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U.S. GOVERNMENT
INFORMATION
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Federal Register

12–11–03 Thursday
Vol. 68 No. 238 Dec. 11, 2003

Pages 69001–69294

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

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 1942

RIN 0575–AC53

Fire and Rescue and Other Community Facilities Projects

AGENCY: Rural Housing Service, USDA.

ACTION: Direct final rule; correction.

SUMMARY: The Rural Housing Service amended its regulation to include all essential community facility projects $300,000 and under to utilize the authority granted for fire and rescue loans. This document corrects the rule, which was published Monday, November 24, 2003.

EFFECTIVE DATE: February 9, 2004.

FOR FURTHER INFORMATION CONTACT: Cheryl Thompson, Management Analyst, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250–0742; Telephone: 202–692–0043.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published in the direct final rule, due to an amendatory instruction error, which may be unclear, this action corrects amendatory instruction number 6 to clarify the intent of the regulation change.

Correction of Publication

In FR rule document 03–29212, published November 24, 2003 (68 FR 65829), make the following correction.

■ On page 65830, in the middle column, amendatory instruction number 6 is corrected to read as follows:

§ 1942.104 [Corrected]

■ 6. In § 1942.104, paragraph (a) is revised, paragraphs (b) and (c) are removed, and paragraph (d) is redesignated as paragraph (b) and revised. (The undesignated text following newly designated paragraph (b) remains unchanged).

Dated: December 5, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 03–30670 Filed 12–10–03; 8:45 am]

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DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 6

[Docket No. 031205307–3307–01]

RIN 0690–AA34

Civil Monetary Penalties; Adjustments

AGENCY: Office of the Secretary, Commerce.

ACTION: Final rule.

SUMMARY: This final rule is being issued to correct adjustments to civil monetary penalties (CMP) which appeared in a Final Rule published by the Department of Commerce (the Department) on January 29, 2003, 68 FR 4380. As required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, the Secretary of Commerce adjusted civil monetary penalties within the jurisdiction of the Department on October 24, 1996, and again on November 1, 2000. On September 30, 2002, the United States General Accounting Office (GAO) sent the Secretary of Commerce a letter indicating that the Department's November 1, 2000, adjustment was inconsistent with the requirements of the statute, and recommending corrective action. The Department's rule of January 29, 2003 sought to bring the Department into compliance with GAO's interpretation of the statute. This rule corrects certain penalty amounts and citations provided in that rule This rule is not retroactive. The Department will not adjust individual penalties that have already been imposed. The Department will not, as a matter of policy, seek penalties that are greater than the corrected amounts stated in this rule for violations occurring between November 1, 2000, and the December 11, 2003.

DATES: This rule is effective December 11, 2003.

ADDRESSES: Office of the General Counsel, Department of Commerce, 14th and Constitution Avenue, NW., MS 5876, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Peter Robbins, (202) 482–0846.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410) provided for the regular evaluation of CMPs to ensure that they continued to maintain their deterrent value and that penalty amounts due to the Federal Government were properly accounted for and collected. On April 26, 1996, the Federal Civil Penalties Inflation Adjustment Act of 1990 was amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) to require each agency to issue regulations to adjust its CMPs for inflation at least every four years. The amendment further provides that any resulting increases in a CMP due to the inflation adjustment should apply only to the violations that occur after the date of the publication in the **Federal Register** of the increased amount of the CMP. Accordingly, the prior penalty amounts remain effective through the date of publication.

In early 2002, GAO determined that in its 2000 adjustments, the Department had adjusted some of its civil penalties in a manner inconsistent with GAO's reading of the statute, and in particular questioned the Department's method of rounding.

As stated in the January 29, 2003, rule, the Department believes that GAO's reading of the Federal Civil Penalties Inflation Adjustment Act of 1990 produces a result which is inconsistent with the stated purpose of the statute (*i.e.*, to keep civil penalties in pace with inflation). Nevertheless, the Department sought to comply with GAO's request that the 2000 adjustments be revised. Accordingly, on January 29, 2003, the Department published a rule listing adjusted CMPs. Unfortunately, there were several improper penalty amounts and citations in that rule. The purpose of this rule is to correct those mistakes.

The changes to the CMPs made by the January 29, 2003, rule and by this rule are not retroactive. The Department will not adjust penalties that were imposed under the CMPs in the November 1, 2000, rule prior to their adjustment in either the January 29, 2003, rule or this rule. In cases in which penalties were not imposed prior to January 29, 2003, and which allege violations that occurred after November 1, 2000, the Department's policy will be not to seek penalties that exceed the amounts that are set by this rule.

During the process of reviewing the above-stated CMPs, the Department has discovered that some CMPs listed in previous adjustment notices have been incorrectly stated. The previous incorrect CMPs were the result of an oversight that failed to properly apply the CMP for the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1851, *et seq.*, to statutes that adopt its CMP by reference. The following statutes' CMPs have been listed to reflect the correct statutorily mandated penalty: 16 U.S.C. 971e(e), Atlantic Tunas Convention Act of 1975 (1995); 16 U.S.C. 3606(b)(1), Atlantic Salmon Convention Act of 1982 (1990); 16 U.S.C. 3637(b), Pacific Salmon Treaty Act of 1985 (1990); 16 U.S.C. 5103(b)(2), Atlantic Coastal Fisheries Cooperative Management Act (1993); 16 U.S.C. 5154(c)(1), Atlantic Striped Bass Conservation Act (1990); and 16 U.S.C. 5606(b), Northwest Atlantic Fisheries Convention Act of 1995.

Rulemaking Requirements

It has been determined that this rule is not significant for purposes of Executive Order 12866.

The Department for good cause finds that notice and opportunity for comments required by 5 U.S.C. 553(b)(B) of the Administrative Procedure Act are unnecessary and contrary to the public interest for this rulemaking because the Debt Collection Improvement Act of 1996 requires the head of each agency to adjust its civil monetary penalties for inflation by regulation at least every four years, and the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, states how to calculate the inflation adjustment. This rule merely adjusts the Department's CMPs according to the statutory requirements, as interpreted by GAO. Because the Department adjusted the CMPs in 2000 in a manner that was not in compliance with GAO's reading of the law, and then readjusted the CMPs in a manner that did not always accurately reflect the appropriate penalties, the Department is adjusting the CMPs sooner than four years. The Department does not have any discretion in making the adjustments. Additionally, the public interest requires that the published maximums for CMPs be accurate. For the same reasons, and also because the published amounts of some penalties have now been in error between November 1, 2000, and January 29, 2003, as well as the period between January 29, 2003, and December 11, 2003, there also exists good cause to waive the thirty-day delay in effectiveness, pursuant to 5 U.S.C. 553(d)(3).

Because notice and opportunity for comment are not required by 5 U.S.C. 553, or any other law, a Regulatory Flexibility Analysis is not required and was not prepared for the purposes of the Regulatory Flexibility Act.

This rule does not contain information collection requirements for the purposes of the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 6

Law Enforcement, Penalties.

James L. Taylor,

Deputy Chief Financial Officer and Director for Financial Management.

■ For the reasons set forth in the preamble, subtitle A of title 15 of the Code of Federal Regulations is amended as follows:

PART 6—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

■ 1. The authority citation for part 6 continues to read as follows:

Authority: Sec. 4, as amended, and sec. 5, Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–134, 110 Stat. 1321, 28 U.S.C. 2461 note.

■ 2. Section 6.4 is revised to read as follows:

§ 6.4 Ajustment to penalties.

(a) Bureau of Industry and Security

(1) 15 U.S.C. 5408(b)(1), Fastener Quality Act violation, from $27,500 to $27,500.

(2) 22 U.S.C. 6761(a)(1)(A), Chemical Weapons Convention Implementation Act—Inspection Violation, from $25,500 to $25,000.

(3) 22 U.S.C. 6761(a)(1)(B), Chemical Weapons Convention Implementation Act—Record Keeping Violation, from $5,100 to $5,000.

(4) 50 U.S.C. 1705(a), International Emergency Economic Powers Act—Export Administration Regulation Violation, from $12,000 to $11,000.

(5) 50 U.S.C. 1705(a), International Emergency Economic Powers Act—Chemical Weapons Convention Implementation Act, Import Restriction Violation, from $11,000 to $11,000.

(6) 50 U.S.C. App. 2410(c), Export Administration Act—Other Violation, from $12,000 to $11,000.

(7) 50 U.S.C. App. 2410(c), Export Administration Act and Section 38 of the Arms Export Control Act—National Security Violation, from $120,000 to $120,000.

(b) Economic Development Administration

(1) 19 U.S.C. 2349, Trade Act of 1974—False Statements or Submissions with Applications for Assistance, from $6,000 to $5,500.

(2) [Reserved]

(c) Economics and Statistics Administration

(1) 13 U.S.C. 304, Delinquency on Delayed Filing of Export Documentation, from $1,200 to $1,100.

(2) 13 U.S.C. 305, Collection of Foreign Trade Statistics—Violations, from $1,200 to $1,100.

(3) 22 U.S.C. 3105(a), International Investment and Trade in Services Act—Failure to Furnish Information, from $30,000 to $27,500.

(d) International Trade Administration

(1) 19 U.S.C. 81s, Foreign Trade Zone—Violation, from $1,200 to $1,100.

(2) 19 U.S.C. 1677(f)(4) U.S.-Canada FTA Protective Order—Violation, from $120,000 to $120,000.

(e) National Oceanic and Atmospheric Administration

(1) 15 U.S.C. 5623(a)(3), Land Remote Sensing Policy Act of 1992, from $11,900 to $11,000.

(2) 15 U.S.C. 5658(c), Land Remote Sensing Policy Act of 1992, from $11,900 to $11,000.

(3) 16 U.S.C. 773f(a), Northern Pacific Halibut Act of 1982, from $30,000 to $27,500.

(4) 16 U.S.C. 783, Sponge Act (1914), from $600 to $550.

(5) 16 U.S.C. 957, Tuna Conventions Act of 1950 (1962);

(i) Violation/Subsection a, from $30,000 to $27,500.

(ii) Subsequent Violation/Subsection a, from $60,000 to $60,000.

(iii) Violation/Subsection b, from $1,200 to $1,100.

(iv) Subsequent Violation/Subsection b, from $6,000 to $5,500.

(v) Violation/Subsection c, from $120,000 to $120,000.

(6) 16 U.S.C. 971e(e), Atlantic Tunas Convention Act of 1975 (1995), from $109,000 to $120,000.

(7) 16 U.S.C. 972f(b), Eastern Pacific Tuna Licensing Act of 1984;

(i) Violation/Subsections (a)(1)–(3), from $30,000 to $27,500.

(ii) Subsequent Violation/Subsections (a)(1)–(3), from $60,000 to $60,000

(iii) Violation/Subsections (a)(4)–(5), from $6,000 to $5,500.

(iv) Subsequent Violation/Subsections (a)(4)–(5), from $6,000 to $5,500.

(v) Violation/Subsection (a)(6), from $120,000 to $120,000.

(8) 16 U.S.C. 973f(a), South Pacific Tuna Act of 1988, from $300,000 to $300,000.

(9) 16 U.S.C. 1174(b), Fur Seal Act Amendments of 1983, from $11,000 to $11,000.

(10) 16 U.S.C. 1375(a)(1), Marine Mammal Protection Act of 1972 (1981), from $12,000 to $11,000.

(11) 16 U.S.C. 1385(e), Dolphin Protection Consumer Information Act (1990), from $110,000 to $110,000.

(12) 16 U.S.C. 1437(d)(1), National Marine Sanctuaries Act (1992), from $119,000 to $120,000.

(13) 16 U.S.C. 1540(a)(1), Endangered Species Act of 1973;

(i) Knowing Violations of Section 1538 (1988), from $30,000 to $27,500.

(ii) Other Knowing Violations (1988), from $14,000 to $13,200.

(iii) Otherwise Violations (1978), from $600 to $550.

(14) 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act (1990), from $120,000 to $120,000.

(15) 16 U.S.C. 2437(a)(1), Antarctic Marine Living Resources Convention Act of 1984;

(i) Knowing Violation, from $12,000 to $11,000.

(ii) Violation, from $6,000 to $5,500.

(16) 16 U.S.C. 2465(a), Antarctic Protection Act of 1990;

(i) Knowing Violation, from $11,000 to $11,000.

(ii) Violation, from $5,500 to $5,500.

(17) 16 U.S.C. 3373(a), Lacey Act Amendments of 1981

(i) Sale and Purchase Violation, from $12,000 to $11,000.

(ii) Marking Violation, from $300 to $275.

(iii) False Labeling Violation, from $12,000 to $11,000.

(iv) Other than Marking Violation, from $12,000 to $11,000.

(18) 16 U.S.C. 3606(b)(1), Atlantic Salmon Convention Act of 1982 (1990), from $120,000 to $120,000.

(19) 16 U.S.C. 3637(b), Pacific Salmon Treaty Act of 1985 (1990), from $120,000 to $120,000.

(20) 16 U.S.C. 4016(b)(1)(B), Fish and Seafood Promotion Act of 1986, from $5,500 to $5,500.

(21) 16 U.S.C. 5010(a)(1), North Pacific Anadromous Stocks Act of 1992, from $110,000 to $110,000.

(22) 16 U.S.C. 5103(b)(2), Atlantic Coastal Fisheries Cooperative Management Act (1993), from $110,000 to $120,000.

(23) 16 U.S.C. 5154(c)(1), Atlantic Striped Bass Conservation Act (1990), from $120,000 to $120,000.

(24) 16 U.S.C. 5507(a)(1), High Seas Fishing Compliance Act of 1995, from $109,000 to $110,000.

(25) 16 U.S.C. 5606(b), Northwest Atlantic Fisheries Convention Act of 1995, from $109,000 to $120,000.

(26) 22 U.S.C. 1978(e), Fishermen's Protective Act of 1967 (1971);

(i) Violation, from $11,000 to $11,000.

(ii) Subsequent Violation, from $27,500 to $27,500.

(27) 30 U.S.C. 1462(a), Deep Seabed Hard Mineral Resources Act (1980), from $30,000 to $27,500.

(28) 42 U.S.C. 9152(c)(1), Ocean Thermal Energy Conversion Act of 1980, from $30,000 to $27,500.

■ 3. Section 6.5 is revised to read as follows:

§ 6.5 Effective date of adjustments.

The adjustments made by Sec. 6.4 of this part, of the penalties there specified, are effective on December 11, 2003, and said penalties, as thus adjusted by the adjustments made by Sec. 6.4 of this part, shall apply only to violations occurring after December 11, 2003, and before the effective date of any future inflation adjustment thereto made subsequent to December 11, 2003 as provided in Sec. 6.6 of this part.

[FR Doc. 03–30621 Filed 12–10–03; 8:45 am]

BILLING CODE 3510–17–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulation Nos. 4 and 16]

RIN 0960–AE97

Federal Old-Age, Survivors and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Administrative Review Process; Video Teleconferencing Appearances Before Administrative Law Judges of the Social Security Administration

AGENCY: Social Security Administration (SSA).

ACTION: Final rule.

SUMMARY: We are adopting without change the final rules that were published in the **Federal Register** on February 3, 2003, at 68 FR 5210, authorizing us to conduct hearings before administrative law judges (ALJs) using video teleconferencing (VTC). The revised rules authorized us to conduct hearings before ALJs at which a party or parties to the hearing and/or a witness or witnesses may appear before the ALJ by VTC. The revised rules also provided that if we schedule you to appear at your hearing by VTC, rather than in person, and you object to use of the VTC procedure, we will reschedule your hearing as one at which you may appear in person before the ALJ. Under the revised rules, the ALJ will also consider any objection you may have to the appearance of a witness by VTC. The purpose of the rules is to provide us with greater flexibility in scheduling and holding hearings, improve hearing process efficiency, and extend another service delivery option to individuals requesting a hearing.

DATES: These rules were effective March 5, 2003.

FOR FURTHER INFORMATION CONTACT: Robert J. Augustine, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–0020 or TTY 1–800–966–5906, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

Electronic Version

The electronic file of this document is available on the Internet at *http://www.gpoaccess.gov/fr/index.html.* It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawRegs.*

SUPPLEMENTARY INFORMATION:

Background

On January 5, 2001, at 66 FR 1059, we published a Notice of Proposed Rulemaking (NPRM) in which we proposed to authorize our use of VTC in conducting hearings before ALJs. One provision in the proposed rules would have given claimants the right to veto use of VTC to take both their own testimony and the testimony of vocational experts (VEs) and medical experts (MEs). On February 3, 2003, after considering the public comments received on the NPRM, we published the final rules at 68 FR 5210 authorizing our use of VTC effective March 5, 2003. The final rules made a significant change from the proposed rules by giving claimants the right to veto the use of VTC only for the purpose of taking their own testimony. Accordingly, in publishing the final rules, we requested public comment on the issue of whether

claimants should or should not be empowered to veto use of VTC to take the testimony of expert witnesses.[1]

Our Reasons for Proposing Rules Authorizing Use of VTC[2]

We receive more than 500,000 requests for hearings before ALJs each year. To accommodate the hearing requests of individuals who do not live near a hearing office, we hold approximately 40% of hearings at remote sites, which are generally at least 75 miles from the hearing office.

To make travel to remote hearing sites as cost effective as possible, hearing offices wait until they have a sufficient number of requests for hearing to schedule a full day or, if travel to a remote hearing site requires an overnight stay, several days of hearings. Because of the need to accrue a docket, ALJs travel to some remote hearing sites infrequently. Because many remote hearing sites are in less-populous areas, it can be difficult to find a needed medical and/or vocational expert witness(es) to travel to these sites, and this difficulty may further delay scheduling a hearing. ALJs also travel from their assigned hearing offices to assist other hearing offices when the need arises.

We proposed rules to authorize use of VTC in conducting hearings based on testing conducted in the State of Iowa beginning in 1996 that demonstrated that VTC procedures can be effectively used where large scale, high quality VTC networks exist and claimants want to participate in VTC procedures because doing so reduces the distances they must travel to their hearings. In a survey of participants in the Iowa test, a large percentage of the respondents rated hearings using VTC procedures as ''convenient'' or ''very convenient,'' and overall service as either ''good'' or ''very good.'' Test data showed that processing time for these hearings was substantially less than for hearings conducted in person at remote sites during the same time period, and that the ratio of hearings held to hearings scheduled was significantly higher for hearings using VTC procedures than for hearings conducted in person. Being able to hold hearings as scheduled increases our efficiency because we do not have to recontact the individual to determine why he or she did not appear at a scheduled hearing nor reschedule the hearing (which can be time consuming, especially when an expert witness(es) has been scheduled to testify). Further, an ALJ does not spend time waiting for someone who does not appear, as would be the case in a hearing conducted in person at a remote site.

Based on all these factors—claimant satisfaction, ability to provide more timely hearings, savings in ALJ travel time, faster case processing, and higher ratio of hearings held to hearings scheduled—we decided that conducting hearings by VTC would be an efficient service delivery alternative. We also decided that scheduling a hearing for use of VTC, rather than asking someone to elect a hearing using VTC, as we did in our testing of VTC, would improve hearing office efficiency and would permit us to provide faster access to a hearing for some individuals.

Final Rules With Request for Comment

In the final rules with request for comment published February 3, 2003, we revised several sections of our regulations. We revised §§ 404.929 and 416.1429 to state that you may appear at your hearing in person or by VTC. We revised §§ 404.936 and 416.1436 to state that we may schedule your appearance or that of any individual appearing at the hearing to be by VTC and that, if we schedule you to appear by VTC and you tell us that you want to appear in person, we will schedule a hearing at which you may appear in person. We revised §§ 404.938 and 416.1438 to state that if we schedule you or anyone to appear at your hearing by VTC, the notice of hearing will tell you that and provide information about VTC appearances and about how you can tell us that you do not want to appear by VTC. Finally, we revised §§ 404.950(a) and (e) and 416.1450(a) and (e) to state that a party or a witness may appear at a hearing in person or by VTC.

The final rules with request for comment included a number of changes we made in response to the public comments we received on the NPRM, including changes to §§ 404.936 and 416.1436 to clearly reflect the authority of the ALJ to determine how hearings are conducted with respect to the use of VTC to conduct appearances.[3] The final rules with request for comment also set forth, in §§ 404.936(c) and 416.1436(c), specific policies that direct how that authority is to be exercised. Those sections specify that—

> ''In setting the time and place of the hearing, the administrative law judge determines whether your appearance or that of any other individual who is to appear at the hearing will be made in person or by video teleconferencing. The administrative law judge will direct that the appearance of an individual be conducted by video teleconferencing if video teleconferencing technology is available to conduct the appearance, use of video teleconferencing to conduct the appearance would be more efficient than conducting the appearance in person, and the administrative law judge does not determine that there is a circumstance in the particular case preventing use of video teleconferencing to conduct the appearance.''

As previously noted, the final rules with request for comment also made changes in the rules proposed in the NPRM relative to the issue of whether claimants should have veto authority over the use of VTC for the appearances of VEs and MEs. We made these changes in response to the comments of ALJs who commented on the NPRM, all but one of whom strongly opposed the proposal to allow claimants to veto the use of VTC to conduct the appearances of expert witnesses. (The comments of the remaining ALJ dealt with matters that were not within the scope of the NPRM.) The ALJs who opposed this provision included five ALJs who conducted hearings in the Iowa test and the Association of Administrative Law Judges.

The commenters opposed the proposal to allow claimants to veto VTC appearances by expert witnesses for several reasons. One was that it would defeat the purpose of using VTC as a way to obtain expert testimony when it is impractical for the expert to appear in person, and that it could force ALJs to forgo needed testimony or to take testimony through the time consuming and unwieldy method of written interrogatories. The commenters also expressed concern that the right to veto the appearance of an expert by VTC could be used to prevent the taking of expert testimony that might be adverse to the claimant and to facilitate ''expert shopping.'' It was pointed out that claimants can already object to witnesses based on bias or qualifications. The view was also expressed that due process is fully accorded to the claimant if the claimant can see and cross-examine the expert

[1] The final rules published on February 3, 2003, were designated as ''[f]inal rules with request for comment.'' This current preamble deals with three sets of rules: (1) The proposed rules published in the NPRM of January 5, 2001; (2) the final rules were requested for comment published February 3, 3002, and (3) these current final rules that adopt the final rules with request for comment without change.

[2] We are summarizing our reasons for proposing rules to authorize use of VTC. For a more detailed review of the history of the development of these rules, see the preamble to the NPRM of January 5, 2001 (66 FR 1059–1062).

[3] For a detailed review of the comments on the NPRM, and of all the changes that the final rules with request for comment made in the proposed rules, see the preamble to the final rules with request for comment of February 3, 2003, 68 FR 5212–5217.

and confront the expert with documentary evidence.

The ALJs who commented based on their experience in the Iowa test strongly emphasized the practical problems that allowing claimants to veto VTC appearances by experts would cause. These ALJs stated that using VTC to take the testimony of VEs is necessary to utilize these experts effectively because the cost of a VE's appearance can be reduced if, as is possible using VTC procedures, a docket of multiple appearances can be arranged for the expert. They also emphasized the value of VTC in reducing the problems involved in scheduling hearings, citing the example of how much easier it is to make arrangements for one VE to appear by VTC in four hearings occurring on a given day at four different sites than it is to arrange for four VEs to make in-person appearances, at odd times in their workdays, at four sites.

The ALJs who participated in the Iowa test also emphasized that the practical problems in not using VTC to take VE testimony are greatly compounded when it comes to securing the testimony of MEs. They reported that it is only through use of VTC that they are able to provide ME testimony for hearings being held in remote sites, and that MEs will not travel to remote sites when it is technically possible to testify in hearings being held at such sites via VTC. These ALJs also reported that it was their experience that it is almost impossible to get MEs to testify in the larger urban areas where the hearing offices are located, and that it is sometimes necessary to rely on MEs testifying from the medical centers in Ames and Iowa City even in cases being heard in the West Des Moines area.

In explaining our response to these comments (*i.e.*, the decision we made in the final rules with request for comment to deny claimants veto authority over whether hearings will be conducted with a witness or witnesses appearing by VTC), we said—

> The claimant may state objections to a witness appearing by VTC, just as they may state objections to any aspect of the hearing, and they may object to a witness on the basis of perceived bias or lack of expertise. However, a claimant's objection to a witness appearing by VTC will not prevent use of VTC for the appearance, unless the ALJ determines that the claimant's objection is based on a circumstance that warrants having the witness appear in person.

The analysis of the commenting ALJs concerning the impracticalities of giving claimants veto power over the medium whereby expert witnesses make their appearance has caused us to reevaluate our proposal in that regard. We believe these commenters are correct in indicating that giving claimants that power would undermine one of the primary practical benefits of using VTC procedures and adversely impact our ability to use those procedures effectively to improve the hearings process. The commenters also effectively emphasize the significance of the positive practical benefits that can flow from relying on VTC procedures in scheduling and conducting the appearances of expert witnesses.

An important point made in this comment is that implementation of VTC procedures reduces the readiness of experts to travel to remote sites. This is a result that might be expected logically, we believe, and the experience of the ALJs in the Iowa test bears out its occurrence.

Unless we ensure ALJ authority to use VTC to take expert testimony by not empowering claimants to veto its use for that purpose, the reduced readiness of expert witnesses to travel when VTC appearances are technologically possible will adversely affect our ability to preserve a reasonable opportunity for claimants to appear in person if they choose to opt out of scheduled appearances by VTC. If the authority of ALJs to secure expert testimony by VTC is not ensured, the reduced willingness of experts to travel when VTC technology is available could also reduce the efficiency with which we are able to schedule the appearances of experts at the hearings of individuals who live near hearing offices in urban areas and appear in person in those offices for their hearings.

MEs and VEs testify as impartial witnesses. They testify based on the evidence entered into the record and not based on any examination or personal evaluation of the claimant. Where they testify by VTC and their testimony is adverse to a party's claim, the party and his or her representative, if any, will have a complete opportunity to confront and examine the witness regarding the matters that are important with respect to expert testimony—*i.e.*, the expertise of the witness and the accuracy of his or her testimony.

Affording claimants the power to veto the appearance of expert witnesses by VTC would be inconsistent with our existing practices and instructions regarding use of interrogatories to secure the testimony of expert witnesses. While emphasizing the preferability of securing live testimony where feasible, and requiring the ALJ to consider and rule on any claimant objection to the use of interrogatories, our instructions do not mandate non-use of interrogatories merely because a claimant objects to their use. See Hearings, Appeals, and Litigation Law Manual (HALLEX), sections I–2–5–30, I–2–5–42, and I–2–5–57, at *http://www.ssa.gov/OP-Home/hallex/hallex.html.* Thus, allowing claimants to veto the live testimony that experts can give by VTC would invest claimants with an authority that they do not currently have with respect to interrogatories.

Under these final rules, ALJs have discretion to determine that the appearance of any individual must be conducted in person. Thus, to the extent that circumstances could arise in which it would be advisable to schedule an in-person appearance by an expert witness even though a VTC appearance would be possible technologically, the ALJ may schedule such an appearance. That action could be appropriate, for example, where the claimant alleges personal bias or dishonesty on the part of the expert and the ALJ determines that the claimant should have the opportunity to cross-examine the witness in person because of the greater immediacy of an in-person confrontation.[4]

Use of VTC

At present, 15 of our 138 hearing offices and 1 regional office use VTC to conduct hearings. Appearances by VTC are occurring from 12 different remote sites and 2 state networks.

We plan to gradually roll out use of VTC nationally. We will begin to use VTC facilities in the servicing area of a hearing office when the Associate Commissioner for Hearings and Appeals determines that appearances at hearings conducted in the area can be conducted more efficiently by VTC than in person.

We foresee initially scheduling VTC appearances where absent use of VTC:

- We would need to accrue a docket for a remote hearing site.
- An ALJ would need to travel to assist another hearing office.
- An expert witness(es) or appropriate medical specialist(s) would not be available for a hearing site. (In such a case, all participants could be at different locations; for example, the ALJ at a hearing office, the individual at a remote hearing site or another hearing office, and the expert witness(es) at a third location.)

Initially, we plan to locate most remote sites for using VTC to conduct appearances either in space where we have a long-term lease or in another federal building. We are investigating sharing VTC facilities with other federal agencies and states, and, if we can ensure privacy, we may eventually rent commercial space to expand use of VTC as a service delivery option. Calling into SSA's VTC network from private facilities, such as facilities owned by a law firm, may also be possible. Regardless of the type of facility, we will make certain that:

- The individual has the same access to the hearing record when appearing by VTC as he or she would have if appearing in person before the ALJ.
- There is a means of transmitting and receiving additional evidence between all locations and all participants.
- An assistant is present at the VTC site to operate the equipment and provide other help, as required.

[4] 68 FR 5215–5216 (2003).

• The audio/video transmission is secure and the individual's privacy is protected.

We will follow the same procedures for making audio recordings of hearings using VTC that we do for hearings where all the participants appear in person. We have no plans to videotape hearings in which a party or a witness appears by VTC. If there is a problem with the VTC equipment, before or during a hearing, we will reschedule the hearing as we do now when unforeseen circumstances require us to reschedule a hearing: At the earliest time possible based on the request for hearing filing date.

We reserve the right not to schedule an appearance by VTC for someone who asks to appear by VTC. In many locations, especially in the near term, we may not have the capability to accommodate the request, and the ALJ may determine that an appearance must be conducted in person even where VTC capability exists. As access to VTC expands, we will generally accommodate requests to appear by VTC as space and time permit.

Although use of VTC to conduct hearings has the potential to improve service, we will not require any individual to appear at his or her hearing by VTC if the individual objects to that procedure at the earliest possible opportunity before the time scheduled for the hearing. Under these final rules, if a party timely objects to making his or her appearance by VTC, we will reschedule the hearing as one at which the individual may appear in person.

When we reschedule a hearing because a party objects to making his or her appearance by VTC, we will reschedule the hearing at the earliest time possible based on the date the request for hearing was filed. Where necessary, to expedite the rescheduling, we will give the party the opportunity to appear in person at the hearing office or any other hearing site within the service area of the hearing office at which we are first able to schedule a hearing. The party's travel expenses to the remote site or to the hearing office, and the travel expenses of his or her appointed representative, if any, and the travel expenses of any unsubpoenaed witnesses we determine to be reasonably necessary, will be reimbursed in accordance with the provisions of §§ 404.999a–404.999d and 416.1495–416.1499.

To ensure that a party fully understands the right to decline to appear by VTC, a notice scheduling an individual to appear at his or her hearing by VTC will clearly state:

• What it means to appear by VTC;
• That we have scheduled the individual's appearance to be by VTC;
• That we will schedule a hearing at which the individual may appear in person if the individual tells us that he or she does not want to appear by VTC; and
• How to tell us that.

We will evaluate hearings using VTC procedures to ensure that there is no significant difference in the outcome of hearings conducted using VTC and those conducted in person and that we maintain a high degree of accuracy in decisions made based on hearings using VTC. We will also ensure that individuals:

• Understand that they are not required to appear at their hearings by VTC;
• Understand that a witness is appearing by VTC, when appropriate;
• Know how to tell us if they do not want to appear by VTC;
• Receive a full and fair hearing; and
• Are satisfied with the VTC process in relation to their appearance and the appearances of any witnesses, including the appearances of witnesses who may appear by VTC notwithstanding an objection by the claimant to use of VTC for the appearance.

Public Comments

The final rules with request for comment that were published on February 3, 2003, provided the public with a 60-day comment period. We received a total of ten comments.

Because some of the comments were detailed, we have condensed, summarized, or paraphrased them below. However, we have tried to summarize the commenters' views accurately and to respond to all of the significant issues raised by the commenters that were within the scope of this rulemaking action.

We have not limited ourselves to responding only to those comments that addressed the specific issue on which we solicited comment (*i.e.*, whether claimants should have veto authority over VTC appearances by witnesses as well as veto authority over their own appearances by VTC). Many of the other comments received addressed issues previously addressed or touched on in the comments received in response to the NPRM. However, since the additional comments generally offered some different perspective on the issues, we are responding to those comments as well.

None of the comments we received opposed the change to deny claimants the right to veto use of VTC to conduct the appearance of a witness. However, a number of the comments suggested that we expand our rules to provide more specific guidance regarding the consideration of objections to the use of VTC for taking expert testimony and the factors that could interfere with use of VTC to conduct the appearance of a witness.

Comment: The Railroad Retirement Board (RRB), which had noted in commenting on the proposed rules that it would be interested in making use of SSA's VTC facilities on a fee basis, wrote to again state its interest in exploring the possibility of the RRB using our VTC facilities.

Response: We are exploring the possibilities of sharing VTC facilities with the RRB and other agencies.

Comment: The Association of Administrative Law Judges (AALJ) wrote to restate its strong support for our decision to have the ALJ decide whether to have expert witnesses appear by VTC and to deny claimants the right to veto use of VTC for that purpose.

Response: We considered the AALJ's comments in deciding to change the proposed rules in this respect. The AALJ's restatement of its prior comments supports adoption of the rules published February 3, 2003, without change.

Comment: Noting that we cited the difficulty of finding MEs in remote sites in sparsely populated areas as one justification for using VTC, one commenter suggested that another possible solution would be to increase ME compensation.

Response: We believe that we can increase our ability to secure ME (and VE) services in remote areas by using VTC, and that it will be productive to use VTC for this purpose even if we also identify other ways to ameliorate the problems we have experienced in securing expert testimony in remote areas. VTC use can increase the incentives for an expert witness to appear in remote-site hearings by reducing or eliminating the adverse effect on the expert's professional schedule that can occur if the expert is required to travel to a remote site. Use of VTC can also increase the incentive of experts to appear in Social Security hearings by facilitating the scheduling of multiple appearances for the expert within a limited period.

Comment: In the mistaken belief that we plan to videotape hearings in which appearances are made by VTC, a commenter asked a number of questions about access to and the costs of the videotapes that would result under such a procedure, and about whether the Appeals Council might use these videotapes and the visual clues they

provide regarding credibility to make credibility findings over and beyond those of the ALJ.

Response: As we stated above, and in the preambles to the NPRM and the final rules with request for comment, we have no plans to videotape hearings in which a party or witness appears by VTC. We will make audio recordings of these hearings using the same procedures we use in hearings in which all of the participants appear in person. The role of the Appeals Council in considering cases should not be affected by whether VTC was used in conducting an appearance or appearances at the hearing.

Comment: This same commenter asked what savings in real days we project to occur as a result of the use of VTC.

Response: As we noted above and in the prior preambles concerning these rules, the Iowa test results showed that processing time for hearings using VTC procedures was substantially less than for hearings conducted in person at remote sites. The processing time savings achieved by different hearing offices will vary depending on multiple factors, including the rate at which the office uses VTC in the hearings it conducts. Nationally, we expect that the overall effect of using VTC in reducing processing times will increase as we gradually rollout VTC and develop more effective VTC networks.

Comment: A commenter expressed the opinion that VTC is a viable alternative for hearings, provided it remains a choice and not a requirement, and that use of VTC should speed up the hearing process and save money.

Response: We agree with these views. We understand the aspect of this comment that deals with the maintenance of ''choice'' to be concerned with the claimant's retention of choice regarding the mode of his or her appearance, rather than the specific issue of whether the claimant should have veto authority over VTC appearances of expert witness. We discuss that issue in response to other comments.

Comment: Two commenters questioned whether claimants would find appearing by VTC satisfactory. One commenter thought that the ALJ hearing was already stressful enough for claimants and that adding a camera to the process will only make matters worse. Another thought that the camera ''may not cut it'' and that represented claimants will want to look the ALJ in the eye and tell their story in person.

Response: Our testing of VTC does not support the conclusion that claimants will find appearing by VTC to be intimidating or unsatisfactory for the purpose of projecting their own credibility. As previously discussed (above and in the prior preambles for these rules), in our testing of VTC in Iowa a large percentage of claimants rated hearings using VTC procedures as ''convenient'' or ''very convenient'' and overall service as ''good'' or ''very good.'' We also note that in commenting on the NPRM, a national organization of claimant representatives reported that one of its members who had represented several hundred claimants in the Iowa test now preferred VTC to in-person hearings because, among other benefits, VTC has a calming effect on his clients.

One of the reasons we retained the right of claimants to opt out of appearing personally by VTC in the final rules with request for comment was to promote claimant satisfaction with the hearing experience. As we noted in the preamble to those rules, claimants may have strong opinions about whether they can best project their own credibility by appearing in person or by VTC. Preserving an option for claimants to appear in person should increase their comfort level in appearing by VTC and help to ensure that they perceive the hearing process as fair.

Comment: Two commenters expressed concerns about the effectiveness of VTC proceedings for the purposes of inquiring fully into the facts. One thought that a ''flickering and disembodied'' view is no substitute for in-person observation at the hearing and that use of VTC will deprive hearing proceedings of the solemnity that encourages truth telling. Another commenter thought that the decisionmaker would lose the personal contact with the claimant that the commenter believes is needed to assess credibility.

Response: Under the final rules with request for comment, the ALJ has discretion to require in-person appearances, by the claimant or witnesses, in any case in which the ALJ determines that the immediacy of an in-person appearance is needed to inquire fully into the facts. Thus, the rules provide a mechanism to prevent use of VTC where an in-person appearance would be more appropriate.

We believe that any problems in assessing credibility in VTC proceedings would generally be associated with possible instances of inadequate VTC transmission. That was the case, for example, in the incident reported in a comment on the NPRM in which a claimant representative was dissatisfied with a VTC experience because the quality of the VTC transmission was not sufficient to allow the ALJ to perceive the claimant's sweating and shortness of breath. We believe we can generally avoid problems of this type by assuring that our VTC facilities are of high quality. As we noted above and in the prior preambles for these rules, we plan to implement use of VTC in the servicing areas of hearing offices after the Associate Commissioner for Hearings and Appeals determines that appearances at hearings conducted in those areas can be conducted more efficiently by VTC than in person. Where problems do occur, we believe that it will frequently be possible to reach satisfactory solutions on an ad hoc basis, such as happened in the above noted example when the ALJ stipulated to the claimant's sweating and shortness of breath based on the representative's statement describing these conditions. Where technical problems occur and cannot be overcome, the hearing will be rescheduled, as happens when a problem in the audio recording equipment prevents the recording of a hearing.

Comment: One commenter opposed use of VTC on the basis that its use is complicated by technical issues, including problems involved in making the claim file available for review by the claimant and the additional costs associated with having dual staffs at two sites.

Response: The technical problems of concern to this commenter involve matters that we assessed in deciding that using VTC to conduct hearings is an efficient service delivery option. Our judgment in this regard included consideration of the need to establish VTC facilities and to have hearing monitors available at VTC sites to assist in the hearing proceedings. The technical issues we have considered also include the problems involved in ensuring that claimants who appear by VTC will have access to the record that is sufficient and equal to that of claimants who appear in person. We have addressed these problems by establishing procedures to provide the claimant and the representative a copy of the evidence of record or an opportunity to review the file at their local Social Security FO before the hearing is conducted, and/or through use of document cameras to display documents on the day of the hearing.[5]

[5] We address these procedures, together with changes we are making in our standardized notices of hearing to advise claimants concerning the procedures, in HALLEX guidance that we have issued to implement our use of VTC procedures (HALLEX TI I–5–1–16). (*See http://www.ssa.gov/OP-Home/hallex/I–05/I–5–1–16.html*, TI 1–5–1–16 III.E, and Attachment 3.)

Comment: One commenter proposed that we should limit the use of VTC to cases in which the ALJ determines that there is ''good cause'' to use VTC procedures because the claimant is prevented from traveling by illness or other good reasons. Another commenter expressed the view that use of VTC should be limited to situations in which its use is necessary to allow the appearance of a witnesses who would be unable to appear except by VTC.

Response: Using VTC would not be efficient or cost effective if we limited its use to the relatively small number of cases in which the claimant is unable to travel or there is another factor requiring the use of VTC. The advantages in efficiency and costs savings involved in using VTC accrue where a hearing office is able to use VTC in many of its cases.

We see no basis for making the use of VTC contingent upon the ALJ finding ''good cause'' to use it in a particular case. As we stated in the preamble to the final rules with request for comment, we believe that the hearing proceedings we conduct using VTC will be fundamentally fair and fully protective of the claimant's right to procedural due process. Based on that belief, we further believe that the best overall policy is to schedule use of VTC to conduct hearings in all instances in which VTC technology is available and would be an efficient means for conducting the appearance(s) of the claimant and/or a witness or witnesses,[6] and the ALJ does not determine that there is a circumstance in the particular case preventing use of VTC to conduct an appearance.

Comment: One commenter expressed concern about unspecified provisions of the final rules with request for comment that ''prohibit a right to object to the appearance of an expert witness by VTC.''

Response: The final rules with request for comment included no provision prohibiting claimants or their representatives from stating objections on any matter, including the appearance of a witness by VTC. As we noted in the preamble to those rules, claimants may state objections to a witness appearing by VTC, just as they may state objections to any aspect of the hearing.[7]

Comment: Noting that it generally supports the use of VTC provided the right to a full and fair hearing is adequately protected and the technical quality of the hearings is assured, an organization of individuals who represent claimants commented that we should provide guidance for circumstances that warrant having a witness appear in person. For that purpose, the commenter suggested that we should include in our rules language from the preamble to the final rules with request for comment in which we specified that a claimant's objection to a witness appearing by VTC will not prevent the use of VTC ''unless the ALJ determines that the claimant's objection is based on a circumstance that warrants having the witness appear in person.''[8]

Response: We are not adopting this comment because the provisions of the final rules with request for comment encompass the point made in the preamble language cited in the comment. Sections 404.936(c) and 416.1436(c) of our rules require us to schedule a VTC appearance for the claimant or any other individual ''if [VTC] technology is available to conduct the appearance, use of [VTC] to conduct the appearance would be more efficient than conducting the appearance in person, and the [ALJ] *does not determine that there is a circumstance in the particular case preventing use of [VTC] to conduct the appearance*.'' (Emphasis added.) A ''circumstance preventing use of [VTC]'' for an appearance necessarily exists where the ALJ ''determines that the claimant's objection is based on a circumstance that warrants having the witness appear in person''; therefore, deciding if there is a circumstance that warrants having a witness appear in person is requisite to deciding if there is a circumstance preventing use of VTC to conduct an appearance.

Comment: This commenter further recommended that our rules should include a requirement that the ALJ consider other factors, such as limitations of the claimant or the representative, that could affect how the hearing is conducted. In this respect, the commenter suggested that we consider including in our rules guidance like that in language from the preamble to the final rules with request for comment indicating that, in deciding whether the claimant's appearance should be scheduled to occur in person or by VTC, the ALJ ''will consider any stated preference of the claimant or the representative for or against appearing by VTC, as well as the availability of VTC technology and other factors, such as a claimant's loss of visual and auditory capacities, that may affect how the appearance should be conducted.''[9] Another commenter, a claimant's representative who personally has a hearing loss that would interfere with his ability to understand and to question a witness appearing by VTC, made a similar comment.

Response: We are making no change in response to these commenters because our rules already include provisions to require consideration of any factors that would compromise the integrity or fairness of the hearing or make it inappropriate to use VTC for any reason. These provisions are reinforced by provisions that require the ALJ to consider the efficiency of scheduling an appearance to occur by VTC.

In setting the time and place for the hearing, the ALJ is required under §§ 404.936(c) and 416.1436(c) to determine whether the appearance of the claimant or any other individual appearing at the hearing will be made in person or by VTC. To make that determination, the ALJ is required by the provisions of these sections to determine if there is a circumstance preventing use of VTC for the appearance. As the cited preamble language reflects, determining if there is such a circumstance requires the ALJ to consider if there is any factor or factors, such as an auditory loss on the part of one of the participants, that would interfere with using VTC for the appearance. The factors considered will necessarily include any visual or auditory limitations on the part of the claimant's representative that could compromise the ability of the representative to participate effectively in observing, understanding, and questioning the expert if VTC is used to take the expert's testimony.[10]

Under §§ 404.936(c)and 416.1436(c) of the final rules with request for comment, the efficiency of using VTC for an appearance is one of the factors the ALJ must consider in deciding if an appearance should be scheduled to occur by VTC or in person. As we explained above and in the prior preambles to these rules, we plan to use VTC in the service area of a hearing

[6] Concerning the assessment of the efficiency of using VTC, see our response below to the comment recommending that the ALJ consider certain factors when scheduling VTC appearances.

[7] HALLEX TI I–5–1–16 has changed our standardized notices of hearing to notify claimants when a witness will appear by VTC and to advise claimants explicitly that they may object not only with respect to issues, but also ''to any other aspect of the scheduled hearing.'' (TI I–5–1–16, Attachment 3.)

[8] 68 FR 5215 (2003).

[9] 68 FR 5213 (2003).

[10] Our HALLEX instructions implementing VTC procedures specify that the circumstances that might cause the ALJ to require an in-person appearance include that in which the claimant or the representative has a visual or auditory impairment of a type that could adversely *affect his or her ability to appear and participate in the hearing* through VTC, either for the purpose of interacting with the ALJ or another participant in the hearing. (TI–I–5–1–16 III.B.)

office when the Associate Commissioner for OHA determines that appearances at hearings conducted in the areas can be conducted more efficiently by VTC than in person. However, while the Associate Commissioner makes the decision about the general efficiency of using VTC in an area, the ALJ is responsible for determining if using VTC for any appearance in a particular case will be efficient.

Comment: The same organization also commented that our rules should require the hearing notice to include a statement that a ME and/or a VE will appear by VTC and provide an opportunity to object.

Response: Sections 404.938(b) and 416.1438(b) of the final rules with request for comment specify that the claimant ''will also be told if [his/her] appearance or that of any other party or witness is scheduled to be made by [VTC] rather than in person.'' We reflect these requirements in HALLEX guidance that modifies our standardized notices of hearing to notify claimants that a witness will appear by VTC and to advise them explicitly of their right to object to any aspect of the hearing (see Footnote 7 above).

Regulatory Procedures

Executive Order 12866, As Amended by Executive Order 13258

We have consulted with the Office of Management and Budget (OMB) and determined that this final rules document meets the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, it was reviewed by OMB.

Regulatory Flexibility Act

We certify that these rules will not have a significant economic impact on a substantial number of small entities as they affect individuals only. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 says that no persons are required to respond to a collection of information unless it displays a valid OMB control number. In accordance with the PRA, SSA is providing notice that the Office of Management and Budget has approved the information collection requirements contained in §§ 404.929, 404.936(d), (e) & (f), 404.938(c) (HA–504), 404.950(a), 416.1429, 416.1436(d), (e) and (f), 416.1438(c) (HA–504), and 416.1450(a) of these final rules. The OMB control number for this collection is 0960–0671, expiring November 30, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.003, Social Security-Special Benefits for Persons Aged 72 and Over; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Aged, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: October 3, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ Accordingly, the final rules with request for comment amending 20 CFR parts 404 and 416 that were published at 68 FR 5210 on February 3, 2003, are adopted as final rules without change.

[FR Doc. 03–30691 Filed 12–10–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 314 and 601

[Docket No. 2000N–1652]

RIN 0910–AB91

Requirements for Submission of Labeling for Human Prescription Drugs and Biologics in Electronic Format

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations governing the format in which certain labeling is required to be submitted for review with new drug applications (NDAs), certain biological license applications (BLAs), abbreviated new drug applications (ANDAs), supplements, and annual reports. The final rule requires that certain labeling content be submitted electronically in a form that FDA can process, review, and archive. Submitting the content of labeling in electronic format will simplify the drug labeling review process and speed up the approval of labeling changes.

DATES: The rule is effective June 8, 2004.

FOR FURTHER INFORMATION CONTACT:

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Robert A. Yetter, Center for Biologics Evaluation and Research (HFM–10), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 3, 2002 (67 FR 22367), FDA published a proposed rule to require the submission of the content of labeling for human prescription drugs and certain biologics in electronic format in a form that FDA can process, review, and archive. This electronic submission requirement would necessitate the amendment of FDA's regulations under §§ 314.50(l) (21 CFR 314.50(l)), 314.81(b)(2)(iii) (21 CFR 314.81(b)(2)(iii)), 314.94(d)(1) (21 CFR 314.94(d)(1)), and the addition of § 601.14 (21 CFR 601.14).

Under current regulations, as noted in the preamble to the proposed rule, labeling for the archival copy of an NDA must be submitted to the agency on paper, labeling for the archival copy of an ANDA may be submitted in any form that FDA and the applicant agree upon, and the current regulations for BLA labeling do not specify a format for submission to the agency. The term ''labeling'' used in §§ 314.50, 314.94, 314.81, and § 601.12 is defined in section 201(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(m)) to mean both labels[1] and other written, printed, or graphic matter upon any article or any of its containers or wrappers, or accompanying such article. Thus, requiring the submission of ''labeling'' entails submission of the label (i.e., the label on the immediate container) and labeling. Labeling consists of the comprehensive prescription drug labeling directed to health care practitioners (i.e., the labeling required under § 201.100(d)(3) (21 CFR 201.100(d)(3)), commonly referred to as the ''package insert'' or

[1] Under section 201(k) of the act, the term ''label'' means a display of written, printed, or graphic matter upon the immediate container of any article.

''professional labeling'')[2] and other labeling. This final rule applies to the electronic submission of the content of labeling, defined as the contents of the package insert or professional labeling, including all text, tables, and figures.

Each year FDA conducts a word-for-word comparison of the labeling as part of the review process for more than 1,000 proposed labeling changes for approved NDAs and BLAs, and more than 2,600 proposed original and supplemental labeling changes for ANDAs.[3] Because reviewers currently conduct these comparisons manually using two paper copies of the labeling, the process is slow and subject to error. Requiring the electronic submission of labeling for NDAs, certain BLAs, ANDAs, supplements, and annual reports will greatly enhance the accuracy and speed of labeling review. This will result in increased protection of the public health because electronic review and comparison of labeling files will provide a higher degree of certainty that all sections of prescription drug labeling are correct.

Although FDA has not previously required regulatory submissions in electronic format, we have issued several guidances describing how to make voluntary electronic submissions to the agency. In the **Federal Register** of January 28, 1999 (64 FR 4433), we (FDA) issued a guidance on general considerations for electronic submissions entitled ''Providing Regulatory Submissions in Electronic Format—General Considerations'' (general considerations guidance). In the general considerations guidance, we included a description of the types of electronic file formats that we are able to accept for processing, reviewing, and archiving electronic documents. In the **Federal Register** of January 28, 1999 (64 FR 4432), we announced the availability of a guidance entitled ''Providing Regulatory Submissions in Electronic Format—NDAs,'' which provided information on how to submit a complete archival copy of an NDA in electronic format. In November 1999, we published a guidance to assist applicants in submitting documents in electronic format for review and archive purposes as part of a BLA, product license application (PLA), or establishment license application (ELA) (64 FR 61647, November 12, 1999). Most recently, we published a guidance for ANDAs entitled ''Providing Regulatory Submission in Electronic Format—ANDAs'' (67 FR 43331, June 27, 2002). In addition, part 11 (21 CFR part 11), concerning electronic records and electronic signatures, describes certain controls for electronic regulatory submissions and states that we are prepared to accept those regulatory submissions that have been identified in the public docket (62 FR 13430, March 20, 1997).

FDA received 13 comments (which raised 21 issues) on the proposed rule and addresses each of those comments in section III of this document. The majority of the comments supported the proposed amendments to FDA's regulations. After careful consideration of the comments, the agency is adopting this final rule without any changes from the proposed rule. The final rule is described in section II of this document.

II. Description of the Final Rule

We are revising our regulations to require the electronic submission of the content of labeling (i.e., the content of the package insert or professional labeling, including all text, tables, and figures) for NDAs, certain BLAs, ANDAs, supplements, and annual reports. This requirement is in addition to existing requirements, found elsewhere in our regulations, that copies of the label and labeling and specimens of enclosures be submitted.

Under the amended regulations that we are adopting in this final rule, §§ 314.50(l), 314.81(b)(2)(iii), and 314.94(d)(1) are revised to require applicants to submit the content of labeling in NDAs, ANDAs, supplements, and annual reports electronically in a form that we can process, review, and archive.[4] Under new § 314.94(d)(1), ANDA applicants are required to submit in electronic format the content of labeling for the proposed drug product (i.e., the content of the generic drug product labeling). As previously stated in the preamble to the proposed rule, ANDA applicants are not required to submit in electronic format the content of labeling for the reference listed drug product. Section 601.14 is added to require applicants for biological products subject to the requirements of § 201.100(d)(3) to submit the content of labeling in BLAs, supplements, and annual reports electronically in a form that we can process, review, and archive.[5]

At this time, portable document format (PDF) is the only type of electronic file format that we have the ability to accept for processing, reviewing, and archiving. PDF is commonly used, easily obtainable, and affordable. Software to convert electronic files to PDF is commercially available at a cost of approximately $100 to $300. The technology necessary to create PDF documents is also publicly available. Because PDF is the only acceptable file type, references to specific media (microfiche, microform, optical disc, and magnetic tape) under §§ 314.50(l)(1) and 314.94.(d)(1) will be deleted.

To be responsive to technological advances, we may recommend in the future that new file formats and software applications be used to submit labeling electronically. As mentioned in the preamble to the proposed rule, we will provide advance notice, in accordance with FDA's good guidance practice regulations under § 10.115 (21 CFR 10.115), so that affected parties will have adequate time to convert to any new format or software. In addition, we expect that such format or software will be widely available before we switch to a new technology. Changes in format and/or software will be identified in public docket number 92S–0251. During any such transition, we will accept submissions using either file format or software.

Finally, these new regulations also make minor changes to reformat and modernize certain regulatory provisions. This final rule is amending § 314.50(l) by adding headings to paragraphs (l)(1) through (l)(4) and by removing the word ''shall'' and adding in its place the word ''must.''

[2] Section 201.100(d) requires that any labeling distributed by or on behalf of the manufacturer, packer, or distributor of the drug, that furnishes or purports to furnish information for use of the drug, or which prescribes, recommends, or suggests a dosage for the use of the drug, must meet the content and format requirements in 21 CFR 201.56 and 201.57.

[3] We also conduct a word-for-word comparison of the labeling for the proposed generic drug product and the reference listed drug to verify that any differences in labeling have been correctly annotated and explained by the ANDA applicant under § 314.94(a)(8)(iv).

[4] The submission of labeling for the archival copy of an NDA is required under § 314.50(e)(2)(ii). Section 314.71(b) (21 CFR 314.71(b)) requires that supplements to approved applications submitted to the agency under § 314.70 (21 CFR 314.70) follow the procedures described in § 314.50. Section 314.81(b)(2)(iii) (21 CFR 314.81(b)(2)(iii)) requires that annual reports include ''currently used professional labeling, patient brochures, or package inserts.'' With respect to the archival copy of an ANDA, § 314.94(a)(8)(ii) requires copies of the label and all labeling for the drug product. Under § 314.97 (21 CFR 314.97), supplements and other changes to approved ANDAs must be submitted to the agency under the requirements of §§ 314.70 and 314.71. Under § 314.98(c) (21 CFR 314.98(c)), annual reports for ANDAs must be submitted as required in § 314.81(b)(2)(iii).

[5] Section 601.2 (21 CFR 601.2) describes the requirements for submission of a BLA, which include the requirement that specimens of enclosures and Medication Guides for a product, if any, be submitted. Section 601.12 (21 CFR 601.12) describes the requirements to make changes to an approved BLA, including labeling changes.

III. Comments on the Proposed Rule

FDA received 13 sets of written comments on the proposed rule from manufacturers, trade associations, advocacy groups, consulting firms, and individuals. The majority of the comments supported FDA's proposal to require that the content of certain labeling be submitted electronically in a form that FDA can process, review, and archive. A few comments requested clarification on various aspects of the rule and one comment opposed the exemptions from specific controls under part 11. A summary of the comments received and the agency's responses follows:

A. General Comments

(Comment 1) One comment identified as a typographical error the citation of § 314.50(l). The comment suggested that § 314.50(l)(1)(i) was being referenced as (1)(1)(i).

(Response) This is not a typographical error; we are citing to § 314.50(l)(1)(i) in the proposed rule, but the lower case letter L (''l'') looks similar to the number 1.

(Comment 2) One comment recommended adding changes to § 314.70 and § 601.12 to address labeling supplements.

(Response) FDA believes that § 314.70 and § 601.12 do not need any changes because the recommended requirements already exist.

Under § 314.71, all procedures that apply to an application under § 314.50 also apply to supplement submissions. Thus, by amending the provisions in § 314.50, the final rule also covers the requirements for labeling supplements. Similarly, § 601.14 requires applicants for biological products subject to the requirements of § 201.100(d)(3) to submit the content of labeling in BLAs, supplements, and annual reports electronically in a form that FDA can process, review, and archive.

(Comment 3) One comment stated that it supported the adoption of regulations to require bar coding for all pharmaceuticals.

(Response) The agency is pursuing bar coding initiatives separately from this rulemaking. A proposed rule to require bar codes on certain human drug product labels and biological product labels was published in the **Federal Register** of March 14, 2003 (68 FR 12500). This final rule deals solely with the content of labeling for human prescription drugs and biologics submitted to FDA in electronic format that FDA can process, review, and archive.

(Comment 4) Although supportive of the proposed rule, one comment was concerned about industry initiatives to use this rule to advocate for electronic versions as a substitute for printed patient inserts (PPIs).[6] The comment expressed concern that this rule could serve as a basis for the elimination of printed PPIs.

(Response) FDA understands the comment's concern, but the agency's regulation of PPIs is unrelated to the requirement to submit the content of labeling electronically. This rule requires that the content of labeling (i.e., the content of the package insert or professional labeling, including all text, tables, and figures) be submitted electronically. It does not alter the current regulatory treatment of PPIs. The PPIs can be submitted in paper or electronic format under part 11. If the PPI is submitted electronically, it must appear in the electronic format as it would in printed form.

(Comment 5) One comment mentioned that this rule will enable the agency to move forward with other initiatives to make labeling more rapidly available. The comment asks the agency to consider providing certain recommendations on a standard database for labeling and standard display formats for viewing labels.

(Response) FDA welcomes the comment, and we are working on several initiatives to make labeling more readily available to the public. This rule is a necessary step to provide FDA with the information needed to improve the readability, organization, and access to labeling information, including the possibility of using the information in a standard database.

B. Applicability/Scope of the Proposed Rule

(Comment 6) One comment requested that FDA clarify whether the Circular of Information for the Use of Human Blood Components (the Circular) is exempt from this rule. The comment stated that the Circular is prepared on a biannual basis by a committee representing all blood organizations and a single submission is made to FDA. The same version of the Circular is used by the majority of licensed blood establishments.

(Response) It is true that FDA reviews a version of the Circular that a consortium of blood establishments submits periodically. Although individual blood establishments may use different versions of the Circular and must submit those versions in supplemental applications to FDA, the amount of variation from the FDA-recognized Circular is so minimal that electronic submission is not necessary at this time. Therefore, the final rule does not require the submission of the Circular to the agency in electronic format.

(Comment 7) Several comments asked for clarification of the following statement in the proposed rule: ''This proposed requirement would be in addition to existing requirements, described in section I.A of this document, that copies of the label and labeling and specimens of enclosures be submitted.'' The comments requested that the agency explicitly state that no paper copies of labeling are to be submitted.

(Response) The content of labeling is a new labeling type not previously required in the regulations to be submitted. The content of labeling, defined as the contents of the package insert or professional labeling, including all text, tables, and figures for prescription products approved under an ANDA, BLA, or NDA, does not replace any previously required labeling type, including the package insert. In other words, the regulations require the package insert to be submitted in addition to the content of labeling. However, no paper copies of any labeling are required. As discussed in our response to comment 4, the applicant has the option of providing the package insert in paper or electronic format under part 11. The package insert, if submitted electronically, must appear as it would in printed form. Submission in this form allows us to evaluate the format of the package insert, such as font size and positioning of the text.

(Comment 8) A few comments asked for clarification of whether the rule requires the submission in electronic format of all types of labeling, such as carton and container labels, labels submitted with advertising material, and labeling that might be submitted with periodic adverse drug experience reports.

(Response) The agency did not intend that the final rule require the electronic submission of the previously mentioned types of labeling. The rule requires only that the content of labeling (i.e. the content of the package insert or professional labeling, including all text, tables, and figures) be submitted in electronic format.

(Comment 9) Some comments requested clarification of whether the rule restricts the submission of labeling in electronic format to the content of labeling.

[6] The comment refers to patient package inserts as ''PIs.'' FDA, though, refers to such inserts as ''PPIs.''.

(Response) The agency did not intend to restrict the voluntary submission of labeling in electronic format. Under part 11, an applicant may submit labeling in electronic format as long as the controls in part 11 are met and the labeling is listed in public docket number 92S–0251.[7] Because the agency has listed labeling in conjunction with NDAs, BLAs, and ANDAs in public docket number 92S–0251, applicants may submit all labeling for an NDA, BLA, or ANDA in electronic format.

(Comment 10) Two comments suggested that the electronic submission of labeling submitted with annual reports under § 314.81 should be optional if the product's labeling has not been revised beyond editorial changes. The comments noted that the labeling revisions to older products are infrequent and often insubstantial in nature; therefore, the submission of annual report labeling is not justified by the objectives of this rule.

(Response) FDA disagrees that the electronic submission of labeling in the annual report is not justified by the objectives of the final rule. The labeling submitted with the annual report, aside from editorial corrections, can also include other changes related to the manufacturing of the product. As with other labeling changes, these changes must be reviewed and require the same degree of comparison with previous versions of labeling. In addition, the labeling changes described in the annual report must be included in FDA's database. Finally, it is important to note that in our economic analysis, we found that the one-time costs to convert the labeling in annual reports to electronic format would not be overly burdensome (see section VIII of this document). Accordingly, the electronic submission of labeling submitted with annual reports under § 314.81 is not optional.

C. Reviewer Support and Training

(Comment 11) Some comments expressed concern that reviewers will accept ''special requests'' to receive the labeling in paper format or other formats to bypass existing agency guidance on electronic submissions. These same comments emphasized the importance of training and support of reviewers and staff in the use of electronic review and version comparison utilities.

(Response) FDA agrees that reviewers should not ''bypass'' our guidance documents. We train reviewers and managers on the details and provisions of guidance documents. When there are differences in opinion concerning the meaning of such provisions, it is best for the applicant and agency personnel to discuss those differences to ensure that everyone understands the relevant issues and the parties' respective positions. In addition, we will update our specific policy and procedure documents for reviewers to help enforce the common practice of reviewing documents electronically. The reviewers and staff will have sufficient training and support to fulfill their duties in reviewing the electronic version of the content of labeling.

(Comment 12) One comment pointed out that the Office of Generic Drugs (OGD) has limited experience with electronic labeling because it has only recently published guidance on providing an ANDA in electronic format.[8] The comment recommended that OGD pilot a program with industry to accept and process electronic labeling before the effective date of this rule.

(Response) FDA does not believe a pilot program is necessary to prepare OGD reviewers for the implementation of this rule. OGD reviewers used the electronic label review technology for many years before the issuance of the guidance on electronic submissions of ANDAs[9] and; therefore, have adequate experience in this area.

D. Requiring Electronic Submission

(Comment 13) The comments were overwhelmingly supportive of requiring the electronic submission of the content of labeling. The comments commend FDA's goal of using electronic labeling to facilitate labeling reviews. However, a few comments suggested that the agency use appropriate metrics for tracking the gains associated with the electronic submission of labeling.

(Response) The agency agrees with the comment, and notes that, as explained in section II.A of the proposed rule, there will be numerous benefits from the regulation, particularly through enhancing the accuracy and speed of the labeling review process. Nevertheless, it may be difficult to quantify precisely the improvements derived solely from receiving labeling in electronic format because we also plan to improve our current business practice for processing and reviewing such labeling changes. To the extent possible, we plan to evaluate the success of all these changes and hope to make the results of our evaluations available to the public.

(Comment 14) A few comments suggested that the implementation of the rule would improve the availability of labeling to the public.

(Response) We believe that a number of changes are needed to improve the public's access to medication information. This rule is an important and necessary step toward that goal, because it will greatly enhance the accuracy and speed of labeling reviews. We are actively working with the pharmaceutical industry, other government agencies, and health care information suppliers to achieve success in this area. For example, we are currently working with several agencies, including the National Library of Medicine, on an initiative to promote patient safety through accessible medication information (DailyMed Initiative). The electronic submission of the content of labeling will allow the agency to provide the DailyMed system with labeling in a comprehensive, reliable, and structured format. The DailyMed can then use this information to make information on medications available to the public. Consumers, health professionals, and others may use this information in several ways, including to identify drug interactions, contraindications, and possible adverse reactions.

(Comment 15) Some comments suggested that the use of electronic labeling may lead to improvement in the communication between the agency and industry when the review division requests modifications for proposed labeling changes. Specifically, the comments referred to word processing software available for tracking changes and editing documents. In addition, the comments suggested that the use of a secure electronic mail exchange system between applicants and the agency during labeling negotiations could be beneficial.

(Response) We appreciate the suggestion and our guidance document entitled ''Providing Regulatory Submissions in Electronic Format—NDAs,'' currently describes submission of the content of labeling in a word processing format in addition to PDF to support editing changes. As mentioned in the proposed rule, PDF is the only type of electronic file format that we have the ability to process, review, and archive because it is currently the most cost effective and best meets our needs

[7] A recent draft guidance issued by the agency provides for the exercise of enforcement discretion with respect to the following part 11 requirements: Validation (§ 11.10(a) (21 CFR 11.10(a))); copies of records § 11.10(b)); record retention (§ 11.10(c)); audit trails (§ 11.10(e) and (k)(2)); and any corresponding requirements in § 11.30. See FDA guidance for industry entitled ''Part 11, Electronic Records; Electronic Signatures—Scope and Application,'' available at *www.fda.gov/cder/guidance*.

[8] See ''Providing Regulatory Submission in Electronic Format—ANDAs'' guidance (67 FR 43331, June 27, 2002).

[9] Id.

for word-for-word comparisons of files. As for any direct communication between applicants and FDA requiring the editing of specific content of labeling, the guidance notes the utility of also submitting labeling in word processing format to facilitate this editing process. In addition, we are looking into new technologies to improve the methods for exchanging and reviewing labeling changes.

E. Providing Labeling to FDA in Electronic Format

(Comment 16) Two comments requested clarification on how to provide labeling with annual reports. They state that some of the confusion with the annual report labeling is because of the lack of a published guidance document on the submission of annual reports in electronic format. The comments also asked if the hard copy information submitted with annual reports containing electronic labeling (distribution, chemistry, manufacturing and controls, preclinical/clinical) should be submitted to the respective reviewing divisions, the central document room, or both.

(Response) As explained previously, the agency has issued guidance for the electronic submission of NDAs, ANDAs, and BLAs. Although there is no published guidance specifically on providing labeling with annual reports, submission of that labeling is covered by these other agency guidance documents on electronic submissions. Therefore, the content of labeling submitted with annual reports would be prepared and submitted electronically as described in the following FDA guidance documents: (1) ''Providing Regulatory Submissions in Electronic Format—General Considerations,'' (2) ''Providing Regulatory Submissions in Electronic Format—NDAs,'' and (3) ''Providing Regulatory Submission in Electronic Format—ANDAs'' (see section I for a description of these guidance documents).

It should be noted that this final rule only applies to the electronic submission of the content of labeling. It does not address the electronic submission of annual reports generally or any other part of an application. To the extent that the commentors asked for more detailed information about annual report submissions, applicants should continue following the regulations and guidance documents pertaining to those submissions.

(Comment 17) One comment requested harmonization of all elements of annual reports for NDAs, ANDAs, and BLAs.

(Response) As noted previously, the content of the annual report, other than labeling, is not affected by this regulation. However, the labeling submitted with an annual report will be prepared and submitted electronically in the same fashion as described for other electronic labeling submissions in an application (i.e., original labeling submissions in an NDA, ANDA, or BLA).

(Comment 18) One comment requested that Form FDA 2567 not be required with each labeling component submitted to a BLA because CDER does not require that such a form accompany labeling.

(Response) The agency agrees that Form FDA 2567 is not required when submitting BLA labeling electronically using form 356h (Application to Market a New Drug, Biologic, or an Antibiotic Drug for Human Use). The form should only be used for human blood and blood components (The human blood and blood components circular is not covered by this rule. See comment 6 in section III of this document.)

(Comment 19) Generally, the comments supported our flexible approach regarding the acceptable content of labeling file format. The comments recognized that a flexible approach would enable the industry and FDA to take advantage of future improvements in computer technology and software design. They also agreed with the proposal to describe the method for submitting the content of labeling in guidance, but requested that FDA guidance accompany the final rule. Some comments, however, made suggestions for the use of specific technologies. In addition, we were requested to limit changes to the file format or software specifications.

(Response) Currently, guidance on the submission of labeling is included in the guidance for industry series ''Providing Regulatory Submissions in Electronic Format'' (see section I of this document). We understand that changes to the file format or software can lead to costly changes in the information technology systems used by industry. For this reason, we plan to limit future changes to those that can lead to increased benefits for both the agency and industry. As mentioned in section II of this final rule, the agency will not switch to new format or software until it is widely available.

(Comment 20) One comment asked that we identify the software used for working on an applicant's labeling (e.g., to compare texts) and whether the software is commercially available or proprietary.

(Response) Currently, the reviewers use Adobe Acrobat and Microsoft Word for reviewing labeling. Both are commercially available. As new technology is developed and we change the software used in reviews, we will make this information available to the public.

F. Part 11 Requirements for Electronic Submissions

(Comment 21) We received a number of comments related to the proposed exemption of the submission of electronic labeling from specific controls under §§ 11.10 and 11.30. Most of the comments were positive and supported the rationale for the exemptions. One comment, however, raised concerns about the effect of the proposed exemptions from part 11 requirements on the integrity of part 11 generally.

(Response) We have recently articulated our current thinking on part 11 in the draft guidance document entitled ''Part 11, Electronic Records; Electronic Signatures—Scope and Application'' (part 11 draft guidance) issued in the **Federal Register** of February 25, 2003 (68 FR 8775). Among other things, this part 11 draft guidance announces the agency's intent to exercise enforcement discretion in the manner specified in the draft guidance with respect to the specific part 11 requirements of validation (§ 11.10 (a)), copies of records (§ 11.10(b)), record retention, audit trails (§ 11.10(e) and (k)(2)), and any corresponding requirements in § 11.30. This final rule exempts the electronic submission of labeling content from the requirements of § 11.10(a), (c) through (h), and (k), and the corresponding requirements of § 11.30.

We recognize that there are some differences with respect to the exemptions from part 11 requirements provided in this final rule (i.e., § 11.10(a), (c) through (h), and (k), and the corresponding requirements of § 11.30), and the part 11 requirements set forth in the part 11 draft guidance for which the agency intends to exercise enforcement discretion (i.e., § 11.10(a) through (c), (e), and (k)(2), and any other corresponding requirements in 11.30)). Although the final rule does not provide an exemption from § 11.10(b), the part 11 draft guidance announces that we intend to exercise enforcement discretion with respect to that section in the manner described in the draft guidance.

The exemptions in the final rule and the part 11 requirements for which we intend to exercise enforcement discretion, as described in the part 11

draft guidance, differ because the final rule is specific to the electronic submission of labeling content for human prescription drugs and certain biologics, and the part 11 draft guidance applies to the maintenance of all electronic records and to all electronic submissions subject to part 11.

We exempted the submission of electronic labeling content from certain part 11 requirements because we believe these part 11 requirements are not critical to ensure the quality of the content of labeling submitted under this rule and we want to ensure that industry resources are not being spent on unnecessary controls. For example, validation for the system used to generate the labeling record is not necessary because the applicant's verification that the information in the labeling record is accurate serves the same objective. Our review of the content of labeling is based on the version of the labeling record submitted to us. Earlier versions of the record, as well as changes made to the earlier versions, are not relevant to our analysis. Thus, other controls related to the creation, modification, and maintenance of the labeling records are also not needed.

IV. Legal Authority

Our legal authority to amend our regulations governing the format of labeling for human prescription drugs and biologics derives from sections 201, 301, 501, 502, 503, 505, 506, 506A, 506B, 506C, 510, 513–516, 518–520, 701, 704, 721, and 801 of the act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 356a, 356b, 356c, 360, 360c–360f, 360h–360j, 371, 374, 379e, and 381); 15 U.S.C. 1451–1561; the Public Health Service Act (42 U.S.C. 216, 241, 262, 263, 264); and section 122, Public Law 105–115, 111 Stat. 2322 (21 U.S.C. 355 note).

V. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual reporting burden. Included in this estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Requirements for Submission of Labeling for Human Prescription Drugs and Biologics in Electronic Format.

Description: FDA is amending its regulations governing the format in which certain labeling is required to be submitted for review with NDAs, certain BLAs, ANDAs, supplements, and annual reports. The final rule requires that the content of labeling for prescription drug and biological products required under § 201.100(d)(3) be submitted to FDA electronically in a form that we can process, review, and archive. Copies of product labeling are currently required to be submitted to FDA for review in NDAs, certain BLAs, ANDAs, certain supplements, and annual reports under §§ 314.50, 314.70, 314.81, 314.94, 314.97, 314.98, §§ 601.2, and 601.12. Copies of labeling may be submitted electronically or on paper. The agency is adding the new requirements because submitting the content of labeling in electronic format will simplify the drug labeling review process and speed up the approval of labeling changes.

As required under section 3506(c)(2)(B) of the Paperwork Reduction Act, FDA provided an opportunity for public comments on May 3, 2002 (67 FR 22367), on the information collection provisions of the proposed rule. FDA received two comments stating that the agency underestimated the time and costs to prepare the content of labeling in electronic format for submission to FDA. Specifically, the comments stated that the 15 minutes to convert the labeling into PDF was underestimated because it did not take into account the time needed to proofread the content of labeling document.

FDA believes that proofreading is not an additional cost for submitting labeling in electronic format for new submissions of NDAs, BLAs, and ANDAs. Labeling is proofread prior to submission regardless of the format. If the labeling is in a word processing file, it is irrelevant whether the document is printed or converted to a PDF file. This is because the finished product, the labeling, is proofread for quality assurance in either case. We also note that someone may need even less time to proofread an electronic file than a printed document because the computer could assist in finding errors. As such, we are not changing the burden estimate for these applications in the final rule.

However, we agree that we should allow for proofreading of labeling under certain circumstances. Applicants that have previously submitted labeling in paper format in annual reports or supplements, but also maintained the labeling document in electronic format, should be provided time for proofreading the converted file. This category of labeling would not require any changes to the labeling since it was last submitted to the agency. It only requires additional time for proofreading to ensure that the electronic document being submitted is the same as the labeling previously submitted in paper format. We estimate that the hours per response (i.e., the time it will take an applicant to submit the labeling content electronically for these annual reports and supplements) will be approximately 5 hours. We discuss this new category of reporting in more detail in this section V when we calculate the burdens associated with submission of electronic labeling in supplements and annual reports. We also add sections to the estimated annual reporting burden chart to report the burdens.

As we noted in the proposed rule, we recognize that some older annual reports may require additional steps, such as accessing the labeling in the archives, putting the content of labeling into an electronic format, and converting it to a PDF file. In response to the proofreading comments mentioned previously, we are allowing an additional 2 hours for proofreading this type of labeling (the proposed rule allowed for 8 hours and the final rule is allowing for 10 hours).

The reporting burdens for submitting labeling as currently required under §§ 314.50, 314.70, 314.81, 314.94, 314.97, and 314.98 have previously been estimated by FDA, and this collection of information was approved by OMB until March 31, 2005, under OMB control number 0910–0001. The reporting burdens associated with current §§ 601.2 and 601.12 have also previously been estimated and this collection of information was approved by OMB until August 31, 2005, under OMB control number 0910–0338 (this includes the collection of information previously approved by OMB under control number 0910–0315). We are not reestimating these approved burdens in this rulemaking. Only the additional reporting burdens associated with the electronic submission of the content of labeling are estimated.

New NDAs (§ 314.50), ANDAs (§ 314.94), and BLAs (§ 601.2): Based on data in the approved collections of information for §§ 314.50, 314.94, and § 601.2, we estimate that approximately 83 NDA applicants, 117 ANDA applicants, and 17 BLA applicants (respondents) submit applications to us annually. We estimate that these applicants (respondents) will submit approximately 85 NDAs, 323 ANDAs, and 17 BLAs each year that will be

subject to this rule.[10] Based on our experience with voluntary electronic submissions and our knowledge of the drug and biologic industries, we assume that applicants for new NDAs, ANDAs, and BLAs will already have the necessary labeling in an electronic format that can be easily accessed and converted to a PDF file. Thus, we have estimated that the hours per response, i.e., the additional time necessary for submission of the content of labeling in electronic format for these applications, will be less than 15 minutes. Therefore, we estimate that respondents will spend approximately 106 hours per year submitting the content of labeling to us in accordance with the final rule.

Supplements to NDAs (§ 314.70) and ANDAs (§ 314.97) and BLAs (§ 601.12(f)(1) and (f)(2)): Based on data in the approved collections of information for §§ 314.70, 314.97, and § 601.12(f)(1) and (f)(2), we estimate that approximately 418 NDA applicants, 152 ANDA applicants, and 20 BLA applicants (respondents) submit supplements to approved applications to us annually. We estimate that these applicants (respondents) will submit approximately 630 NDA supplements, 1,000 ANDA supplements, and 20 BLA supplements each year that will be subject to this rule.

Based on our experience with voluntary electronic submissions and our knowledge of the drug and biologic industries, we assume that approximately 254 NDA supplements, 396 ANDA supplements, and 10 BLA supplements will be submitted by applicants who already have the necessary labeling in an electronic format that can be easily accessed and converted to a PDF file. Thus, we have estimated that the hours per response, i.e., the additional time necessary for submission of the content of labeling in electronic format for these supplements, will be less than 15 minutes. Therefore, we estimate that respondents would spend approximately 165 hours per year submitting the content of labeling to us in these supplements under the final rule.

As mentioned previously, we are adding a new category to the paperwork section to allow for proofreading the converted file of labeling that was previously submitted in supplements in paper form (and not requiring any changes since it was last submitted), but is also maintained by the applicant in an electronic format. We estimate that approximately 376 NDA supplements, 604 ANDA supplements, and 10 BLA supplements will be submitted by applicants who previously submitted labeling in paper, but have such labeling available in electronic format. We estimate that the hours per response, i.e., the time it will take an applicant to submit the labeling content electronically for these supplements, will be approximately 5 hours. Therefore, we estimate that in the first year, respondents will spend approximately 4,950 hours submitting the content of labeling that was previously submitted in supplements in paper form. For all supplements combined, we estimate that in the first year, respondents will spend approximately 5,115 hours submitting the content of labeling to us in supplements under the final rule. This expenditure of time will only be necessary the first time that a supplement is submitted with the content of labeling in electronic format. Once the content of labeling has been converted to an electronic format, the time necessary to submit the content of labeling in subsequent supplements will be the same as that for the other types of submissions or less than 15 minutes. Therefore, we estimate that, in subsequent years, respondents will spend approximately 413 hours per year submitting the content of labeling in supplements.

Annual Reports for NDAs (§ 314.81), ANDAs (§ 314.98), and BLAs (§ 601.12(f)(3)): Based on data in the approved collections of information for §§ 314.81, 314.98, and § 601.12(f)(3), we estimate that approximately 275 NDA applicants, 275 ANDA applicants, and 75 BLA applicants (respondents) submit annual reports to us annually. We also estimate that each NDA applicant submits to us approximately 9.45 annual reports, each ANDA applicant submits approximately 16.18 annual reports, and each BLA applicant submits approximately 1 annual report each year. Further, we estimate that the total annual responses, i.e., the total number of annual reports submitted to us per year, will remain approximately 2,600 NDA annual reports, 4,450 ANDA annual reports, and 75 BLA annual reports.

Based on our experience with voluntary electronic submissions and our knowledge of the drug and biologic industries, we estimate that approximately 24 percent of NDA annual reports (624 NDA annual reports), 20 percent of ANDA annual reports (890 ANDA annual reports), and 24 percent of BLA annual reports (18 BLA annual reports), will already have the necessary labeling in an electronic format that can be easily accessed and converted to a PDF file. As discussed above, we estimate that each NDA applicant submits to us approximately 9.45 annual reports, each ANDA applicant submits approximately 16.18 annual reports, and each BLA applicant submits approximately 1 annual report each year. Therefore, approximately 66 NDA applicants, 55 ANDA applicants, and 18 BLA applicants can easily access labeling in electronic form and convert it to a PDF file. For the applicants submitting these annual reports, we estimate that the hours per response, i.e., the additional time necessary for submission of the content of labeling in electronic format in the annual report, will be less than 15 minutes. Therefore, we estimate that respondents would spend approximately 383 hours per year submitting the content of labeling to us in these annual reports under the final rule.

As mentioned previously, we are adding a new category to the paperwork section to allow for proofreading the converted file of labeling that was previously submitted in annual reports in paper form (and not requiring any changes since it was last submitted), but is also maintained by the applicant in an electronic format. For applicants to include labeling content in their annual reports in electronic format, we estimate that approximately 36 percent of NDA annual reports (936 NDA annual reports), 30 percent of ANDA annual reports (1,335 ANDA annual reports), and 36 percent of BLA annual reports (27 BLA annual reports) will be submitted by applicants who previously submitted labeling in paper, but have such labeling available in electronic format. As discussed above, we estimate that each NDA applicant submits to us approximately 9.45 annual reports, each ANDA applicant submits approximately 16.18 annual reports, and each BLA applicant submits approximately 1 annual report each year. Therefore, under the final rule, approximately 99 NDA applicants, 83 ANDA applicants, and 27 BLA applicants would need additional time to proofread these annual reports. We estimate that the hours per response, i.e., the time it will take an applicant to submit the labeling content electronically for these annual reports, will be approximately 5 hours. Therefore, we estimate that respondents would spend approximately 11,490 hours per year submitting the content of labeling to us in these annual reports under the final rule.

We recognize that annual reports for some drug and biological products, particularly older products for which labeling changes have not been made in

[10] The numbers in this final rule have changed from the proposed rule because we have updated the numbers to be more current.

several years, may require additional steps. For applicants to include labeling content in their annual reports in electronic format, we estimate that approximately 40 percent of NDA annual reports (1,040 NDA annual reports), 50 percent of ANDA annual reports (2,225 ANDA annual reports), and 40 percent of BLA annual reports (30 BLA annual reports) will be submitted by applicants who may need to access the labeling in their archives, put the content of labeling into an electronic format, and convert it to a PDF file. As discussed previously, we estimate that each NDA applicant submits to us approximately 9.45 annual reports, each ANDA applicant submits approximately 16.18 annual reports, and each BLA applicant submits approximately 1 annual report each year. Therefore, under the final rule, approximately 110 NDA applicants, 137 ANDA applicants, and 30 BLA applicants would need to put labeling content in an electronic format and convert it to a PDF file. We estimate that the hours per response, i.e., the time it will take an applicant to submit the labeling content electronically for these annual reports, will be approximately 10 hours.[11] Therefore, we estimate that respondents would spend approximately 32,950 hours per year submitting the content of labeling to us in these annual reports under the final rule.

We estimate that in the first year, respondents will spend approximately 44,823 hours submitting the content of labeling to us in annual reports under the final rule. This expenditure of time will only be necessary the first time that an annual report is submitted with the content of labeling in electronic format. Once the content of labeling has been converted to an electronic format, the time necessary to submit the content of labeling in subsequent annual reports will be the same as that for the other types of submissions or less than 15 minutes. Therefore, we estimate that, in subsequent years, respondents will spend approximately 1,781 hours per year submitting the content of labeling in annual reports.

Description of Respondents: An applicant submitting an NDA, ANDA, BLA, supplement, or annual report to us for a drug or biological product.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Responses	Hours per Response	Total Hours
Applications: 314.50	83	1.02	85	.25	21
314.94	117	2.76	323	.25	81
601.14 (Applications submitted under § 601.2)	17	1	17	.25	4
Subtotal, applications					106
Supplements: 314.70 (Products not requiring additional steps for electronic submission)	167	1.52	254	.25	63
314.70 (Products requiring additional proofreading)	251	1.50	376	5	1,880
314.97 (Products not requiring additional steps for electronic submission)	61	6.50	396	.25	99
314.97(Products requiring additional proofreading)	91	6.50	604	5	3,020
601.14 (Supplements submitted under § 601.12(f)(1) and (f)(2))(Products not requiring additional steps for electronic submission)	8	1.25	10	.25	3
601.14 (Supplements submitted under § 601.12(f)(1) and (f)(2)) (Products requiring additional proofreading)	12	.83	10	5	50
Subtotal, supplements, year one					5,115
Subtotal, supplements, subsequent years[2]					413
Annual Reports: 314.81 (Products not requiring additional steps for electronic submission)	66	9.45	624	.25	156
314.81 (Products requiring additional proofreading)	99	9.45	936	5	4,680

[11] The number increased from 8 hours to 10 hours to allow for additional time to proofread.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Responses	Hours per Response	Total Hours
314.81 (Products requiring additional steps for electronic submission)	110	9.45	1,040	10	10,400
314.98 (Products not requiring additional steps for electronic submission)	55	16.18	890	.25	222
314.98 (Products requiring additional proofreading)	83	16.18	1,335	5	6,675
314.98 (Products requiring additional steps for electronic submission)	137	16.18	2,225	10	22,250
601.14 (Annual reports submitted under § 601.12(f)(3) not requiring additional steps for electronic submission)	18	1	18	.25	5
601.14 Annual reports submitted under § 601.12(f)(3) (Products requiring additional proofreading)	27	1	27	5	135
601.14 (Annual reports submitted under § 601.12(f)(3) requiring additional steps for electronic submission)	30	1	30	10	300
Subtotal, annual reports, year one					44,823
Subtotal, annual reports, subsequent years[3]					1,781
Total, year one					50,044
Total, subsequent years[3]					2,300

[1] There are one-time capital costs to: (1) Acquire computer software; (2) train employees to use the software; and (3) convert certain labeling to an electronic format. These costs are estimated to be about $2.3 million (see section VIII of this document). There are no operating or maintenance costs associated with this collection of information.

[2] We estimate that for certain annual reports, respondents will spend 5 hours per response in the first year. We estimate that in subsequent years respondents will spend less than 15 minutes per response for all supplements.

[3] We estimate that for certain annual reports, respondents will spend either 5 or 10 hours per response in the first year. We estimate that in subsequent years respondents will spend less than 15 minutes per response for all annual reports.

In compliance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has submitted a copy of this rule to OMB for its review and approval of these information collections.

The information collection provisions in this final rule have been approved under OMB control number 0910–0530. This approval expires on November 30, 2006. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the information collection displays a currently valid OMB control number.

VI. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. Analysis of Economic Impacts

We have examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule may have a significant economic impact on a substantial number of small entities, an agency must consider alternatives that would minimize the economic impact of the rule on small entities. Section 202(a) of the Unfunded

Mandates Reform Act of 1995 requires that agencies prepare a written assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

We believe that this final rule is consistent with the regulatory philosophy and principles identified in Executive Order 12866 and in these two statutes. The final rule is a significant regulatory action as defined in section 3 paragraph (f)(4) of the Executive order. However, as shown in this section VIII, the final rule will not be an economically significant regulatory action as defined by the Executive order and will not require further analysis under the Regulatory Flexibility Act.

The Unfunded Mandates Reform Act of 1995 does not require FDA to prepare a statement of costs and benefits for the final rule because the final rule would not result in an expenditure of $100 million in any one year, adjusted for inflation. The current inflation-adjusted statutory threshold is approximately $110 million.

The purpose of this final rule is to require applicants to submit in electronic format the content of labeling required under § 201.100(d)(3) in NDAs, ANDAs, BLAs, annual reports, and applicable supplements. Submissions in electronic format will help simplify and speed up our review of these documents. Currently, applicants may voluntarily submit such data in electronic form, but they are not required to do so. The rule will require all applicants of approved and new NDAs, BLAs, and ANDAs to convert the content of labeling to an electronic format for submission. At this time, PDF is the type of electronic file format that we have the ability to accept for processing, reviewing, and archiving. Applicants that do not already have the capabilities to create PDF files will have to acquire the software and expertise to do so or make contractual arrangements to have documents converted.

The economic burden on industry will include a one-time cost to acquire the appropriate computer software and train employees on its use. Applicants may also incur additional one-time costs to revise applications that have not had any labeling changes within the last few years to a format that can be converted to a PDF file. We do not know the number of applicants that currently have the capability to submit electronic files, nor do we have firsthand information on how labeling files are currently maintained or on how much time will be required to train employees on the software and new procedures.

Three comments were received regarding the economic impact analysis. Two of these comments suggested that the cost to convert the content of labeling to a PDF format was underestimated because it did not include the cost to proofread the labeling after it is converted to a PDF file. The time required for proofreading ranged from 4 to 6 hours depending on the complexity/length of the labeling. One of these comments also suggested that the cost for converting older labeling that is only available on paper was underestimated, suggesting that the costs should include costs for equipment, training, and time to scan paper documents.

The agency agrees that we should allow for proofreading of labeling under certain circumstances. Applicants that have previously submitted annual reports or supplements in paper form, but also maintained the documents in electronic format, should be provided time for proofreading the converted file. This category of labeling would not require any changes to the labeling since it was last submitted to the agency. It only requires additional time for proofreading to ensure that it is the same as the labeling submitted in paper format. Five hours was used in this analysis to reflect the cost under these circumstances.

However, we do not agree that proofreading is an incremental cost for labeling that has been changed and is in a word processing file. Proofreading of the finished product for submission (in this case, the PDF file) is done now as part of current industry quality assurance practice. We also do not agree with the comment that costs for scanning labeling should be included in the impact analysis. While scanning paper labeling and using optical character recognition software is an option some firms may choose, it is not required. The labeling can be transcribed into a word processing format and then converted. However, we did increase the time estimate for such conversions by an additional 2 hours and we also increased our estimate of the percent of labeling that is included in this category because we now believe that number was underestimated.

Annually, we receive approximately 425 applications, 7,125 annual reports, and 1,650 supplements that contain labeling from approximately 625 applicants. Based on our experience working with voluntary electronic submissions, we estimate that overall approximately 70 percent of the applicants (440) already have the necessary software and trained personnel to comply with this rule. The remaining 30 percent of applicants (190) would need to purchase software, which costs about $250. Based on agency review, approximately 78 percent of these 190 applicants 148 would be considered small (fewer than 750 employees for drug product manufacturers and fewer than 500 employees for biological product manufacturers). We estimate that each small applicant would need to purchase only one copy of the software, for a total of 148 copies. The remaining 22 percent of applicants (42) that would need to purchase software are large entities. The agency estimates that each of these firms would need to purchase about 3 copies of the software or 126 copies (42 x 3). Thus, the total one-time cost for software is $68,500 ((148 + 126) x $250). Training costs include the cost of the software training course (estimated at $150 for a 6-hour course) and the wages of the employees attending the course (assuming an average weighted wage rate of $40 per hour). We estimate that applicants would train two employees per software purchase (548 employees), for a total one-time cost of $213,720 (($150 + (6 hours x $40)) x 548). The total one-time cost for software and training combined is estimated to be $282,220 ($68,500 + $213,720).

The cost to convert the applicable labeling to an electronic format is a one-time cost. The cost of conversions for new NDAs, BLAs, and ANDAs will be nominal because the file would be in a format easily convertible to PDF. The PDF file, being the finished product, would be proofread for quality assurance. Annually, we receive approximately 1,650 supplements that would be subject to the final rule. Because the majority of products for which supplements are submitted would have had labeling changes within the last few years, most labeling files would be easily accessible. Currently, the labeling in about 40 percent (660) of the supplements received is submitted in a PDF format and would require an estimated additional 15 minutes to comply with this final rule. The labeling in the remaining 60 percent (990) will require an estimated 5 hours to process and proofread. Thus, the total number of hours needed to convert applicable labeling in supplements to a PDF file format is 5,115 ((0.25 x 660) + (5 x 990)).

Labeling in most of the annual reports will also need to be converted. The conversion of this labeling to a PDF file for about 40 percent of NDA annual reports (975), 50 percent of ANDA annual reports (2,295), and 40 percent of

BLA annual reports (40), would require additional time to complete because they are not in a format easily convertible to PDF. We estimate that these annual reports would require 10 hours to complete, for a total of 33,100 hours ((975 + 2,295 + 40) x 10). For the content of labeling in the remaining annual reports (3,815), an estimated 40 percent (1,526) would require 15 minutes to process because they are currently in PDF format, and the remaining 2,289 annual reports will require approximately 5 hours to process and proofread, for a total of 11,827 hours ((1,526 x 0.25) + (2,289 x 5)). Thus, the total number of hours needed to convert all applicable labeling to a PDF file format in supplements and annual reports is 50,042 (5,115 + 33,100 + 11,827). Using the weighted average wage rate ($40 per hour), the total one-time costs to convert applicable labeling in supplements and annual reports would be about $2.0 million (50,042 x $40). The cost for the entire rule is estimated to be about $2.3 million ($0.3 million (software and training + $2.0 million labeling)).

Approximately 300 domestic entities would be affected by this final rule, about 240 of which meet the Small Business Administration's definition of a small entity (fewer than 750 employees for drug product manufacturers and fewer than 500 employees for biological product manufacturers). The economic impact of this final rule would vary by firm depending on the number of applications they hold and whether or not the company has PDF capabilities. The number of applications per firm ranges from 1 to 124, with a median of 4 applications per small entity. The average small entity has about 7 applications, and, assuming a worst case scenario—the firm did not have the content of labeling in an electronic format and needed to purchase software and train employees—this rule would cost the average small firm about $4,000 ($1,030 software and training + (7 x 10 hours x $40)), which is about $550 per application. Because these costs would almost certainly be less than 1 percent of product revenues, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 314 and 601 are amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

■ 1. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 355a, 356, 356a, 356b, 356c, 371, 374, 379e.

■ 2. Section 314.50 is amended by revising paragraph (l)(1); by adding headings for paragraphs (l)(2), (l)(3), and (l)(4); by removing from paragraphs (l)(2) and (l)(3) the word ''shall'' and adding in its place the word ''must''; and by adding paragraph (l)(5) to read as follows:

§ 314.50 Content and format of an application.

* * * * *

(l) *Format of an original application.* (1) *Archival copy.* The applicant must submit a complete archival copy of the application that contains the information required under paragraphs (a) through (f) of this section. FDA will maintain the archival copy during the review of the application to permit individual reviewers to refer to information that is not contained in their particular technical sections of the application, to give other agency personnel access to the application for official business, and to maintain in one place a complete copy of the application. Except as required by paragraph (l)(1)(i) of this section, applicants may submit the archival copy on paper or in electronic format provided that electronic submissions are made in accordance with part 11 of this chapter.

(i) *Labeling.* The content of labeling required under § 201.100(d)(3) of this chapter (commonly referred to as the package insert or professional labeling), including all text, tables, and figures, must be submitted to the agency in electronic format as described in paragraph (l)(5) of this section. This requirement is in addition to the requirements of paragraph (e)(2)(ii) of this section that copies of the formatted label and all labeling be submitted. Submissions under this paragraph must be made in accordance with part 11 of this chapter, except for the requirements of § 11.10(a), (c) through (h), and (k), and the corresponding requirements of § 11.30.

(ii) [Reserved]

(2) *Review copy.* * * *

(3) *Field copy.* * * *

(4) *Binding folders.* * * *

(5) *Electronic format submissions.* Electronic format submissions must be in a form that FDA can process, review, and archive. FDA will periodically issue guidance on how to provide the electronic submission (e.g., method of transmission, media, file formats, preparation and organization of files).

■ 3. Section 314.81 is amended by revising paragraph (b)(2)(iii) to read as follows:

§ 314.81 Other postmarketing reports.

* * * * *

(b) * * *

(2) * * *

(iii) *Labeling.* (*a*) Currently used professional labeling, patient brochures or package inserts (if any), and a representative sample of the package labels.

(*b*) The content of labeling required under § 201.100(d)(3) of this chapter (i.e., the package insert or professional labeling), including all text, tables, and figures, must be submitted in electronic format. Electronic format submissions must be in a form that FDA can process, review, and archive. FDA will periodically issue guidance on how to provide the electronic submission (e.g., method of transmission, media, file formats, preparation and organization of files). Submissions under this paragraph must be made in accordance with part 11 of this chapter, except for the requirements of § 11.10(a), (c) through (h), and (k), and the corresponding requirements of § 11.30.

(*c*) A summary of any changes in labeling that have been made since the last report listed by date in the order in which they were implemented, or if no changes, a statement of that fact.

* * * * *

■ 4. Section 314.94 is amended by revising paragraph (d)(1) to read as follows:

§ 314.94 Content and format of an abbreviated application.

* * * * *

(d) * * * (1) The applicant must submit a complete archival copy of the abbreviated application as required under paragraphs (a) and (c) of this section. FDA will maintain the archival copy during the review of the application to permit individual reviewers to refer to information that is not contained in their particular technical sections of the application, to give other agency personnel access to

the application for official business, and to maintain in one place a complete copy of the application.

(i) *Format of submission.* An applicant may submit portions of the archival copy of the abbreviated application in any form that the applicant and FDA agree is acceptable, except as provided in paragraph (d)(1)(ii) of this section.

(ii) *Labeling.* The content of labeling required under § 201.100(d)(3) of this chapter (commonly referred to as the package insert or professional labeling), including all text, tables, and figures, must be submitted to the agency in electronic format as described in paragraph (d)(1)(iii) of this section. This requirement applies to the content of labeling for the proposed drug product only and is in addition to the requirements of paragraph (a)(8)(ii) of this section that copies of the formatted label and all proposed labeling be submitted. Submissions under this paragraph must be made in accordance with part 11 of this chapter, except for the requirements of § 11.10(a), (c) through (h), and (k), and the corresponding requirements of § 11.30.

(iii) *Electronic format submissions.* Electronic format submissions must be in a form that FDA can process, review, and archive. FDA will periodically issue guidance on how to provide the electronic submission (e.g., method of transmission, media, file formats, preparation and organization of files).

* * * * *

PART 601—LICENSING

■ 5. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: 15 U.S.C. 1451–1561; 21 U.S.C. 321, 351, 352, 353, 355, 356b, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263, 264; sec. 122, Pub. L. 105–115, 111 Stat. 2322 (21 U.S.C. 355 note).

■ 6. Add 601.14 to subpart C to read as follows:

§ 601.14 Regulatory submissions in electronic format.

(a) *General.* Electronic format submissions must be in a form that FDA can process, review, and archive. FDA will periodically issue guidance on how to provide the electronic submission (e.g., method of transmission, media, file formats, preparation and organization of files.)

(b) *Labeling.* The content of labeling required under § 201.100(d)(3) of this chapter (commonly referred to as the package insert or professional labeling), including all text, tables, and figures, must be submitted to the agency in electronic format as described in paragraph (a) of this section. This requirement is in addition to the provisions of §§ 601.2(a) and 601.12(f) that require applicants to submit specimens of the labels, enclosures, and containers, or to submit other final printed labeling. Submissions under this paragraph must be made in accordance with part 11 of this chapter except for the requirements of § 11.10(a), (c) through (h), and (k), and the corresponding requirements of § 11.30.

Dated: July 31, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–30641 Filed 12–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9097]

RIN 1545–AX22

Arbitrage Restrictions Applicable to Tax-Exempt Bonds Issued by State and Local Governments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on the arbitrage restrictions applicable to tax-exempt bonds issued by state and local governments. The regulations affect issuers of tax-exempt bonds and provide a safe harbor for qualified administrative costs for broker's commissions and similar fees incurred in connection with the acquisition of guaranteed investment contracts or investments purchased for a yield restricted defeasance escrow.

DATES: *Effective Date:* These regulations are effective February 9, 2004.

Applicability Date: For dates of applicability, *see* § 1.148–11(i) of these regulations.

FOR FURTHER INFORMATION CONTACT: Rose M. Weber, (202) 622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 1 under section 148 of the Internal Revenue Code by providing rules for determining when certain brokers' commissions or similar fees are qualified administrative costs (the final regulations). On August 27, 1999, the IRS published in the **Federal Register** a notice of proposed rulemaking (REG–105565–99)(64 FR 46876) (the proposed regulations). The proposed regulations modify § 1.148–5(e)(2) to provide a safe harbor for determining whether brokers' commissions and similar fees incurred in connection with the acquisition of guaranteed investment contracts or investments purchased for a yield restricted defeasance escrow are treated as qualified administrative costs. Comments on the proposed regulations were received and a hearing was held on December 14, 1999. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision. The revisions are discussed below.

Explanation of Provisions

I. Existing Regulations

A. Investment Yield and Administrative Costs

Section 148 limits the yield on investments purchased with proceeds of tax-exempt bonds. In general, under § 1.148–5(b)(1) of the existing regulations, the yield on an investment is computed by comparing receipts from the investment to payments for the investment. Section 1.148–5(e)(1) provides that the yield on an investment generally is not adjusted to take into account any costs or expenses paid, directly or indirectly, to purchase, carry, sell, or retire the investment (administrative costs). However, § 1.148–5(e)(2)(i) provides that the yield on nonpurpose investments (as defined in § 1.148–1(b)) is adjusted to take into account qualified administrative costs. Qualified administrative costs are reasonable, direct administrative costs, other than carrying costs, such as separately stated brokerage or selling commissions, but not legal and accounting fees, recordkeeping, custody, and similar costs. In general, under § 1.148–5(e)(2)(i), administrative costs are not reasonable unless they are comparable to administrative costs that would be charged for the same investment or a reasonably comparable investment if acquired with a source of funds other than gross proceeds of tax-exempt bonds (the comparability standard).

B. Special Rule for Guaranteed Investment Contracts

Section 1.148–5(e)(2)(iii) of the existing regulations provides that, for a guaranteed investment contract, a broker's commission or similar fee paid on behalf of either an issuer or the guaranteed investment contract provider generally is a qualified administrative

cost to the extent that the present value of the commission, as of the date the contract is allocated to the issue, does not exceed the lesser of (x) a reasonable amount within the meaning of § 1.148–5(e)(2)(i) or (y) the present value of annual payments equal to .05 percent of the weighted average amount reasonably expected to be invested each year of the term of the contract. Present value is computed using the taxable discount rate used by the parties to compute the commission, or if not readily ascertainable, the yield to the issuer on the investment contract or other reasonable taxable discount rate.

C. Special Rule for Yield Restricted Defeasance Escrows

Section 1.148–5(e)(2)(iv) of the existing regulations provides that, for investments purchased for a yield restricted defeasance escrow, a fee paid to a bidding agent is a qualified administrative cost only if the fee is comparable to a fee that would be charged for a reasonably comparable investment if acquired with a source of funds other than gross proceeds of tax-exempt bonds, and it is reasonable. The fee is deemed to meet both the comparability and reasonableness requirements if it does not exceed the lesser of $10,000 or .1 percent of the initial principal amount of investments deposited in the yield restricted defeasance escrow.

II. Proposed Regulations

The proposed regulations were issued in response to comments stating that issuers were having difficulty applying § 1.148–5(e)(2)(iii) and (iv), primarily because of uncertainty about whether a particular broker's commission or similar fee is reasonable. The proposed regulations delete the existing provisions of § 1.148–5(e)(2)(iii) and (iv) and create a single rule for qualified administrative costs that treats a broker's commission or similar fee incurred in connection with a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow as a qualified administrative cost if the fee is reasonable within the meaning of § 1.148–5(e)(2)(i) of the existing regulations.

The proposed regulations also set forth a safe harbor, which treats a broker's commission or similar fee incurred in connection with the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow as reasonable within the meaning of § 1.148–5(e)(2)(i) if two requirements are met. Under the first requirement for the safe harbor, the amount of the broker's commission or similar fee treated by the issuer as a qualified administrative cost cannot exceed the lesser of $25,000 or 0.2 percent of the computational base (the per-investment safe harbor). For guaranteed investment contracts, the computational base is the aggregate amount reasonably expected as of the issue date to be deposited over the term of the contract. For example, for a guaranteed investment contract used to earn a return on what otherwise would be idle cash balances from maturing investments in a yield restricted defeasance escrow, the aggregate amount reasonably expected to be deposited includes all periodic deposits reasonably expected to be made pursuant to the terms of the contract. For investments, other than guaranteed investment contracts, deposited in a yield restricted defeasance escrow, the computational base is the initial amount invested in those investments. Under the second requirement for the safe harbor, for any issue of bonds, the issuer cannot treat as qualified administrative costs more than $75,000 in brokers' commissions or similar fees with respect to all guaranteed investment contracts and investments for yield restricted defeasance escrows purchased with gross proceeds of the issue (the per-issue safe harbor).

III. Final Regulations

A. Safe Harbor Approach

Some commentators suggested that the existing regulations, coupled with competitive market forces, work well to produce reasonable brokers' fees. Commentators also suggested that the proposed regulations will eliminate much of the incentive for the independent bidding agent to actively participate in the market, with the result that, in many cases, tax-exempt bond proceeds will be placed in lower-yielding and often riskier investments. These commentators recommended against adopting the safe harbor in the proposed regulations.

Other commentators suggested that the existing regulations do not work well. They stated that the current rules provide little practical guidance upon which an issuer can rely to determine whether a broker's fee for a guaranteed investment contract is a reasonable amount. These commentators recommended that the safe harbor be adopted with modifications. They suggested that the safe harbor will provide a much needed level of certainty.

The IRS and Treasury Department do not believe the final regulations will result in tax-exempt bond proceeds being invested in low-yielding, risky investments because the regulations do not adversely affect an issuer's incentive to realize investment earnings and to invest in secure investments. To provide simplicity and certainty, the final regulations retain the safe harbor, with certain modifications discussed below. The final regulations do not limit the amount of brokers' fees that may be paid by issuers. Thus, for example, the final regulations do not restrict the ability of an issuer to pay a particular fee that exceeds the safe harbor amount. Furthermore, brokers' commissions or similar fees in excess of the safe harbor are qualified administrative costs if they are reasonable within the meaning of § 1.148–5(e)(2)(i).

B. Per-Investment Safe Harbor

Commentators suggested that, if the per-investment safe harbor is retained, it should be increased. These commentators stated that in some circumstances the safe harbor does not reflect the value provided by brokers, particularly in the case of small or large transactions and long-term debt service reserve fund investments. Suggestions for modifying the per-investment safe harbor included adding a minimum fee for smaller transactions and a sliding scale for larger transactions. Commentators also suggested increasing the computational base for long-term guaranteed investment contracts by treating them as a series of shorter-term contracts.

The final regulations increase the $25,000 amount to $30,000 and provide for a minimum fee of $3,000. Thus, if 0.2 percent of the computational base is less than $3,000, the per-investment safe harbor is $3,000. The final regulations do not adopt a sliding scale and do not treat long-term contracts as a series of shorter-term contracts because the IRS and Treasury Department have concluded that the per-investment safe harbor in the final regulations provides much needed certainty without requiring issuers to pay less than fair market value for brokers' fees.

C. Per-Issue Safe Harbor

Commentators recommended that the per-issue safe harbor be increased or eliminated. Some commentators suggested replacing the per-issue safe harbor with an anti-abuse rule to prevent the artificial creation of multiple investments when a single investment would be appropriate. Suggestions included aggregating separate investments that (1) are made at or about the same time if the bond proceeds being invested have similar

rebate or yield characteristics, or (2) would normally be bid together as a single investment unless there was a good business reason for the separation.

The final regulations retain the per-issue safe harbor and increase the $75,000 amount to $85,000. To maintain simplicity and certainty, the final regulations do not adopt the suggestion to replace the per-issue safe harbor with an anti-abuse rule. The IRS and Treasury Department have concluded that the per-issue safe harbor in the final regulations limits artificial separation of investments without requiring issuers to pay less than fair market value for brokers' fees.

D. Fees in Excess of Safe Harbor

Some commentators requested guidance on the factors for determining whether a fee in excess of the safe harbor is reasonable. Suggested factors included the duration of the contract, the complexity of its terms, the creditworthiness of the issuer, the availability of providers to deliver the contract, the presence of unusual features in the issue or the contract, custom in the industry, and the level of risk to the broker. The IRS and Treasury Department have considered the suggested factors and have concluded that they do not represent administrable standards for determining whether a particular fee is reasonable. Therefore, the final regulations do not specify factors for determining the reasonableness of fees in excess of the safe harbor. Under the final regulations, the determination of whether a fee is reasonable is made based on all the facts and circumstances, including whether the fee satisfies the comparability standard in § 1.148–5(e)(2)(i).

Some commentators suggested that the portion of a fee that is within the safe harbor should be a qualified administrative cost, even if the total fee exceeds the safe harbor. The final regulations adopt this suggestion.

E. Computational Base for Guaranteed Investment Contracts

Commentators suggested that the computational base for a guaranteed investment contract should be determined as of the date the contract is acquired, rather than the issue date, so that the safe harbor may be applied to guaranteed investment contracts that are not anticipated on the issue date. The final regulations adopt this suggestion.

F. Cost-of-Living Adjustments

Commentators requested that the final regulations provide for periodic adjustments to the dollar limits in the safe harbor to reflect inflation. The final regulations provide a cost-of-living adjustment for both the per-investment safe harbor and the per-issue safe harbor. The adjusted safe harbor dollar amounts will be published in the annual revenue procedure that sets forth inflation-adjusted items.

G. Interpretative Rule

One commentator questioned whether the proposed regulations should have been classified as a legislative rule. The IRS and Treasury Department have reviewed the applicable authorities and have determined that the regulations are properly classified as an interpretative rule.

Effective Dates

The final regulations apply to bonds sold on or after February 9, 2004. In the case of bonds sold before February 9, 2004, that are subject to § 1.148–5 (pre-effective date bonds), issuers may apply the final regulations, in whole but not in part, with respect to transactions entered into on or after December 11, 2003. If an issuer applies the final regulations to pre-effective date bonds, the per-issue safe harbor is applied by taking into account all brokers' commissions or similar fees with respect to guaranteed investment contracts and investments for yield restricted defeasance escrows that the issuer treats as qualified administrative costs for the issue, including all such commissions or fees paid before February 9, 2004. For purposes of §§ 1.148–5(e)(2)(iii)(B)(*3*) and 1.148–5(e)(2)(iii)(B)(*6*) of the final regulations (relating to cost-of-living adjustments), transactions entered into before 2003 are treated as entered into in 2003.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the rule does not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

Drafting Information

The principal authors of these final regulations are Rose M. Weber and Rebecca L. Harrigal, Office of Chief Counsel, IRS (TE/GE), and Stephen J. Watson, Office of Tax Policy, Treasury Department. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ 2. Section 1.148–0 is amended by revising the entry in paragraph (c) for § 1.148–11 (i) to read as follows:

§ 1.148–0 Scope and table of contents.

* * * * *

(c) Table of contents.

* * * * *

§ 1.148–11 Effective dates.

* * * * *

(i) Special rule for certain broker's commissions and similar fees.

* * * * *

■ 3. In § 1.148–5, paragraph (e) is amended as follows:

■ 1. Paragraph (e)(2)(iii) is revised.

■ 2. Paragraph (e)(2)(iv) is removed.

The revision reads as follows:

§ 1.148–5 Yield and valuation of investments.

* * * * *

(e) * * *

(2) * * *

(iii) *Special rule for guaranteed investment contracts and investments purchased for a yield restricted defeasance escrow*—(A) *In general.* An amount paid for a broker's commission or similar fee with respect to a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is a qualified administrative cost if the fee is reasonable within the meaning of paragraph (e)(2)(i) of this section.

(B) *Safe harbor—(1) In general.* A broker's commission or similar fee with respect to the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is reasonable within the meaning of paragraph (e)(2)(i) of this section to the extent that—

(*i*) The amount of the fee that the issuer treats as a qualified administrative cost does not exceed the lesser of:

(*A*) $30,000 and

(*B*) 0.2% of the computational base or, if more, $3,000; and

(*ii*) For any issue, the issuer does not treat as qualified administrative costs more than $85,000 in brokers' commissions or similar fees with respect to all guaranteed investment contracts and investments for yield restricted defeasance escrows purchased with gross proceeds of the issue.

(*2*) *Computational base.* For purposes of paragraph (e)(2)(iii)(B)*(1)* of this section, computational base shall mean—

(*i*) For a guaranteed investment contract, the amount of gross proceeds the issuer reasonably expects, as of the date the contract is acquired, to be deposited in the guaranteed investment contract over the term of the contract, and

(*ii*) For investments (other than guaranteed investment contracts) to be deposited in a yield restricted defeasance escrow, the amount of gross proceeds initially invested in those investments.

(*3*) *Cost-of-living adjustment.* In the case of a calendar year after 2004, each of the dollar amounts in paragraph (e)(2)(iii)(B)*(1)* of this section shall be increased by an amount equal to—

(*i*) Such dollar amount; multiplied by

(*ii*) The cost-of-living adjustment determined under section 1(f)(3) for such calendar year by using the language ''calendar year 2003'' instead of ''calendar year 1992'' in section 1(f)(3)(B).

(*4*) *Rounding.* If any increase determined under paragraph (e)(2)(iii)(B)(*3*) of this section is not a multiple of $1,000, such increase shall be rounded to the nearest multiple thereof.

(*5*) *Applicable year for cost-of-living adjustment.* The cost-of-living adjustments under paragraph (e)(2)(iii)(B)(*3*) of this section shall apply to the safe harbor amounts under paragraph (e)(2)(iii)(B)(*1*) of this section based on the year the guaranteed investment contract or the investments for the yield restricted defeasance escrow, as applicable, are acquired.

(*6*) *Cost-of-living adjustment to determine remaining amount of per-issue safe harbor*—(i) *In general.* This paragraph (e)(2)(iii)(B)(*6*) applies to determine the portion of the safe harbor amount under paragraph (e)(2)(iii)(B)(1)(*ii*) of this section, as modified by paragraph (e)(2)(iii)(B)(*3*) of this section (the per-issue safe harbor), that is available (the remaining amount) for any year (the determination year) if the per-issue safe harbor was partially used in one or more prior years.

(*ii*) *Remaining amount of per-issue safe harbor.* The remaining amount of the per-issue safe harbor for any determination year is equal to the per-issue safe harbor for that year, reduced by the portion of the per-issue safe harbor used in one or more prior years.

(*iii*) *Portion of per-issue safe harbor used in prior years.* The portion of the per-issue safe harbor used in any prior year (the prior year) is equal to the total amount of broker's commissions or similar fees paid in connection with guaranteed investment contracts or investments for a yield restricted defeasance escrow acquired in the prior year that the issuer treated as qualified administrative costs for the issue, multiplied by a fraction the numerator of which is the per-issue safe harbor for the determination year and the denominator of which is the per-issue safe harbor for the prior year. See paragraph (e)(2)(iii)(C) *Example 2* of this section.

(C) *Examples.* The following examples illustrate the application of the safe harbor in paragraph (e)(2)(iii)(B) of this section:

Example 1. Multipurpose issue. In 2003, the issuer of a multipurpose issue uses brokers to acquire the following investments with gross proceeds of the issue: a guaranteed investment contract for amounts to be deposited in a construction fund (construction GIC), Treasury securities to be deposited in a yield restricted defeasance escrow (Treasury investments) and a guaranteed investment contract that will be used to earn a return on what otherwise would be idle cash balances from maturing investments in the yield restricted defeasance escrow (the float GIC). The issuer deposits $22,000,000 into the construction GIC and reasonably expects that no further deposits will be made over its term. The issuer uses $8,040,000 of the proceeds to purchase the Treasury investments. The issuer reasonably expects that it will make aggregate deposits of $600,000 to the float GIC over its term. The brokers' fees are $30,000 for the construction GIC, $16,080 for the Treasury investments and $3,000 for the float GIC. The issuer has not previously treated any brokers' commissions or similar fees as qualified administrative costs. The issuer may claim all $49,080 in brokers' fees for these investments as qualified administrative costs because the fees do not exceed the safe harbors in paragraph (e)(2)(iii)(B) of this section. Specifically, each of the brokers' fees equals the lesser of $30,000 and 0.2% of the computational base (or, if more, $3,000) (*i.e.*, lesser of $30,000 and 0.2% × $22,000,000 for the construction GIC; lesser of $30,000 and 0.2% × $8,040,000 for the Treasury investments; and lesser of $30,000 and $3,000 for the float GIC). In addition, the total amount of brokers' fees claimed by the issuer as qualified administrative costs ($49,080) does not exceed the per-issue safe harbor of $85,000.

Example 2. Cost-of-living adjustment. In 2003, an issuer issues bonds and uses gross proceeds of the issue to acquire two guaranteed investment contracts. The issuer pays a total of $50,000 in brokers' fees for the two guaranteed investment contracts and treats these fees as qualified administrative costs. In a year subsequent to 2003 (Year Y), the issuer uses gross proceeds of the issue to acquire two additional guaranteed investment contracts, paying a total of $20,000 in broker's fees for the two guaranteed investment contracts, and treats those fees as qualified administrative costs. For Year Y, applying the cost-of-living adjustment under paragraph (e)(2)(iii)(B)(*3*) of this section, the safe harbor dollar limits under paragraph (e)(2)(iii)(B)(*1*) of this section are $3,000, $32,000 and $90,000. The remaining amount of the per-issue safe harbor for Year Y is $37,059 ($90,000–[$50,000 × $90,000/$85,000]). The broker's fees in Year Y do not exceed the per-issue safe harbor under paragraph (e)(2)(iii)(B)(*1*)(*ii*) (as modified by paragraph (e)(2)(iii)(B)(*3*)) of this section because the broker's fees do not exceed the remaining amount of the per-issue safe harbor determined under paragraph (e)(2)(iii)(B)(*6*) of this section for Year Y. In a year subsequent to Year Y (Year Z), the issuer uses gross proceeds of the issue to acquire an additional guaranteed investment contract, pays a broker's fee of $15,000 for the guaranteed investment contract, and treats the broker's fee as a qualified administrative cost. For Year Z, applying the cost-of-living adjustment under paragraph (e)(2)(iii)(B)(*3*) of this section, the safe harbor dollar limits under paragraph (e)(2)(iii)(B)(*1*) of this section are $3,000, $33,000 and $93,000. The remaining amount of the per-issue safe harbor for Year Z is $17,627 ($93,000—[($50,000 × $93,000/$85,000) + ($20,000 × $93,000/$90,000)]). The broker's fee incurred in Year Z does not exceed the per-issue safe harbor under paragraph (e)(2)(iii)(B)(*1*)(*ii*) (as modified by paragraph (e)(2)(iii)(B)(*3*)) of this section because the broker's fee does not exceed the remaining amount of the per-issue safe harbor determined under paragraph (e)(2)(iii)(B)(*6*) of this section for Year Z. See paragraph (e)(2)(iii)(B)(*6*) of this section.

* * * * *

■ 4. Section 1.148–11 is amended by revising paragraph (i) to read as follows:

§ 1.148–11 Effective dates.

* * * * *

(i) *Special rule for certain broker's commissions and similar fees.* Section 1.148–5(e)(2)(iii) applies to bonds sold on or after February 9, 2004. In the case of bonds sold before February 9, 2004, that are subject to § 1.148–5 (pre-effective date bonds), issuers may apply § 1.148–5(e)(2)(iii), in whole but not in part, with respect to transactions entered into on or after December 11, 2003. If an issuer applies § 1.148–5(e)(2)(iii) to pre-effective date bonds, the per-issue safe harbor in § 1.148–5(e)(2)(iii)(B)(*1*)(*ii*) is applied by taking into account all brokers' commissions or similar fees with respect to guaranteed investment contracts and investments for yield restricted defeasance escrows

that the issuer treats as qualified administrative costs for the issue, including all such commissions or fees paid before February 9, 2004. For purposes of §§ 1.148–5(e)(2)(iii)(B)(*3*) and 1.148–5(e)(2)(iii)(B)(*6*) (relating to cost-of-living adjustments), transactions entered into before 2003 are treated as entered into in 2003.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 2, 2003.

Gregory Jenner,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–30635 Filed 12–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9098]

RIN 1545–BC77

Guidance Under Section 1502; Application of Section 108 to Members of a Consolidated Group

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains amendments to temporary regulations under section 1502 that govern the application of section 108 when a member of a consolidated group realizes discharge of indebtedness income. These temporary regulations affect corporations filing consolidated returns. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the proposed rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Amber Renee Cook or Marie C. Milnes-Vasquez at (202) 622–7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 61(a)(12) of the Internal Revenue Code (Code) provides that gross income includes income from the discharge of indebtedness, except as provided by law. Section 108(a) provides that, in certain cases, gross income of a C corporation does not include certain amounts of discharge of indebtedness income that would otherwise be includible in gross income. In these cases, however, the taxpayer must reduce its tax attributes, including the basis of property, by the excluded amount of discharge of indebtedness income (excluded COD income). This provision reflects Congressional intent of ''deferring, but eventually collecting within a reasonable period, tax on ordinary income realized from debt discharge.'' *See* H.R. Rep. 96–833 at 9 (1980); S. Rep. No. 96–1035 at 10 (1980).

On September 4, 2003, the IRS and Treasury Department published in the **Federal Register** a notice of proposed rulemaking (REG–132760–03, 68 FR 52542) and temporary regulations (TD 9089, 68 FR 52487) under section 1502 (the original regulations). The original regulations provide guidance regarding the determination of the attributes that are available for reduction when a member of a consolidated group realizes excluded COD income and the method for reducing those attributes. As explained in the preamble to the original regulations, those regulations adopt a consolidated approach that is intended to reduce all attributes that are available to the debtor member and contain a rule governing the order in which attributes are reduced. In particular, under the original regulations, the attributes attributable to the debtor member are first subject to reduction. For this purpose, attributes attributable to the debtor member include (1) consolidated attributes attributable to the debtor member, (2) attributes that arose in separate return limitation years of the debtor member, and (3) the basis of property of the debtor member. To the extent that the excluded COD income exceeds the attributes attributable to the debtor member, the original regulations require the reduction of consolidated attributes attributable to other members and attributes attributable to other members that arose (or are treated as arising) in a separate return limitation year to the extent that the debtor member is a member of the separate return limitation year subgroup with respect to such attribute.

Explanation of Provisions

The IRS and Treasury Department have become aware that the original regulations may not provide for the reduction of all the attributes that are in fact available to the debtor member. In particular, those regulations may not require the reduction of tax attributes attributable to members other than the debtor member that arise in a separate return year and that are not subject to a SRLY limitation. Such attributes, for example, include attributes from separate return limitation years that are not subject to a SRLY limitation as a result of the application of the overlap rule of § 1.1502–15(g) or § 1.1502–21(g).

These temporary regulations, therefore, amend the original regulations to include among the tax attributes that are subject to reduction, after the reduction of the tax attributes attributable to the debtor member, tax attributes attributable to members other than the debtor member (other than asset basis) that arose in a separate return year or that arose (or are treated as arising) in a separate return limitation year to the extent that no SRLY limitation applies to the use of such attributes by the group. This amendment is consistent with the approach of the original regulations to make available for reduction all of the attributes that are available to offset income of the debtor member.

Effective Date

These amendments to the original regulations generally apply to discharges of indebtedness that occur after August 29, 2003, but only if the discharge occurs during a taxable year the original return for which is due (without regard to extensions) after December 10, 2003.

Other Issues

The IRS and Treasury Department are aware that there are a number of other technical issues that have been identified regarding the operation of the original regulations. The IRS and Treasury Department are currently studying these issues, including the application of section 1245 to property the basis of which has been reduced, the timing of certain basis adjustments, and the timing of taking into account certain excess loss accounts. It is expected that guidance regarding these issues will be issued in the near future and may available on a retroactive basis.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. These temporary regulations are necessary to provide taxpayers with immediate guidance regarding the application of section 108 when a member of a consolidated group realizes discharge of indebtedness income that is excluded from gross income and the application of previously promulgated regulations regarding such application. Accordingly, good cause is found for dispensing with notice and public procedure pursuant to 5 U.S.C.

553(b)(B) and with a delayed effective date pursuant to 5 U.S.C. 553(d)(3). For applicability of the Regulatory Flexibility Act, please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Marie C. Milnes-Vasquez of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Section 1.1502–28T also issued under 26 U.S.C. 1502. * * *

■ 2. Section 1.1502–28T is amended by revising paragraphs (a)(4) and (d) to read as follows:

§ 1.1502–28T Consolidated section 108 (temporary).

(a) * * *

(4) *Reduction of certain tax attributes attributable to other members.* To the extent that, pursuant to paragraph (a)(2) of this section, the excluded COD income is not applied to reduce the tax attributes attributable to the member that realizes the excluded COD income, after the application of paragraph (a)(3) of this section, such amount shall be applied to reduce the remaining consolidated tax attributes of the group as provided in section 108 and this section. Such amount also shall be applied to reduce the tax attributes attributable to members that arose (or are treated as arising) in a separate return limitation year to the extent that the member that realizes excluded COD income is a member of the separate return limitation year subgroup with respect to such attribute if a SRLY limitation applies to the use of such attribute. In addition, such amount shall be applied to reduce the tax attributes attributable to members that arose in a separate return year or that arose (or are treated as arising) in a separate return limitation year if no SRLY limitation applies to the use of such attribute. The reduction of each tax attribute pursuant to the three preceding sentences shall be made in the order prescribed in section 108 and pursuant to the principles of § 1.1502–21T(b)(1). Except as otherwise provided in this paragraph (a)(4), a tax attribute that arose in a separate return year or that arose (or is treated as arising) in a separate return limitation year is not subject to reduction pursuant to this paragraph (a)(4). Basis in assets is not subject to reduction pursuant to this paragraph (a)(4). Finally, to the extent that the realization of excluded COD income by a member pursuant to paragraph (a)(3) does not reduce a tax attribute attributable to such lower-tier member, such excess shall not be applied to reduce tax attributes attributable to any member pursuant to this paragraph (a)(4).

* * * * *

(d) *Effective dates.* This section other than paragraph (a)(4) of this section applies to discharges of indebtedness that occur after August 29, 2003. Paragraph (a)(4) of this section applies to discharges of indebtedness that occur after August 29, 2003, but only if the discharge occurs during a taxable year the original return for which is due (without regard to extensions) after December 10, 2003. However, groups may apply paragraph (a)(4) of this section to discharges of indebtedness that occur after August 29, 2003, and during a taxable year the original return for which is due (without regard to extensions) on or before December 10, 2003. For discharges of indebtedness that occur after August 29, 2003, and during a taxable year the original return for which is due (without regard to extensions) on or before December 10, 2003, paragraph (a)(4) of this section shall apply as in effect on August 29, 2003.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 2, 2003.

Gregory Jenner,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–30636 Filed 12–10–03; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN159–1a; FRL–7598–6]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Oxides of Nitrogen Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the oxides of nitrogen (NO_X) budget trading program submitted by Indiana on June 26, 2003, and August 4, 2003. These changes revise Indiana's NO_X State Implementation Plan (SIP) and NO_X budget approved by EPA on November 8, 2001. The most significant change adds 17 units from three sources to the NO_X trading portion of the Indiana plan. The plan revision also includes: A compliance date change to accommodate revised deadlines under the NO_X SIP call; a revised definition of ''energy efficiency project'' to include anaerobic digestion systems; the addition of formulas to describe an energy efficiency and renewable energy ''set aside''; and minor wording changes and correction of typographical errors. These changes are consistent with Indiana's previously approved ''Phase I budget.''

DATES: This rule is effective on January 26, 2004, unless EPA receives relevant adverse written comments by January 12, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, *bortzer.jay@epa.gov.* Comments may also be submitted electronically or through hand delivery/courier, please follow the detailed instructions described in subsection (B)(1)(i) through (iii) of the Supplementary Information section.

You may obtain a copy of the submittal and plan revisions at the above address. Please telephone John Paskevicz at (312) 886–6084 if you intend to visit the Region 5 office.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Chicago, Illinois 60604. E-Mail Address: *paskevicz.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

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Throughout this document, the term ''you'' refers to the reader of this rule and/or to sources subject to the State rule, and the terms ''we'', ''us'', or ''our'' refer to EPA.

I. General Information

A. How Can I Get Copies of This Document and Other Related Information ?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under ''Region 5 Air Docket IN159''. The official public file 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 rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the *regulations.gov* Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register** and are open for comment.

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 review at the EPA Regional Office, 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 the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. 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 rulemaking identification number by including the text ''Public comment on Direct Final rulemaking Region 5 Air Docket IN159'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. 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. *E-mail.* Comments may be sent by electronic mail (e-mail) to *bortzer.jay@epa.gov.* Please include the text ''Public comment on proposed rulemaking Region 5 Air Docket IN159'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through *Regulations.gov,* 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.

ii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then click on the button ''TO SEARCH FOR REGULATIONS CLICK HERE,'' and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. 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.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: J. Elmer Bortzer, Chief, Criteria Pollutant Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please include the text ''Public comment on Direct Final Rulemaking Regional Air Docket IN159'' in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: J. Elmer Bortzer, Chief, Criteria Pollutant Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. 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 official public regional rulemaking file. 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 file and available for public inspection. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. Background

On November 8, 2001 (66 FR 56465), EPA approved an Indiana NO_X SIP revision because it fulfilled the NO_X SIP Call Phase I emission budget requirements. That plan addressed emissions from electric generating units, large industrial boilers, turbines and cement kilns, in order to achieve reductions and meet the NO_X budget required by EPA's October 27, 1998, NO_X SIP Call. (63 FR 57357). The regulations approved include 326 Indiana Administrative Code (IAC) 10–3, the NO_X reduction program for specific categories, and 326 IAC 10–4, the NO_X budget trading program.

The amendment to the Indiana plan currently before EPA, also referred to by Indiana as the ''NO_X fix-up rule,'' addresses additional matters, some of which occurred after State adoption of the rule. The revisions consist of: (1) Regulating Ispat Inland Steel's and U.S. Steel's blast furnace gas boilers in 326 IAC 10–4 instead of 326 IAC 10–3; (2) correcting the omission of three boilers at Purdue University and specifying their allowance allocations in 326 IAC 10–4; (3) amending the definition of ''energy efficiency projects'' to include anaerobic digestion systems; (4) adding three new formulas to the energy efficiency renewable energy ''set-aside'' provisions; (5) changing compliance and other dates for all sources subject to the NO_X trading program, as a result of a judicial decision; and (6) making minor wording changes and correcting typographical errors.

III. Summary of the State Submittal

A. What Sources Are Affected by This Rule Change?

There are a number of sources affected by this rule change. Purdue University's heating plant consists of four boilers which provide steam and electricity to the school. Three of these boilers were originally classified as ''small boilers'' in the NO_X SIP Call inventory and therefore, were not included the NO_X rules. However, Indiana has determined that these boilers meet the applicable threshold for the NO_X trading program (250 million BTU per hour). IDEM calculated and allocated allowances for the boilers and included these boilers in 326 IAC 10–4.

When EPA approved Indiana's NO_X SIP on November 8, 2001, we determined that the Indiana submittal met the Phase I NO_X SIP Call budget requirement. The plan included Indiana's Phase I budget demonstration and supporting documentation including initial unit allocations and two new rules: 326 IAC 10–3 and 326 IAC 10–4. The final adopted rule included the regulation of blast furnace gas units under 10–3 rather than 10–4. A total of 25 blast furnace gas boilers at 4 facilities with a maximum design heat input of greater than 250 mmBtu/hr were regulated in 326 IAC 10–3. Since all of the units have a low emission rate on a lb/mmBtu basis, IDEM did not include these units in the trading program and did not require further emission reductions. The State inventory notes all of these units use blast furnace gas, natural gas, and/or coke oven gas to make steam. The steam is needed to operate cold air blowers which provide air to stoves and subsequently to the blast furnaces.

The Indiana submittal addressed here moves 14 units from 2 sources (Ispat Inland and U.S. Steel-Gary Works) from 10–3 to 10–4, making the 14 units at these 2 sources part of the trading program, and makes additional allowances available in the trading budget. This approach however, continues to maintain the total overall NO_X budget for the State as is demonstrated in the revised budget demonstration.

EPA does not generally believe it is appropriate to regulate only a portion of a category of similar sources under a cap and trade program, unless conditions (such as those in the opt-in provisions of the model trading rule in 40 Code of Federal Regulations (CFR) part 96) are imposed in order to address the potential for shifting utilization out of the trading program. When only a portion of a group of similar sources is regulated, there is the potential for utilization to be redistributed from capped to non-capped units in the category in such a way that emissions are shifted from within the trading program, meaning allowances are freed up and total emissions increase. When emissions from all sources in a source category are regulated and accounted for in a cap and trade program, utilization shifts among sources do not increase total emissions. However, for the particular source category involved here, specifically blast furnace gas boilers in the iron and steel industry, there seems to be little or no ability to shift utilization among plants. The boilers are located in proximity to blast furnaces and burn the by-product gas from the furnaces, which are used in the iron making process. The iron making process is integral to the steel making process at an iron and steel plant. The four plants in Indiana are owned and operated by four separate companies. In order for utilization of the blast furnace gas boilers at one plant to be shifted to those at another plant, steel production would have to be shifted, which seems highly unlikely. Given the low energy content and economic value of blast furnace gas itself, it is also highly unlikely that such gas from one plant would be transported to be burned at another plant.

Considering the relatively small emissions and the unlikelihood of utilization and emissions shifting, EPA in this unique case accepts Indiana's proposal to split this particular source category for the purposes of Indiana's NO_X budget trading program. However, EPA intends, as part of its review in 2007 of the results of the NO_X SIP call, to evaluate the impact (including the effect on total emissions) of allowing some, but not all, of the blast furnace gas boilers to participate in the NO_X budget trading program.

The State has demonstrated and we agree that the changes submitted by Indiana will continue to provide for the timely compliance with the State's NO_X budget during the 2007 ozone season. The 2 sources which remain in and are subject to the provisions of 326 IAC 10–3 will not adversely affect the overall budget. We are approving the revision because it meets the requirements of § 51.121(b)(1)(I). While the changes increase the trading budget, the overall Phase I budget for Indiana will continue to be met.

These newly included units will make a very small impact on the Indiana overall NO_X budget. The budget remains within the NO_X budget approved on November 8, 2001, (66 FR 56465). Specifically, the November 2001 plan contained a budget of 233,633 tons of NO_X during the 2007 ozone season. The current revision caps NO_X emissions for the same period at 233,548, well within the previously approved budget.

The rule also adds anaerobic digesters to the list of sources in 326 IAC 10–4–

2 eligible for energy efficiency and renewable energy allowances. Anaerobic digesters are closed, air-tight systems that use bacteria to break down organic matter and produce gases through this natural decomposition. One of the gases produced is methane, a combustible gas which is used to power engines to produce electricity. The purpose of this revision is to expand the number of types of projects eligible for energy efficiency renewable energy ''set-asides.'' Indiana has the flexibility to add to this program projects which it believes will have a positive effect on energy efficiency and generation output, and EPA agrees with this addition.

B. What Additional Changes Has Indiana Made?

IDEM has added three new formulas to the energy efficiency and renewable energy set aside provisions in 326 IAC 10–4–9(e). The reason for this revision is to make allowances available, during the ozone control period, to producers of electricity using systems which are highly efficient.

In addition, the rule has revised dates for compliance, changed from May 1, 2003 to May 31, 2004 as a result of a court decision affecting the NO_X SIP call, *Appalachian Power Co. et al.* v. *EPA,* F.3d (D.C. Cir 2001). Finally, IDEM has made minor wording changes and corrected typographical errors.

C. What Public Review Opportunities Did Indiana Provide?

Public notices were published in November 2002 and April 2003 for the two Indiana Air Pollution Control Board hearings in December 2002 and May 2003, respectively. At both of these hearings, Indiana provided the public and the affected sources with an opportunity to comment on the changes to the Indiana NO_X rules. Indiana also provided copies of the record as part of the submittal of the Indiana NO_X plan.

D. Do the Changes Continue To Meet the NO_X Budget for Indiana?

Indiana provided a revised budget demonstration which takes into account the changes to the rule including the addition of the Ispat Inland, U.S. Steel and Purdue boilers to the trading program. The budget revisions affect only the non-EGU source category, and show a net decrease in the overall Indiana NO_X budget.

The changes for the three sources affect the set-asides for new large units at 326 IAC 10–4–9(e)(1)(A)(ii) and at 326 IAC 10–4–9(e)(1)(B) for energy efficiency and renewable energy projects. The Indiana analysis also demonstrates a net change to the overall Phase I budget to be a negative 85 tons during the ozone season. This decrease is the result of including the Purdue boilers in the trading program and allocating NO_X allowances based on a controlled emissions level. In EPA's November 8, 2001 approval of the 2007 Indiana NO_X SIP, the budget was set at 233,633 tons. In this action, following the implementation of these rule changes, the Indiana revised NO_X budget for the 2007 ozone season is 233,548 tons.

IV. EPA Action

EPA is taking final action to approve revisions to the NO_X SIP submitted by Indiana on June 25, 2003, and August 4, 2003. These revisions: shift certain existing sources from the general NO_X reduction rule to the NO_X trading rule; add additional sources to the NO_X trading rule; change the definition of energy efficiency projects to include anaerobic digestion systems; add three new formulas to the energy efficiency and renewable set aside provisions; change compliance dates in accordance with the 2001 court decision; and make some minor wording and typographical changes and corrections. Indiana's NO_X SIP continues to meet the Phase I budget for EPA's NO_X SIP Call.

In meeting this emissions budget, EPA believes the State will achieve reductions in emissions of NO_X which will have a significant impact on ozone air quality in-state and downwind from sources in Indiana.

In the event we receive meaningful written adverse comment, this direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on a proposal published elsewhere in today's **Federal Register**.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Coordination With Indian Tribal Governments

This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer and Advancement Act

In reviewing SIP submissions, USEPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS),

EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for USEPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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. USEPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective January 26, 2004.

Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: December 2, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52— [AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart P—Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(163) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(163) On June 26, 2003, the Indiana Department of Environmental Management (IDEM) submitted revisions to 326 IAC 10–3 (NO_X Reduction Program for Specific Source Categories) and 326 IAC 10–4 (NO_X Budget Trading Program) of the Indiana Administrative Code (IAC). Also, on August 4, 2003, IDEM submitted a letter containing the Legislative Service Agency Document #00–54(F) as published in the Indiana Register on August 1, 2003, 26 IR 3550, containing the legal and approving signatures. The revised rules change the Indiana Phase I NO_X budget to 233,548 tons per ozone season for 2007.

(i) Incorporation by reference.

(A) Indiana Pollution Control Board rules: 326 IAC 10–3–1 and 326 IAC 10–4–1, 10–4–2, 10–4–9, 10–4–10, 10–4–13, 10–4–14 and 10–4–15. Adopted by the Indiana Pollution Control Board on May 7, 2003. Filed with the Secretary on July 7, 2003. Published at Indiana Register Volume 26, Number 11, August 1, 2003 (26 IR 3550). Effective August 6, 2003.

[FR Doc. 03–30696 Filed 12–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[FRL–7598–4]

Delegation of Authority to the States of Iowa; Kansas; Missouri; Nebraska; Lincoln-Lancaster County, NE; and City of Omaha, NE, for New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP); and Maximum Achievable Control Technology (MACT) Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: The states of Iowa, Kansas, Missouri, Nebraska, and the local agencies of Lincoln-Lancaster County, Nebraska, and city of Omaha, Nebraska, have submitted updated regulations for delegation of EPA authority for implementation and enforcement of NSPS, NESHAP, and MACT. The submissions cover new EPA standards and, in some instances, revisions to standards previously delegated. EPA's review of the pertinent regulations shows that they contain adequate and effective procedures for the implementation and enforcement of these Federal standards. This action informs the public of delegations to the above-mentioned agencies.

DATES: This document is effective on December 11, 2003. The dates of delegation can be found in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Copies of documents relative to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

Effective immediately, all notifications, applications, reports, and other correspondence required pursuant to the newly delegated standards and revisions identified in this document should be submitted to the Region 7 office, and, with respect to sources located in the jurisdictions identified in this document, to the following addresses:

Iowa Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Urbandale, Iowa 50322.

Kansas Department of Health and Environment, Bureau of Air and Radiation, 1000 S.W. Jackson, Suite 310, Topeka, Kansas 66612.
Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, P.O. Box 176, Jefferson City, Missouri 65102.
Nebraska Department of Environmental Quality, Air and Waste Management Division, P.O. Box 98922, Statehouse Station, Lincoln, Nebraska 68509.
Lincoln-Lancaster County Division of Environmental Health, Air Pollution Control Agency, 3140 ''N'' Street, Lincoln, Nebraska 68510.
City of Omaha, Public Works Department, Air Quality Control Division, 5600 South 10th Street, Omaha, Nebraska 68107.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603, or by e-mail at *kaiser.wayne@epa.gov*.

SUPPLEMENTARY INFORMATION: The supplementary information is organized in the following order:

What does this action do?
What is the authority for delegation?
What does delegation accomplish?
What has been delegated?
What has not been delegated?

List of Delegation Tables

Table I—NSPS, 40 CFR part 60
Table II—NESHAP, 40 CFR part 61
Table III—NESHAP, 40 CFR part 63

What Does This Action Do?

The EPA is providing notice that it has delegated authority for implementation and enforcement of the Federal standards shown in the tables below to the state and local air agencies in Region 7. This rule updates the delegation tables previously published at 67 FR 70170 (November 21, 2003). The EPA has established procedures by which these agencies are automatically delegated the authority to implement the standards when they adopt regulations which are identical to the Federal standards. We then periodically provide notice of the new and revised standards for which delegation has been given.

What Is the Authority for Delegation?

1. Section 111(c)(1) of the Clean Air Act (CAA) authorizes EPA to delegate authority to any state agency which submits adequate regulatory procedures for implementation and enforcement of the NSPS program. The NSPS are codified at 40 CFR part 60.

2. Section 112(l) of the CAA and 40 CFR part 63, subpart E, authorizes the EPA to delegate authority to any state or local agency which submits adequate regulatory procedures for implementation and enforcement of emission standards for hazardous air pollutants. The hazardous air pollutant standards are codified at 40 CFR parts 61 and 63, respectively.

What Does Delegation Accomplish?

Delegation confers primary responsibility for implementation and enforcement of the listed standards to the respective state and local air agencies. However, EPA also retains the authority to enforce the standards if it so desires.

What Has Been Delegated?

Tables I, II, and III below list the delegated standards. The first date in each block is the reference date to the CFR contained in the state rule. In general, the state or local agency has adopted the applicable standard through this date as noted in the table. The second date is the most recent effective date of the state agency rule for which the EPA has granted the delegation.

What Has Not Been Delegated?

1. The EPA regulations effective after the first date specified in each block have not been delegated, and authority for implementation of these regulations is retained solely by EPA.

2. In some cases, the standards themselves specify that specific provisions cannot be delegated. You should review the applicable standard for this information.

3. In some cases, the agency rules do not adopt the Federal standard in its entirety. Each agency rule (available from the respective agency) should be consulted for specific information.

4. In some cases, existing delegation agreements between the EPA and the agencies limit the scope of the delegated standards. Copies of delegation agreements are available from the state agencies, or from this office.

5. With respect to 40 CFR part 63, subpart A, General Provisions (see Table III), the EPA has determined that §§ 63.6(g), 63.6(h)(9), 63.7(e)(2)(ii) and (f), 63.8(f), and 63.10(f) cannot be delegated. Additional information is contained in an EPA memorandum titled ''Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies'' from John Seitz, Director, Office of Air Quality Planning and Standards, dated July 10, 1998.

List of Delegation Tables

TABLE I.—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
A	General Provisions	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
D	Fossil-Fuel Fired Steam Generators for Which Construction Is Commenced After August 17, 1971.	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
Da	Electric Utility Steam Generating Units for Which Construction Is Commenced After September 18, 1978.	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
Db	Industrial-Commercial-Institutional Steam Generating Units	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
Dc	Small Industrial-Commercial-Institutional Steam Generating Units	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
E	Municipal Incinerators	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
Ea	Municipal Waste Combustors Constructed After December 20, 1989, and On or Before September 20 1994.	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
Eb	Municipal Waste Combustors for Which Construction Is Commenced After September 20, 1994.	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction Commenced After June 20, 1996.	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
F	Portland Cement Plants	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02

TABLE I.—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
G	Nitric Acid Plants	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
H	Sulfuric Acid Plants	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
I	Asphaltic Concrete Plants	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
J	Petroleum Refineries	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
K	Storage Vessels for Petroleum Liquid for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
Ka	Storage Vessels for Petroleum Liquid for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
Kb	Volatile Organic Liquid Storage Vessels for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
L	Secondary Lead Smelters	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
M	Brass & Bronze Production Plants	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
N	Basic Oxygen Process Furnaces for Which Construction Is Commenced After June 11, 1973.	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
Na	Basic Oxygen Process Steelmaking Facilities for Which Construction Is Commenced After January 20, 1983.	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
O	Sewage Treatment Plants	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
P	Primary Copper Smelters	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
Q	Primary Zinc Smelters	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
R	Primary Lead Smelters	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
S	Primary Aluminum Reduction Plants	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
T	Wet Process Phosphoric Acid Plants	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
U	Superphosphoric Acid Plants	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
V	Diammonium Phosphate Plants	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
W	Triple Superphosphate Plants	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
X	Granular Triple Superphosphate Storage Facilities	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
Y	Coal Preparation Plants	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
Z	Ferroalloy Production Facilities	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
AA	Steel Plant Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983.	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
AAa	Steel Plant Electric Arc Furnaces & Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983.	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
BB	Kraft Pulp Mills	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	.....
CC	Glass Manufacturing Plants	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
DD	Grain Elevators	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
EE	Surface Coating of Metal Furniture	12/31/01 10/23/03	07/01/98 06/11/99	06/30/0 10/30/03	07/01/01 07/10/02
GG	Stationary Gas Turbines	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
HH	Lime Manufacturing Plants	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
KK	Lead-Acid Battery Manufacturing Plants	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
LL	Metallic Mineral Processing Plants	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
MM	Auto & Light-Duty Truck Surface Coating Operations	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02

TABLE I.—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
NN	Phosphate Rock Plants	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
PP	Ammonium Sulfate Manufacture	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
QQ	Graphic Arts Industry: Publication Rotogravure Printing	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
RR	Pressure Sensitive Tape & Label Surface Coating Operations	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
SS	Industrial Surface Coating: Large Appliances	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
TT	Metal Coil Surface Coating	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
UU	Asphalt Processing & Asphalt Roofing Manufacture	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
VV	SOCMI Equipment Leaks (VOC)	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
WW	Beverage Can Surface Coating Industry	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
XX	Bulk Gasoline Terminals	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
AAA	New Residential Wood Heaters	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
BBB	Rubber Tire Manufacturing Industry	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
DDD	Polymer Manufacturing Industry (VOC)	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
FFF	Flexible Vinyl and Urethane Coating and Printing	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
GGG	Equipment Leaks of VOC in Petroleum Refineries	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
HHH	Synthetic Fiber Production Facilities	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
III	SOCMI AIR Oxidation Unit Processes	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
JJJ	Petroleum Dry Cleaners	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
KKK	VOC Leaks from Onshore Natural Gas Processing Plants	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
LLL	Onshore Natural Gas Processing: SO_2 Emissions	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
NNN	VOC Emissions from SOCMI Distillation Operations	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
OOO	Nonmetallic Mineral Processing Plants	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
PPP	Wool Fiberglass Insulation Manufacturing Plants	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
QQQ	VOC Emissions from Petroleum Refinery Wastewater Systems	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
RRR	VOC Emissions from SOCMI Reactor Processes	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
SSS	Magnetic Tape Coating Facilities	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
TTT	Surface Coating of Plastic Parts for Business Machines	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
UUU	Calciners & Dryers in Mineral Industries	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
VVV	Polymeric Coating of Supporting Substrates Facilities	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
WWW	New Municipal Solid Waste Landfills Accepting Waste On or After May 30, 1991.	12/31/01 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02
AAAA	New Small Municipal Waste Combustion Units	12/31/01 10/23/03	.....	06/30/02 10/30/03	07/01/01 07/10/02
CCCC	New Commercial and Industrial Solid Waste Incineration Units	12/31/01 10/23/03	.....	06/30/02 10/30/03	07/01/01 07/10/02

TABLE II.—DELEGATION OF AUTHORITY—PART 61 NESHAP—REGION 7

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
A	General Provisions	10/14/97 05/13/98	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
B	Radon Emissions From Underground Uranium Mines.		07/01/98 06/11/99				
C	Beryllium	10/14/97 05/13/98	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
D	Beryllium Rocket Motor Firing	10/14/97 12/23/98	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
E	Mercury	10/14/97 05/13/98	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
F	Vinyl Chloride	10/14/97 05/13/98	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
J	Equipment Leaks (Fugitive Emission Sources) of Benzene.	10/14/97 05/13/98	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
L	Benzene Emissions From Coke By-Product Recovery Plants.	10/14/97 05/13/98	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
M	Asbestos	10/14/97 05/13/98	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants.	10/14/97 05/13/98	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
O	Inorganic Arsenic Emissions From Primary Copper Smelters.	10/14/97 05/13/98	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.	10/14/97 05/13/98	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
Q	Radon Emissions From Department of Energy Facilities.		07/01/98 06/11/99				
R	Radon Emissions From Phosphogypsum Stacks.		07/01/98 06/11/99				
T	Radon Emissions From the Disposal of Uranium Mill Tailings.		07/01/98 06/11/99				
V	Equipment Leaks (Fugitive Emission Sources).	10/14/97 05/13/98	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
W	Radon Emissions From Operating Mill Tailings.		07/01/98 06/11/99				
Y	Benzene Emissions From Benzene Storage Vessels.	10/14/97 05/13/98	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
BB	Benzene Emissions From Benzene Transfer Operations.	10/14/97 05/13/98	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
FF	Benzene Waste Operations	10/14/97 05/13/98	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03

TABLE III.—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
A	General Provisions	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
B	Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Section 112(g) & (j).	04/29/03 10/23/03	07/01/98 06/11/99	12/31/00 11/20/02	04/05/02 11/20/02		04/05/02 04/18/03 (112 (g) only)
D	Compliance Extensions for Early Reductions of Hazardous Air Pollutants.	04/29/03 10/23/03	07/01/98 06/11/99	12/31/00 09/30/02	12/29/92 11/20/02	11/21/94 07/31/01	12/29/92 04/18/03
F	Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Tetrahydrobenzaldehyde Manufacturing.	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
G	Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
H	Organic Hazardous Air Pollutants for Equipment Leaks.	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03

TABLE III.—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
I	Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
J	Polyvinyl Chloride and Copolymers Production.	04/29/03 10/23/03	.....	.....	.....	.....	.....
L	Coke Ovens	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	.....	.....	.....
M	Dry Cleaning Facilities	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
N	Chromium Emissions From Hard and Decorative Chromium Electroplating Anodizing Tanks.	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
O	Ethylene Oxide Sterilization Facilities	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
Q	Industrial Process Cooling Towers	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
R	Gasoline Distribution (Stage 1)	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/98 04/18/03
S	Pulp and Paper MACT I and MACT III	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
T	Halogenated Solvent Cleaning	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
U	Polymers and Resins Group I	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
W	Polymers & Resins II	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
X	Secondary Lead Smelting	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
Y	Marine Tank Vessel Loading Operations	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	.....	.....	.....
AA/BB	Phosphoric Acid/ Phosphate Fertilizers	04/29/03 10/23/03	.....	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
CC	Petroleum Refineries	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/81/97 07/31/01	07/01/01 04/18/03
DD	Off-Site Waste Recovery Operations	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
EE	Magnetic Tape Manufacturing	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
GG	Aerospace Manufacturing and Rework Facilities.	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
HH	Oil & Natural Gas Production	04/29/03 10/23/03	.....	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
II	Shipbuilding and Ship Repair	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	.....	.....	.....
JJ	Wood Furniture Manufacturing Operations	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
KK	Printing and Publishing Industry	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
LL	Primary Aluminum Production	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
MM	Combustion Sources at Kraft, Soda, and Sulfite Pulp & Paper Mills.	04/29/03 10/23/03	.....	06/30/02 10/30/03	07/01/01 07/10/02	.....	07/01/01 04/18/03
OO	Tanks—Level 1	.....	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
PP	Containers	.....	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
QQ	Surface Impoundments	.....	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
RR	Individual Drain Systems	.....	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	04/29/03 10/23/03	.....	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
TT	Equipment Leaks—Control Level 1 Standards.	04/29/03 10/23/03	.....	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
UU	Equipment Leaks—Control Level 2 Standards.	04/29/03 10/23/03	.....	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
VV	Oil-Water Separators & Organic-Water Separators.	.....	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03

TABLE III.—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
WW	Storage Vessel (Tanks)—Control Level 2	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
YY	Generic MACT+, FR 6/29/99: Acetal Resins, Hydrogen Fluoride, Polycarbonates Prod., Acrylic/Modacrylic Fibers. FR 7/12/02: Carbon Black Prod., Cyanide Chemicals Mfg., Ethylene Proc., Spandex Prod..	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
XX	Ethylene Manuf. Process Units	04/29/03 10/23/03					
CCC	Steel Pickling-HCL Process	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
DDD	Mineral Wool Production	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
EEE	Hazardous Waste Combustors	04/29/03 10/23/03		06/30/02 10/30/03		07/01/00 07/31/01	
GGG	Pharmaceutical Production	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
HHH	Natural Gas Transmission and Storage	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
III	Flexible Polyurethane Foam Production	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
JJJ	Polymers and Resins Group IV	04/29/03 10/23/03	07/01/98 06/11/99	06/30/02 10/30/03	07/01/01 04/18/03		
LLL	Portland Cement Manufacturing	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
MMM	Pesticide Active Ingredient Production	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
NNN	Wool Fiberglass Manufacturing	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
OOO	Polymers & Resins III, Amino Resins/Phenolic Resins.	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
PPP	Polyether Polyols Production	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
QQQ	Primary Copper	04/29/03 10/23/03		06/30/02 10/30/03			
RRR	Secondary Aluminum	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02		07/01/01 04/18/03
TTT	Primary Lead Smelting	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
UUU	Petroleum Refineries	04/29/03 10/23/03		06/30/02 10/30/03	07/01/02 11/24/03		
VVV	Publicly Owned Treatment Works	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02		07/01/01 04/18/03
XXX	Ferroalloys Production	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02	07/01/00 07/31/01	07/01/01 04/18/03
AAAA	Municipal Solid Waste Landfills	04/29/03 10/23/03					
CCCC	Manufacturing Nutritional Yeast	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02		07/01/01 04/18/03
EEEE	Organic Liquids Distribution						
FFFF	Misc. Organic Chemical Prod. & Processes.						
GGGG	Solvent Extraction for Vegetable Oil Production.	04/29/03 10/23/03		06/30/02 10/30/03	07/01/01 07/10/02		07/01/01 04/18/03
HHHH	Wet Formed Fiberglass Mat Production	04/29/03 10/23/03		06/30/02 10/30/03	07/01/02 11/24/03		
JJJJ	Paper & Other Web Surface Coating	04/29/03 10/23/03					
KKKK	Metal Can Surface Coating						
MMMM	Misc. Metal Parts and Products Surface Coating.						
NNNN	Large Appliance Surface Coating	04/29/03 10/23/03					
OOOO	Fabric Printing, Coating & Dyeing						
PPPP	Plastic Parts Surface Coating						
QQQQ	Wood Building Products Surface Coating						
RRRR	Metal Furniture Surface Coating	04/29/03 10/23/03					

TABLE III.—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
SSSS	Metal Coil Surface Coating	04/29/03 10/23/03		06/30/02 10/30/03	07/01/02 11/24/03		
TTTT	Leather Finishing Operations	04/29/03 10/23/03		06/30/02 10/30/03	07/01/02 11/24/03		
UUUU	Cellulose Products Manufacturing	04/29/03 10/23/03		06/30/02 10/30/03	07/01/02 11/24/03		
VVVV	Boat Manufacturing	04/29/03 10/23/03		06/30/02 10/30/03	07/01/02 11/24/03		
WWWW	Reinforced Plastic Composites	04/29/03 10/23/03					
XXXX	Rubber Tire Manufacturing	04/29/03 10/23/03					
YYYY	Combustion Turbines						
AAAA	Lime Manufacturing						
BBBB	Semiconductor Manufacturing						
CCCC	Coke Oven: Pushing, Quenching, & Battery Stacks.	04/29/03 10/23/03					
EEEE	Iron and Steel Foundries						
FFFF	Integrated Iron & Steel						
GGGG	Site Remediation						
HHHH	Misc. Coating Manufacturing						
IIII	Mercury Cell Chlor-Alkali Plants						
JJJJ	Brick & Sturctural Clay Prod. Mfg.						
KKKK	Clay Ceramics Mfg.						
LLLL	Asphalt Roofing & Processing	04/29/03 10/23/03					
MMMM	Flexible Polyurethane Foam Fabircation Operation.	04/29/03 10/23/03					
NNNN	Hydrochloric Acid Prod.	04/29/03 10/23/03					
PPPP	Engine Test Cells/Stands	04/29/03 10/23/03					
QQQQ	Friction Products Manufacturing	04/29/03 10/23/03					
RRRR	Taconite Iron Ore Processing						
SSSS	Refactory Products Mfg.	04/29/03 10/23/03					
TTTT	Primary magnesium Refining						

Summary of This Action

All sources subject to the requirements of 40 CFR parts 60, 61, and 63 are also subject to the equivalent requirements of the above-mentioned state or local agencies.

This action informs the public of delegations to the above-mentioned agencies of the above-referenced Federal regulations.

Authority: This document is issued under the authority of sections 101, 110, 112, and 301 of the CAA, as amended (42 U.S.C. 7401, 7410, 7412, and 7601).

Dated: December 1, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 03–30706 Filed 12–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[NM–40–2–7445a; FRL–7598–8]

New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; delegation of authority.

SUMMARY: The New Mexico Environment Department (NMED) has submitted updated regulations for receiving delegation of EPA authority for implementation and enforcement of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) for all sources (both part 70 and non-part 70 sources). These regulations apply to certain NSPS promulgated by EPA, as amended through September 1, 2002, and certain NESHAPs promulgated by EPA, as amended through September 1, 2001 and September 1, 2002. The delegation of authority under this notice does not apply to sources located in Bernalillo County, New Mexico, or sources located in Indian Country. EPA is providing notice that it has approved delegation of certain NSPS to NMED, and taking direct final action to approve the delegation of certain NESHAPs to NMED.

DATES: This rule is effective on February 9, 2004 without further notice, unless EPA receives adverse comment by January 12, 2004. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in

the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffery Robinson, U.S. EPA, Region 6, Multimedia Planning and Permitting Division (6PD), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–6435; or electronic mail at *robinson.jeffrey@epa.gov.*

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I. General Information

A. What Is the Public Rulemaking File?

EPA is committed to ensuring public access to the information that is used to inform the public of the Agency's decisions regarding the environment and human health and to ensuring that the public has an opportunity to participate in the Agency's decision process. The official public rulemaking file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The public rulemaking file does not include Confidential Business Information (CBI) or other information for which disclosure is restricted by statute, although such information is a part of the administrative record for this action. The public rulemaking file is the collection of materials that is available for public viewing at the Regional Office. The administrative record is the collection of material used to inform the public of the Agency's decision on this rulemaking action.

B. How Can I Get Copies of This Document and Other Related Information?

1. *An official public rulemaking file is available for inspection at the Regional Office.* The Regional Office has established an official public rulemaking file for this action under NM–40–2–7445a. The public rulemaking file is available for viewing at the Air Permits Section, U.S. Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section two working days in advance to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4 p.m. excluding Federal holidays.

2. *Copies of the State submittal.* Copies of the State submittal are also available for public inspection during official business hours, by appointment at the New Mexico Environment Department, Air Quality Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

3. *Electronic Access.* You may access this Federal Register document electronically through the Regulation.gov web site located at *http://www.regulations.gov* where you can find, review, and submit comments on federal rules that are open for comment and have been published in the **Federal Register**.

The E Government Act of 2002 states that to ''to the extent practicable'' agencies shall accept electronic comments and establish electronic dockets. Also, President Bush's management plan for government includes a government-wide electronic rulemaking system. The first phase of the e-Rulemaking initiative was the development a Federal portal that displays all Federal Register notices and proposed rules open for comment. The URL for this site is *http://www.regulations.gov.* The site also provides the public with the ability to submit electronic comments that can then be transferred to the Agency responsible for the rule.

EPA's policy is to make all comments it receives, whether submitted electronically or on paper, available for public viewing at the Regional Office as EPA receives them and without change. However, those portions of a comment that contain properly identified and claimed CBI or other information for which disclosure is restricted by statute will be excluded from the public rulemaking file. The entire comment, including publicly restricted information, will be included in the administrative record for this action.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in section I.D, below. Do not use e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment, and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the public rulemaking file, and may be 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. E-mail. Comments may be sent by electronic mail (e-mail) to *robinson.jeffrey@epa.gov*, Attention ''Public comment on proposed rulemaking NM–40–2–7445a.'' 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.

ii. Regulations.gov. As an alternative to email, you may submit comments electronically to EPA by using the Federal web-based portal that displays all **Federal Register** notices and proposed rules open for comment. To use this method, access the Regulations.gov Web site at *http://www.regulations.gov*, then select ''Environmental Protection Agency'' at the top of the page and click on the ''Go'' button. The list of current EPA actions available for comment will be displayed. Select the appropriate action and please follow the online instructions for submitting comments. Unlike EPA's email system, the Regulations.gov Web site is an ''anonymous'' system, which means EPA will not know your identity, e-mail address, or other contact information, unless you provide it in the text of your comments.

iii. Disk or CD–ROM. You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in section I.C.2, directly below. These electronic submissions will be accepted in WordPerfect, Word, or ASCII file format. You should avoid the use of special characters and any form of encryption.

2. By Mail. Send your comments to: Jeff Robinson, Air Permits Section (6PD–R), Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Please include the text ''Public comment on proposed rulemaking NM–40–2–7445a'' in the subject line of the first page of your comments.

3. By Hand Delivery or Courier. Deliver your written comments or comments on a disk or CD–ROM to: Jeff Robinson, Air Permits Section (6PD–R), Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, Attention ''Public comment on proposed rulemaking NM–40–2–7445a.'' Such deliveries are only accepted during official hours of business, which are Monday through Friday, 8:30 a.m. to 4 p.m., excluding Federal holidays.

D. How Should I Submit CBI to the Agency?

For comments submitted to the Agency by mail or hand delivery, in either paper or electronic format, you may assert a business confidentiality claim covering confidential business information (CBI) included in your comment by clearly marking any part or all of the information as CBI at the time the comment is submitted to EPA. CBI should be submitted separately, if possible, to facilitate handling by EPA. Submit one complete version of the comment that includes the properly labeled CBI for EPA's official docket and one copy that does not contain the CBI to be included in the public docket. If you submit CBI on a disk or CD–ROM, mark on the outside of the disk or the CD–ROM that it contains CBI and then identify the CBI within the disk or CD–ROM. Also submit a non-CBI version if possible. Information which is properly labeled as CBI and submitted by mail or hand delivery will be disclosed only in accordance with procedures set forth in 40 CFR part 2. For comments submitted by EPA's e-mail system or through Regulations.gov, no CBI claim may be asserted. Do not submit CBI to *Regulations.gov* or via EPA's e-mail system. Any claim of CBI will be waived for comments received through *Regulations.gov* or EPA's e-mail system. For further advice on submitting CBI to the Agency, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

E. Privacy Notice

It is important to note that the comments you provide to EPA will be publicly disclosed in a rulemaking docket or on the Internet. The comments are made available for public viewing as EPA receives them and without change. Any personal information you choose to include in your comment will be included in the docket. However, EPA will exclude from the public docket any information labeled confidential business information (CBI), copyrighted material or other information restricted from disclosure by statute.

Comments submitted via Regulations.gov will not collect any personal information, e-mail addresses, or contact information unless they are included in the body of the comment. Comments submitted via Regulations.gov will be submitted anonymously unless you include personal information in the body of the comment. Please be advised that EPA cannot contact you for any necessary clarification if technical difficulties arise unless your contact information is included in the body of comments submitted through Regulations.gov. However, EPA's e-mail system is not an anonymous system. E-mail addresses are automatically captured by EPA's e-mail system and included as part of your comment that is placed in the public rulemaking docket.

F. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. What Does This Action Do?

EPA is providing notice that it is delegating authority for implementation and enforcement of certain NSPS to NMED. EPA is also taking direct final action to approve the delegation of certain NESHAPs to NMED. With this delegation, NMED has the primary responsibility to implement and enforce the delegated standards.

III. What Is the Authority for Delegation?

Section 111(c)(1) of the Clean Air Act (CAA) authorizes EPA to delegate authority to any state agency which submits adequate regulatory procedures for implementation and enforcement of the NSPS program. The NSPS standards are codified at 40 CFR part 60.

Section 112(l) of the CAA and 40 CFR part 63, subpart E, authorizes EPA to delegate authority to any state or local agency which submits adequate regulatory procedures for implementation and enforcement of emission standards for hazardous air pollutants. The hazardous air pollutant standards are codified at 40 CFR parts 61 and 63.

IV. What Criteria Must New Mexico's Program Meet To Be Approved?

EPA previously approved NMED's program for the delegation of NSPS. 51 FR 20648 (June 6, 1986). This notice notifies the public that EPA is updating NMED's delegation to implement and enforce certain NSPS. As to the NESHAP standards in parts 61 and 63,

section 112(l) of the CAA enables EPA to approve State air toxics programs or rules to operate in place of the Federal air toxics program or rules. 40 CFR part 63, subpart E (Subpart E) governs EPA's approval of State rules or programs under section 112(l).

EPA will approve an air toxics program if we find that:

(1) The State program is ''no less stringent'' than the corresponding Federal program or rule;

(2) The State has adequate authority and resources to implement and enforce the program;

(3) The schedule for implementation and compliance is sufficiently expeditious; and

(4) The program otherwise complies with Federal guidance.

In order to obtain approval of its program to implement and enforce Federal section 112 rules as promulgated without changes (straight delegation), only the criteria of 40 CFR 63.91(d) must be met. Section 63.91(d)(3) provides that interim or final Title V program approval will satisfy the criteria of § 63.91(d) for part 70 sources.

V. How Did NMED Meet the Subpart E Approval Criteria?

As part of its Title V submission, NMED stated that it intended to use the mechanism of incorporation by reference to adopt unchanged Federal section 112 into its regulations. This applied to both existing and future standards as they applied to part 70 sources. 59 FR 26158, 26160–26161 (May 19, 1994). EPA approved NMED's program for receiving delegation of existing and future standards when it granted final interim approval to NMED's Title V program. 59 FR 59656, 59658 & 56960. In addition, on November 26, 1996, EPA promulgated full approval of the State's operating permits program as administered by NMED. 61 FR 60032. Under 40 CFR 63.91(d)(2), once a state has satisfied up-front approval criteria, it needs only to reference the previous demonstration and reaffirm that it still meets the criteria for any subsequent submittals. NMED has affirmed that it still meets the up-front approval criteria.

VI. What Is Being Delegated?

EPA received requests to update the NSPS and NESHAP delegations on November 13, 1998, August 16, 1999, April 25, 2002, and May 23, 2003. NMED requested the EPA to update the delegation of authority for the following:

A. NSPS (40 CFR part 60 standards) from July 2, 1997, through September 1, 2002;

B. NESHAPs (40 CFR part 61 standards) from July 2, 1997 through September 1, 2001; and

C. NESHAPs (40 CFR part 63 standards) from December 19, 1994 (effective date of final interim approval of NMED's Title V program).

NMED's request was for delegation of certain NSPS and NESHAP for all sources (both part 70 and non-part 70 sources). The request includes revisions of 20 NMAC 2.77, 20 NMAC 2.78, and 20 NMAC 2.82 as adopted by the New Mexico Environmental Improvement Board. For NSPS, this revision incorporated all NSPS promulgated by EPA (except subpart AAA—Standards of Performance for New Residential Wood Heaters) as amended in the **Federal Register** through September 1, 2002. The effective date of the Federal delegation for NSPS under section 111 is the date that this **Federal Register** is published. For the part 61 NESHAPs, this revision included all NESHAPs promulgated by EPA as amended in the **Federal Register** through September 1, 2001, excluding Subparts B, H, I, K, Q, R, T, and W. For the part 63 NESHAPs, this includes the NESHAPs set forth in Table 1 below. The effective date of the Federal delegation for parts 61 and 63 standards is the effective date of this rule.

TABLE 1.—40 CFR PART 63 NESHAPS FOR SOURCE CATEGORIES DELEGATED TO NMED

Subpart	Source category
A	General Provisions.
D	Early Reductions.
F	Hazardous Organic NESHAP (HON)—Synthetic Organic Chemical Manufacturing Industry (SOCMI).
G	HON—SOCMI Process Vents, Storage Vessels, Transfer Operations and Wastewater.
H	HON—Equipment Leaks.
I	HON—Certain Processes Negotiated Equipment Leak Regulation.
J	Polyvinyl Chloride and Copolymers Production.
L	Coke Oven Batteries.
M	Perchloroethylene Dry Cleaning.
N	Chromium Electroplating and Chromium Anodizing Tanks.
O	Ethylene Oxide Sterilizers.
Q	Industrial Process Cooling Towers.
R	Gasoline Distribution.
S	Pulp and Paper Industry.
T	Halogenated Solvent Cleaning.
U	Group I Polymers and Resins.
W	Epoxy Resins Production and Non-Nylon Polyamides Production.
X	Secondary Lead Smelting.
Y	Marine Tank Vessel Loading.
AA	Phosphoric Acid Manufacturing Plants.
BB	Phosphate Fertilizers Production Plants.
CC	Petroleum Refineries.
DD	Off-Site Waste and Recovery Operations.
EE	Magnetic Tape Manufacturing.
GG	Aerospace Manufacturing and Rework Facilities.
HH	Oil and Natural Gas Production Facilities.
II	Shipbuilding and Ship Repair Facilities.
JJ	Wood Furniture Manufacturing Operations.
KK	Printing and Publishing Industry.
LL	Primary Aluminum Reduction Plants.
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfide, and Stand-Alone Semichemical Pulp Mills.
OO	Tanks—Level 1.
PP	Containers.

TABLE 1.—40 CFR PART 63 NESHAPS FOR SOURCE CATEGORIES DELEGATED TO NMED—Continued

Subpart	Source category
QQ	Surface Impoundments.
RR	Individual Drain Systems.
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.
TT	Equipment Leaks—Control Level 1.
UU	Equipment Leaks—Control Level 2 Standards.
VV	Oil-Water Separators and Organic-Water Separators.
WW	Storage Vessels (Tanks)—Control Level 2.
YY	Generic Maximum Achievable Control Technology Standards.
CCC	Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants.
DDD	Mineral Wool Production.
EEE	Hazardous Waste Combustors.
GGG	Pharmaceuticals Production.
HHH	Natural Gas Transmission and Storage Facilities.
III	Flexible Polyurethane Foam Production.
JJJ	Group IV Polymers and Resins.
LLL	Portland Cement Manufacturing.
MMM	Pesticide Active Ingredient Production.
NNN	Wool Fiberglass Manufacturing.
OOO	Amino/Phenolic Resins.
PPP	Polyether Polyols Production.
QQQ	Primary Copper Smelting.
RRR	Secondary Aluminum Production.
TTT	Primary Lead Smelting.
UUU	Petroleum Refineries—Catalytic Cracking Units, Catalytic Reforming Units and Sulfur Recovery Plants.
VVV	Publicly Owned Treatment Works (POTW).
XXX	Ferroalloys Production: Ferromanganese and Silicomanganese.
CCCC	Nutritional Yeast Manufacturing.
GGGG	Solvent Extraction for Vegetable Oil Production.
HHHH	Wet Formed Fiberglass Mat Production.
NNNN	Surface Coating of Large Appliances.
SSSS	Surface Coating of Metal Coil.
TTTT	Leather Finishing Operations.
UUUU	Cellulose Production Manufacture.
VVVV	Boat Manufacturing.
XXXX	Tire Manufacturing.
CCCCC	Coke Ovens: Pushing, Quenching and Battery Stacks.

VII. What Is Not Being Delegated?

As mentioned above, NMED has not been delegated the authority for the following standards:

40 CFR part 60, subpart AAA (Standards of Performance for New Residential Wood Heaters);

40 CFR part 61, subpart B (National Emission Standards for Radon Emissions from Underground Uranium Mines);

40 CFR part 61, subpart H (National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities);

40 CFR part 61, subpart I (National Emission Standards for Radionuclide Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H);

40 CFR part 61, subpart K—(National Emission Standards for Radionuclide Emissions from Elemental Phosphorus Plants);

40 CFR part 61, subpart Q (National Emission Standards for Radon Emissions from Department of Energy facilities);

40 CFR part 61, subpart R (National Emission Standards for Radon Emissions from Phosphogypsum Stacks);

40 CFR part 61, subpart T (National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings); and

40 CFR part 61, subpart W (National Emission Standards for Radon Emissions from Operating Mill Tailings).

In addition, EPA cannot delegate to a State any of the Category II Subpart A authorities set forth in 40 CFR 63.91(g)(2). These include the following provisions: § 63.6(g), Approval of Alternative Non-Opacity Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; and § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting. In addition, some MACT standards have certain provisions that cannot be delegated to the States [*e.g.* 40 CFR 63.106(b)].[1] Therefore, any MACT standard that EPA is delegating to NMED that provides that certain authorities cannot be delegated are retained by EPA and not delegated. Furthermore, no authorities are delegated that require rulemaking in the **Federal Register** to implement, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112. Finally, section 112(r), the accidental release program authority, is not being delegated by this approval.

All of the inquiries and requests concerning implementation and enforcement of the excluded standards in the State of New Mexico should be directed to the EPA Region 6 Office.

In addition, this delegation to NMED to implement and enforce certain NSPS

[1] On June 23, 2003, EPA modified certain NESHAPs to clarify which authorities can be delegated to State, local, and tribal agencies. 68 FR 37334. However, this delegation is not directly affected by these changes, since NMED is receiving delegation of the part 63 standards that were promulgated by EPA, as amended through September 1, 2002.

and NESHAPs does not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151. Under this definition, EPA treats as reservations, trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. Consistent with previous Federal program approvals or delegations, EPA will continue to implement the NSPS and NESHAPs in Indian country because NMED has not adequately demonstrated its authority over sources and activities located within the exterior boundaries of Indian reservations and other areas in Indian country.

Also, this delegation does not extend to sources or activities located in Bernalillo County because the Albuquerque/Bernalillo County Air Quality Control Board and the Albuquerque Environmental Health Department have jurisdiction to administer and enforce provisions of the New Mexico Air Quality Control Act in Bernalillo County (excluding Indian country). The Albuquerque/Bernalillo County Air Quality Control Board and the Albuquerque Environmental Health Department have been delegated the authority to implement and enforce certain NSPS and NESHAPs by EPA. *See* 60 FR 52329 (October 6, 1995).

VIII. How Will Applicability Determinations Under Section 112 Be Made?

In approving this delegation, NMED will obtain concurrence from EPA on any matter involving the interpretation of section 112 of the CAA or 40 CFR part 63 to the extent that implementation, administration, or enforcement of these sections have not been covered by EPA determinations or guidance.

IX. What Authority Does EPA Have?

We retain the right, as provided by CAA section 112(l)(7), to enforce any applicable emission standard or requirement under section 112. EPA also has the authority to make certain decisions under the General Provisions (subpart A) of part 63. We are granting NMED some of these authorities, and retaining others, as explained in sections VI and VII above. In addition, EPA may review and disapprove of State determinations and subsequently require corrections. (*See* 40 CFR 63.91(g) and 65 FR 55810, 55823, September 14, 2000.)

Furthermore, we retain any authority in an individual emission standard that may not be delegated according to provisions of the standard. Also, listed in the footnotes of the part 63 delegation table at the end of this rule are the authorities that cannot be delegated to any State or local agency which we therefore retain.

X. What Information Must NMED Provide to EPA?

In delegating the authority to implement and enforce these rules and in granting a waiver of EPA notification requirements, we require NMED to input all source information into the Aerometric Information Retrieval System (AIRS) for both point and area sources. NMED must enter this information into the AIRS system and update the information by September 30 of every year. NMED must provide any additional compliance related information to EPA, Region 6, Office of Enforcement and Compliance Assurance within 45 days of a request under 40 CFR 63.96(a).

In receiving delegation for specific General Provisions authorities, NMED must submit to EPA Region 6 on a semi-annual basis, copies of determinations issued under these authorities. For part 63 standards, these determinations include: applicability determinations (§ 63.1); approvals/disapprovals of construction and reconstruction (§ 63.5(e) and (f)); notifications regarding the use of a continuous opacity monitoring system (§ 63.6(h)(7)(ii)); finding of compliance (§ 63.6(h)(8)); approvals/disapprovals of compliance extensions (§ 63.6(i)); approvals/disapprovals of minor (§ 63.7(e)(2)(i)) or intermediate (§ 63.7(e)(2)(ii) and (f)) alternative test methods; approval of shorter sampling times and volumes (§ 63.7(e)(2)(iii)); waiver of performance testing (§ 63.7(e)(2)(iv) and (h)(2), (3)); approvals/disapprovals of minor or intermediate alternative monitoring methods (§ 63.8(f)); approval of adjustments to time periods for submitting reports (§§ 63.9 and 63.10); and approvals/disapprovals of minor alternatives to recordkeeping and reporting (§ 63.10(f)).

Additionally, EPA's Emission Measurement Center of the Emissions Monitoring and Analysis Division must receive copies of any approved intermediate changes to test methods or monitoring. (Please note that intermediate changes to test methods must be demonstrated as equivalent through the procedures set out in EPA method 301.) This information on approved intermediate changes to test methods and monitoring will be used to compile a database of decisions that will be accessible to State and local agencies and EPA Regions for reference in making future decisions. (For definitions of major, intermediate and minor alternative test methods or monitoring methods, *see* 40 CFR 63.90.) The NMED should forward these intermediate test methods or monitoring changes via mail or facsimile to: Chief, Source Categorization Group A, EPA (MD–19), Research Triangle Park, NC 27711, Facsimile telephone number: (919) 541–1039.

XI. What Is EPA's Oversight of This Delegation to NMED?

EPA must oversee NMED's decisions to ensure the delegated authorities are being adequately implemented and enforced. We will integrate oversight of the delegated authorities into the existing mechanisms and resources for oversight currently in place. If, during oversight, we determine that NMED made decisions that decreased the stringency of the delegated standards, then NMED shall be required to take corrective actions and the source(s) affected by the decisions will be notified, as required by 40 CFR 63.91(g)(1)(ii). We will initiate withdrawal of the program or rule if the corrective actions taken are insufficient.

XII. Should Sources Submit Notices to EPA or NMED?

All of the information required pursuant to the Federal NSPS and NESHAP (40 CFR parts 60, 61, and 63) should be submitted by sources located outside the boundaries of Bernalillo County and areas outside of Indian country, directly to the NMED at the following address: Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, New Mexico 87502. The NMED is the primary point of contact with respect to delegated NSPS and NESHAPs. Sources do not need to send a copy to EPA. EPA Region 6 waives the requirement that notifications and reports for delegated standards be submitted to EPA in addition to NMED in accordance with 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii).

XIII. How Will Unchanged Authorities Be Delegated to NMED in the Future?

In the future, NMED will only need to send a letter of request to EPA, Region 6, for those NSPS and NESHAP regulations that NMED has adopted by reference. The letter must reference the previous up-front approval demonstration and reaffirm that it still meets the up-front approval criteria. We will respond in writing to the request stating that the request for delegation is either granted or denied. If a request is approved, the effective date of the delegation will be the date of our response letter. A **Federal Register**

notice will be published to inform the public and affected sources of the delegation, indicating where source notifications and reports should be sent, and to amend the relevant portions of the Code of Federal Regulations showing which NSPS and NESHAP standards have been delegated to NMED.

XIV. What Is the Relationship Between RCRA and the Hazardous Waste Combustor MACT?

As part of today's rule, we are delegating, under the CAA, implementation and enforcement authority for the Hazardous Waste Combustor (HWC) MACT (subpart EEE) to NMED. Many of the sources subject to the HWC MACT are also subject to the RCRA permitting requirements. We expect air emissions and related operating requirements found in the HWC MACT will be included in part 70 permits issued by NMED. However, RCRA permits will still be required for all other aspects of the combustion unit and the facility that are governed by RCRA (*e.g.*, corrective action, general facility standards, other combustor-specific concerns such as materials handling, risk-based emissions limits and operating requirements, as appropriate and other hazardous waste management units).[2] *See* the HWC MACT rule preamble discussion (64 FR 52828, 52839–52843 (September 30, 1999)), and the RCRA Site-Specific Risk Assessment Policy for HWC Facilities dated June 2000 for more information on the interrelationship of the MACT rule with the RCRA Omnibus provision and site specific risk assessments.

[2] EPA promulgated the HWC MACT (40 CFR part 63, subpart EEE) under the joint authority of the CAA and RCRA. Before this rule went in to effect, the air emissions from these sources were primarily regulated under the authority of RCRA. See 40 CFR parts 264, 265, 266, and 270. With the release of HWC MACT, the air emissions are now regulated under both CAA and RCRA. Even though both statutes give EPA the authority to regulate air emissions, we determined that having the emissions standards and permitting requirements in both sets of implementing regulations would be duplicative. For this reason, using the authority provided by section 1006(b) of RCRA, EPA deferred the RCRA requirements for the HWC emission controls to the CAA requirements of 40 CFR part 63, Subpart EEE. After a facility has demonstrated compliance with the HWC MACT, the RCRA standards for air emissions from these units will no longer apply, with the exception of section 3005(c)(3) of RCRA, which requires that each RCRA permit contain the terms and conditions necessary to protect human health and the environment. Under this provision of RCRA, if a regulatory authority determines that more stringent conditions than the HWC MACT are necessary to protect human health and the environment for a particular facility, then that regulatory authority may impose those conditions in the facility's RCRA permit.

XV. Final Action

The public was provided the opportunity to comment on the proposed approval of the program and mechanism for delegation of section 112 standards, as applied to part 70 sources, on May 19, 1994. The proposal was part of EPA's proposed approval of New Mexico's Operating Permits Program. 59 FR at 26160. The EPA did not receive any public comments on the proposed delegation of section 112 standards. 59 FR 59656 (November 18, 1994). In this action, the public is given the opportunity to comment on the approval of NMED request for delegation of authority to implement and enforce certain section 112 standards for all sources (both part 70 and non-part 70 sources) which have been adopted by reference into New Mexico's state regulations. However, the Agency views the approval of these requests as a noncontroversial action and anticipates no adverse comments. Therefore, EPA is publishing this rule without prior proposal. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the program and delegation of authority described in this action if adverse comments are received. This action will be effective February 9, 2004 without further notice unless the Agency receives relevant adverse comments by January 12, 2004.

If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

XVI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state request to receive delegation of certain Federal standards, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing delegation submissions, EPA's role is to approve submissions provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a delegation submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA to use VCS in place of a delegation submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

This rule does not impose an information collection burden under the

provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 60

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

40 CFR Part 61

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

40 CFR Part 63

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

Authority: This action is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended, 42 U.S.C. 7411 and 7412.

Dated: November 26, 2003.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

■ 40 CFR parts 60, 61, and 63 are amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

■ 2. Section 60.4 is amended by revising paragraph (b)(GG) and adding paragraph (e) to read as follows:

§ 60.4 Address

(b) * * *

* * * * *

(GG) State of New Mexico: New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502. Note: For a list of delegated standards for New Mexico (excluding Bernalillo County and Indian country), see paragraph (e)(1) of this section.

* * * * *

(e) The following lists the specific part 60 standards that have been delegated unchanged to the air pollution control agencies in Region 6.

(1) *New Mexico.* The New Mexico Environment Department has been delegated all part 60 standards promulgated by EPA, except subpart AAA—Standards of Performance for New Residential Wood Heaters, as amended in the **Federal Register** through September 1, 2002.

PART 61—[AMENDED]

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

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

■ 4. Section 61.04 is amended by revising paragraph (b)(GG) and adding paragraph (c)(6) to read as follows:

§ 61.04 Address.

(b) * * *

* * * * *

(GG) *State of New Mexico:* New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502. For a list of delegated standards for New Mexico (excluding Bernalillo County and Indian country), see paragraph (c)(6) of this section.

* * * * *

(c) * * *

* * * * *

(6) The following lists the specific part 61 standards that have been delegated unchanged to the air pollution control agencies in Region 6.

(i)–(ii). [Reserved]

(iii) *New Mexico.* The New Mexico Environment Department (NMED) has been delegated the following part 61 standards promulgated by EPA, as amended in the **Federal Register** through September 1, 2001. The (X) symbol is used to indicate each subpart that has been delegated.

DELEGATION STATUS FOR NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (PART 61 STANDARDS) FOR NEW MEXICO (EXCLUDING BERNALILLO COUNTY AND INDIAN COUNTRY)[1]

Subpart	Source category	New Mexico
A	General Provisions	X
B	Radon Emissions From Underground Uranium Mines.	
C	Beryllium	X
D	Beryllium Rocket Motor Firing	X
E	Mercury	X
F	Vinyl Chloride	X
G	(Reserved).	
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.	
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.	
J	Equipment Leaks (Fugitive Emission Sources) of Benzene	X
K	Radionuclide Emissions From Elemental Phosphorus Plants.	
L	Benzene Emissions From Coke By-Product Recovery Plants	X
M	Asbestos	X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants	X
O	Inorganic Arsenic Emissions From Primary Copper Smelters	X

DELEGATION STATUS FOR NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (PART 61 STANDARDS) FOR NEW MEXICO (EXCLUDING BERNALILLO COUNTY AND INDIAN COUNTRY)[1]—Continued

Subpart	Source category	New Mexico
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities	X
Q	Radon Emissions From Department of Energy Facilities.	
R	Radon Emissions From Phosphogypsum Stacks.	
S	(Reserved).	
T	Radon Emissions From the Disposal of Uranium Mill Tailings.	
U	(Reserved).	
V	Equipment Leaks (Fugitive Emission Sources)	X
W	Radon Emissions From Operating Mill Tailings.	
X	(Reserved).	
Y	Benzene Emissions From Benzene Storage Vessels	X
Z–AA	(Reserved).	
BB	Benzene Emissions From Benzene Transfer Operations	X
CC–EE	(Reserved).	
FF	Benzene Waste Operations	X

[1] Program delegated to New Mexico Environment Department (NMED).

(iv)–(vi). [Reserved]

PART 63—[AMENDED]

■ 5. The authority citation for part 63 continues to read as follows:

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

■ 6. Section 63.99 is amended by adding paragraph (a)(31) to read as follows:

(a) * * *

* * * * *

(31) *New Mexico.*

(i) The following table lists the specific part 63 standards promulgated by EPA, that have been delegated unchanged to the New Mexico Environment Department for all sources (both part 70 and non-part 70 sources). The delegation applies to the following part 63 standards promulgated by EPA, as amended in the **Federal Register** through September 1, 2002. The (X) symbol is used to indicate each subpart that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—NEW MEXICO (EXCLUDING BERNALILLO COUNTY AND INDIAN COUNTRY)[1]

Subpart	Source category	New Mexico
A	General Provisions[2]	X
D	Early Reductions	X
F	Hazardous Organic NESHAP (HON)—Synthetic Organic Chemical Manufacturing Industry (SOCMI)	X
G	HON—SOCMI Process Vents, Storage Vessels, Transfer Operations and Wastewater	X
H	HON—Equipment Leaks	X
I	HON—Certain Processes Negotiated Equipment Leak Regulation	X
J	Polyvinyl Chloride and Copolymers Production	X
K	(Reserved)	
L	Coke Oven Batteries	X
M	Perchloroethylene Dry Cleaning	X
N	Chromium Electroplating and Chromium Anodizing Tanks	X
O	Ethylene Oxide Sterilizers	X
P	(Reserved)	
Q	Industrial Process Cooling Towers	X
R	Gasoline Distribution	X
S	Pulp and Paper Industry	X
T	Halogenated Solvent Cleaning	X
U	Group I Polymers and Resins	X
V	(Reserved)	
W	Epoxy Resins Production and Non-Nylon Polyamides Production	X
X	Secondary Lead Smelting	X
Y	Marine Tank Vessel Loading	X
Z	(Reserved)	
AA	Phosphoric Acid Manufacturing Plants	X
BB	Phosphate Fertilizers Production Plants	X
CC	Petroleum Refineries	X
DD	Off-Site Waste and Recovery Operations	X
EE	Magnetic Tape Manufacturing	X
FF	(Reserved)	
GG	Aerospace Manufacturing and Rework Facilities	X
HH	Oil and Natural Gas Production Facilities	X
II	Shipbuilding and Ship Repair Facilities	X
JJ	Wood Furniture Manufacturing Operations	X
KK	Printing and Publishing Industry	X
LL	Primary Aluminum Reduction Plants	X
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfide, and Stand-Alone Semichemical Pulp Mills.	

DELEGATION STATUS FOR PART 63 STANDARDS—NEW MEXICO (EXCLUDING BERNALILLO COUNTY AND INDIAN COUNTRY) [1]—Continued

Subpart	Source category	New Mexico
NN	(Reserved)	
OO	Tanks—Level 1	X
PP	Containers	X
QQ	Surface Impoundments	X
RR	Individual Drain Systems	X
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	X
TT	Equipment Leaks—Control Level 1	X
UU	Equipment Leaks—Control Level 2 Standards	X
VV	Oil-Water Separators and Organic-Water Separators	X
WW	Storage Vessels (Tanks)—Control Level 2	X
XX	(Reserved)	
YY	Generic Maximum Achievable Control Technology Standards	X
ZZ–BBB	(Reserved)	
CCC	Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration	X
DDD	Mineral Wool Production	X
EEE	Hazardous Waste Combustors	X
FFF	(Reserved)	
GGG	Pharmaceuticals Production	X
HHH	Natural Gas Transmission and Storage Facilities	X
III	Flexible Polyurethane Foam Production	X
JJJ	Group IV Polymers and Resins	X
KKK	(Reserved)	
LLL	Portland Cement Manufacturing	X
MMM	Pesticide Active Ingredient Production	X
NNN	Wool Fiberglass Manufacturing	X
OOO	Amino/Phenolic Resins	X
PPP	Polyether Polyols Production	X
QQQ	Primary Copper Smelting	X
RRR	Secondary Aluminum Production	X
SSS	(Reserved)	
TTT	Primary Lead Smelting	X
UUU	Petroleum Refineries—Catalytic Cracking Units, Catalytic Reforming Units and Sulfur Recovery Plants	X
VVV	Publicly Owned Treatment Works (POTW)	X
WWW	(Reserved)	
XXX	Ferroalloys Production: Ferromanganese and Silicomanganese	X
AAAA	Municipal Solid Waste Landfills	
CCCC	Nutritional Yeast Manufacturing	X
EEEE	Organic Liquids Distribution	
GGGG	Solvent Extraction for Vegetable Oil Production	X
HHHH	Wet Formed Fiberglass Mat Production	X
JJJJ	Paper and other Web (Surface Coating)	
KKKK	Metal Can (Surface Coating)	
NNNN	Surface Coating of Large Appliances	X
OOOO	Fabric Printing Coating and Dyeing	
PPPP	Plastic Parts (Surface Coating)	
QQQQ	Surface Coating of Wood Building Products	
RRRR	Surface Coating of Metal Furniture	
SSSS	Surface Coating for Metal Coil	X
TTTT	Leather Finishing Operations	X
UUUU	Cellulose Production Manufacture	X
VVVV	Boat Manufacturing	X
WWWW	Reinforced Plastic Composites Production	
XXXX	Tire Manufacturing	X
YYYY	Combustion Turbines	
BBBBB	Semiconductor Manufacturing	
CCCCC	Coke Ovens: Pushing, Quenching and Battery Stacks	X
EEEEE	Iron Foundries	
FFFFF	Integrated Iron and Steel	
GGGGG	Site Remediation	
HHHHH	Miscellaneous Coating Manufacturing	
IIIII	Mercury Cell Chlor-Alkali Plants	
JJJJJ	Brick and Structural Clay Products Manufacturing	
KKKKK	Clay Ceramics Manufacturing	
LLLLL	Asphalt Roofing and Processing	
MMMMM	Flexible Polyurethane Foam Fabrication Operation	
NNNNN	Hydrochloric Acid Production, Fumed Silica Production	
PPPPP	Engine Test Facilities	
QQQQQ	Friction Products Manufacturing	
RRRRR	Taconite Iron Ore Processing	
SSSSS	Refractory Products Manufacture	

DELEGATION STATUS FOR PART 63 STANDARDS—NEW MEXICO (EXCLUDING BERNALILLO COUNTY AND INDIAN COUNTRY) [1]—Continued

Subpart	Source category	New Mexico
TTTTT	Primary Magnesium Refining	

[1] Program delegated to New Mexico Environment Department (NMED).
[2] Authorities that cannot be delegated include § 63.6(g), Approval of Alternative Non-Opacity Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; and § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting. In addition, all authorities identified in the certain subparts that EPA has designated that cannot be delegated.

[FR Doc. 03–30710 Filed 12–10–03; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket RSPA–97–2995; Notice 11]

Pipeline Safety: Drug Testing; Random Testing Rate

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of minimum annual percentage rate for random drug testing.

SUMMARY: Each year, pipeline operators randomly select employees to test for prohibited drugs. The number of employees selected may not be less than the minimum annual percentage rate the Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) determines, which is either 50 percent or 25 percent of covered employees based on the industry's positive rate of random tests. In accordance with applicable standards, RSPA/OPS has determined that the positive rate of random drug tests reported by operators this year for testing done in calendar year 2002 is less than 1.0 percent. Therefore, in calendar year 2004, the minimum annual percentage rate for random drug testing is 25 percent of covered employees.

DATES: Effective January 1, 2004, through December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Sheila Wright, RSPA,OPS, Room 7128, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–4554 or e-mail *sheila.wright.rspa.dot.gov.*

SUPPLEMENTARY INFORMATION: Operators of gas, hazardous liquid, and carbon dioxide pipelines and operators of liquefied natural gas facilities must annually submit Management Information System (MIS) reports of drug testing conducted in the previous calendar year (49 CFR 199.119(a)). This information is used to calculate the minimum annual percentage rate at which operators must randomly select covered employees for drug testing during the next calendar year (49 CFR 199.105(c)(2)). If the minimum annual percentage rate for random drug testing is 50 percent, RSPA/OPS may lower the rate to 25 percent if it determines that the positive rate reported for random tests for two consecutive calendar years is less than 1.0 percent (49 CFR 199.105(c)(3)). If the minimum annual percentage rate is 25 percent, RSPA/OPS will increase the rate to 50 percent if it determines that the positive rate reported for random tests for any calendar year is equal to or greater than 1.0 percent (49 CFR 199.105(c)(4)). Part 199 defines ''positive rate'' as ''the number of positive results for random drug tests * * * plus the number of refusals of random tests * * *, divided by the total number of random drug tests * * * plus the number of refusals of random tests. * * *''

Through calendar year 1996, the minimum annual percentage rate for random drug testing in the pipeline industry was 50 percent of covered employees. Based on MIS reports of random testing conducted in 1994 and 1995, RSPA/OPS lowered the minimum rate from 50 percent to 25 percent for calendar year 1997 (61 FR 60206; November 27, 1996). The minimum rate remained at 25 percent in calendar years 1998 (62 FR 59297; Nov. 3, 1997); 1999 (63 FR 58324; Oct. 30, 1998); 2000 (64 FR 66788; Nov. 30, 1999); 2001 (65 FR 81409; Dec. 26, 2000); and 2002 (67 FR 2611; Jan. 18, 2002).

Using the MIS reports received this year for drug testing conducted in calendar year 2002, RSPA/OPS calculated the positive rate of random testing to be 0.7 percent. Since the positive rate continues to be less than 1.0 percent, RSPA/OPS is announcing that the minimum annual percentage rate for random drug testing is 25 percent of covered employees for the period January 1, 2004, through December 31, 2004.

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

Issued in Washington, DC, on December 4, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–30654 Filed 12–10–03; 8:45 am]
BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2003–15855]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant Crash Protection,'' because it is redundant to pending rulemaking action by the agency.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Louis Molino, Office of Crashworthiness Standards, NVS–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–2264. Fax: (202) 493–2290.

For legal issues: Rebecca MacPherson, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

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I. Background
II. The Petition
III. Discussion and Analysis

I. Background

On May 12, 2000, we published in the **Federal Register** (65 FR 30680) a final

rule to require advanced air bags (Docket No. NHTSA–00–7013). The rule amended Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection,* to require that future air bags be designed so that, compared to current air bags, they create less risk of serious air bag-induced injuries, particularly for small women and young children, and provide improved frontal crash protection for all occupants, by means that include advanced air bag technology.

One means of compliance with part of the advanced air bag regulation is to turn off the passenger air bag by means of a weight sensor and/or some other method of detecting the presence of children. To test the ability of those means to detect the presence of children, the rule specifies that child test dummies be placed in child restraint systems (CRSs) or seats that are in turn placed on the passenger seats. Optionally, for infants in rear facing CRSs, compliance can also be achieved by placing a dummy representing a 12-month-old child in a CRS and assuring that the air bag deploys in a benign manner. Appendix A of FMVSS No. 208 provides a list of CRSs to be used for these compliance tests. The list published with the May 12, 2000 final rule contained 1 car bed, 11 rear-facing seats, 7 convertible seats, and 4 booster seats for a total of 23.

On December 18, 2001, a new FMVSS No. 208 Final Rule was published in response to petitions for reconsideration to the May 12, 2000, Final Rule. A new Appendix A was published as part of this new rule. All seats that were known to be out of production were removed from the list. Replacement seats were added to the list. The number of rear-facing CRSs was reduced by one and the total number of CRSs in Appendix A became 22.

On November 19, 2003, the agency published a document that responded, in part, to petitions for reconsideration to the December 18, 2001, FMVSS No. 208 Final Rule. It addressed detailed dummy and seat positioning issues and other test procedure clarifications presented in the petitions for reconsideration. It also began to deal with issues associated with child restraints specified in Appendix A of FMVSS No. 208. The agency also addressed the methodology for regular updates to Appendix A.

II. The Petition

The Evenflo Company, Inc., petitioned NHTSA to remove specific Evenflo CRS models from Appendix A of FMVSS No. 208 and change the model number designation of another model. There are currently six Evenflo products in Appendix A. One of these products is a booster seat, which Evenflo is not requesting to have removed from the list. On August 30, 2002, Evenflo discontinued production of all CRSs that were not LATCH compliant in accordance with the requirements of S5.9 of FMVSS No. 213. In its petition, Evenflo recommended replacement seats for the five for which removal was requested. The out-of-production seats and the suggested LATCH compliant seats are shown in Table 1. The third column in Table 1 indicates the similarity, noted by Evenflo, between the out-of-production seats and the suggested replacement seats.

TABLE 1

Out-of-production	LATCH seats	Similarity noted by Evenflo
Rear Facing Infant		
204 First Choice	381 Tot Taxi	Base not removable.
282 On My Way Position Right V	386 Port About 5	Equivalent in size.
212 Discovery Adjust Right	316 Discovery	Same seat with LATCH.
Convertible Seats		
425 Horizon V	379 Tribute	Equivalent in size.
254 Medallion	359 Triumph 5	Equivalent in size and 5 pt. Harness.

III. Discussion and Analysis

Evenflo requested that five out-of-production CRSs that it manufactures be removed from Appendix A and replaced. The On My Way Position Right V has already been removed from the list, so four now remain. Evenflo is not unique among the CRS manufacturers represented in Appendix A. The agency understands that since all CRSs except car beds and booster seats must now be LATCH compliant, many of the CRSs in Appendix A are no longer in production in a non-LATCH form. In response to petitions for reconsideration of the December 18, 2001, FMVSS No. 208 Final Rule, we published a notice addressing the issue of how to update Appendix A. The notice addressed the concerns expressed in Evenflo's petition. Therefore, we are denying the Evenflo petition because it is redundant.

Authority: 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8

Issued on: December 8, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–30690 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 120503A]

Fisheries of the Exclusive Economic Zone off Alaska; Recision and Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reallocation.

SUMMARY: NMFS is rescinding a previous action that reallocated Pacific

cod among gear types and is reallocating the currently projected unused amount of Pacific cod from vessels using trawl and jig gear to catcher/processor vessels using hook-and-line gear and vessels using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). These actions are necessary to allow the 2003 total allowable catch (TAC) of Pacific cod to be harvested in accordance with regulations at 50 CFR part 679.

DATES: Effective December 8, 2003, until 2400 hours, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Effective November 26, 2003, NMFS reallocated the projected unused amount of Pacific cod from vessels using trawl and jig gear to vessels using hook-and-line gear in the BSAI (68 FR 67379, December 2, 2003). As of December 2, 2003, based on revised catch amounts, NMFS has determined that catcher vessels using trawl gear have already harvested all but 1,671 mt originally apportioned to them by the final 2003 harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003). This reduces the projected unused amount available to catcher/processor vessels using hook-and-line gear by 4,113 metric tons (mt) and to vessels using pot gear by 216 mt. Therefore, NMFS is rescinding the previous action and reallocating the projected unused amount of Pacific cod as follows.

The 2003 BSAI Pacific cod TAC was established by the final 2003 harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003) as 191,938 metric tons. Pursuant to § 679.20(a)(7)(i)(A), 3,839 mt was allocated to vessels using jig gear, 97,388 mt to vessels using hook-and-line or pot gear as a directed fishing allowance, and 90,211 mt to vessels using trawl gear. The share of the Pacific cod TAC allocated to trawl gear was further allocated 50 percent to catcher vessels and 50 percent to catcher/processor vessels (§ 679.20(a)(7)(i)(B)). The share of the Pacific cod TAC allocated to hook-and-line or pot gear was further allocated 80 percent to catcher/processor vessels using hook-and-line gear; 0.3 percent to catcher vessels using hook-and-line gear; 18.3 percent to vessels using pot gear; and 1.4 percent to catcher vessels less than 60 ft LOA that use either hook-and-line or pot gear (§ 679.20(a)(7)(i)).

As of December 2, 2003, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that trawl catcher/processors will not be able to harvest 11,500 mt and trawl catcher vessels will not be able to harvest 1,671 mt of Pacific cod allocated to those vessels under 679.20(a)(7)(i)(B). Therefore, in accordance with § 679.20(a)(7)(ii), NMFS apportions 13,171 mt of Pacific cod from trawl gear to catcher/processor vessels using hook-and-line gear and vessels using pot gear.

The Regional Administrator has determined that vessels using jig gear will not harvest 3,600 mt of their Pacific cod allocation by the end of the year. Therefore, in accordance with § 679.20(a)(7)(ii), NMFS is reallocating the unused amount of 3,600 mt of Pacific cod allocated to vessels using jig gear to catcher/processor vessels using hook-and-line gear and vessels using pot gear.

In accordance with § 679.20(a)(7)(ii)(C)(2), the combined reallocation of unused Pacific cod from jig gear and trawl gear, 16,771 mt is apportioned so that catcher/processor vessels using hook-and-line gear will receive 95 percent and vessels using pot gear will receive 5 percent of the reallocation.

The harvest specifications for Pacific cod included in the harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003) are revised as follows: 239 mt to vessels using jig gear, 93,843 mt to catcher processor vessels using hook-and-line gear, 18,661 mt to vessels using pot gear, 33,605 mt to trawl catcher/processors, and 43,434 mt to trawl catcher vessels.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the implementation of these measures in a timely fashion in order to allow full utilization of the Pacific cod TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is taken under 50 CFR 679.20 and is exempt from OMB review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 8, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30714 Filed 12–8–03; 3:17 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 120403C]

Fisheries of the Exclusive Economic Zone off Alaska; Pacific Cod by Vessels Using Pot Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2003 total allowable catch (TAC) of Pacific cod allocated to vessels using pot gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 9, 2003, until 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP

appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 Pacific cod TAC allocated to vessels using pot gear in the BSAI was established as a directed fishing allowance of 17,822 metric tons (mt) by the final 2003 harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003). The Pacific cod TAC allocation for vessels using pot gear was revised on October 17, 2003 (68 FR 59748), on December 2, 2003 (68 FR 67379), and again in a document published elsewhere in this issue, resulting in a directed fishing allowance of 18,661 mt. See § 679.20(c)(3)(iii), § 679.20(c)(5), § 679.20(a)(7)(i)(A) and (C) and § 679.20 (a) (7) (ii).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2003 Pacific cod TAC allocated as a directed fishing allowance to vessels using pot gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 Pacific cod TAC allocated as a directed fishing allowance to vessels using pot gear in the BSAI, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 8, 2003.

Bruce C. Morehead.

Acting Director, Office of Sustainable Fisheries,National Marine Fisheries Service.

[FR Doc. 03–30715 Filed 12–8–03; 3:17 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

Docket No. 021212307–3037–02; I.D. 120403B]

Fisheries of the Exclusive Economic Zone off Alaska; Pacific Cod by Catcher/Processor Vessels Using Hook-and-line Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher/processor vessels using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2003 total allowable catch (TAC) of Pacific cod allocated for catcher/processor vessels using hook-and-line gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 9, 2003, until 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 Pacific cod TAC allocated to catcher/processor vessels using hook-and-line gear in the BSAI was 77,911 metric tons (mt), as established by the final 2003 harvest specifications for groundfish of the BSAI (68 FR 9924, March 3, 2003). The Pacific cod TAC allocation to catcher processor vessels using hook-and-line gear was revised on October 17, 2003 (68 FR 59748), on December 2, 2003 (68 FR 67379), and again in a document published elsewhere in this issue, resulting in a directed fishing allowance of 93,843 mt. See § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(i)(A) and (C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 Pacific cod TAC allocated as a directed fishing allowance to catcher/processor vessels using hook-and-line gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher/processor vessels using hook-and-line gear in the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 Pacific cod TAC allocated as a directed fishing allowance allocated to catcher/processor vessels in the BSAI, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 8, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30716 Filed 12–8–03; 3:17 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 120403A]

Fisheries of the Exclusive Economic Zone off Alaska; Pacific Cod by Catcher Vessels Using Hook-and-Line Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels

using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2003 total allowable catch (TAC) of Pacific cod allocated to catcher vessels using hook-and-line gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 9, 2003, until 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 Pacific cod TAC allocated to catcher vessels using hook-and-line gear in the BSAI was 292 metric tons (mt) as established by the final 2003 harvest specifications for groundfish of the BSAI (68 FR 9924, March 3, 2003). The Pacific cod TAC allocation to catcher vessels using hook-and-line gear was revised on October 17, 2003 (68 FR 59748), on December 2, 2003 (68 FR 67379), and again in a document published elsewhere in this issue, resulting in a net TAC allocation of 292 mt, unchanged from the original allocation.

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2003 Pacific cod TAC allocated as a directed fishing allowance to catcher vessels using hook-and-line gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using hook-and-line gear in the BSAI.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 Pacific cod TAC allocated to catcher vessels using hook-and-line gear in the BSAI, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 8, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30717 Filed 12–8–03; 3:17 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 238
Thursday, December 11, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2003–16647]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–14, DC–9–15, and DC–9–15F Airplanes; Model DC–9–20, –30, –40, and –50 Series Airplanes; and Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), MD–88, and MD–90–30 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 McDonnell Douglas airplane models. This proposal would require inspection of the captain's and first officer's seat locking pins for minimum engagement with the detent holes in the seat tracks; inspection of the seat lockpins for excessive wear; and corrective actions, if necessary. This action is necessary to prevent uncommanded seat movement during takeoff and/or landing, which could result in interference with the operation of the airplane and consequent temporary loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 26, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. FAA–2003–16647, 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. FAA–2003–16647'' 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 Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Services Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Cheyenne Del Carmen, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5338; fax (562) 627–5210.

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–203–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. FAA–2003–16647, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports that on three instances the captain's and/or first officer's seat(s) unexpectedly moved full aft during takeoff of certain McDonnell Douglas Model DC–9–41 and DC–9–33RC airplanes. The cause of the uncommanded seat movement has been attributed to marginal engagement between the seat locking pins and the detent holes of the seat track of the captain's and first officer's seat assemblies. This condition, if not corrected, could lead to uncommanded seat movement during takeoff and/or landing, which could result in interference with the operation of the airplane and consequent temporary loss of control of the airplane.

The captain's and first officer's seat assemblies on certain Model DC–9–41 and DC–9–33RC airplanes are identical to those installed on certain Model DC–9–14, DC–9–15, and DC–9–15F airplanes; certain Model DC–9–20, –30, –40, and –50 series airplanes; and certain Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), MD–88, and MD–90–30 airplanes. Therefore, all of these models may be subject to the identified unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin DC9–25A350, Revision 01, dated June 14, 2002 (for Model DC–9–14, DC–9–15, and DC–9–15F airplanes; Model DC–9–20, –30, –40, and –50 series airplanes; and Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes); and Boeing Alert Service Bulletin MD90–25A009, Revision 01, dated July 1, 2002 (for Model MD–90–30 airplanes).

These service bulletins describe procedures for a detailed inspection of the captain's and first officer's seat locking pins for minimum engagement with the detent holes in the seat tracks; a detailed inspection of the seat lockpins for excessive wear; and corrective actions, if necessary. The corrective actions include adjusting/replacing the seat locking pin with a new pin and/or adjusting/repairing/replacing the seat track with a new track, as applicable. 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.

Cost Impact

There are approximately 2,166 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,355 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately between 1 and 3 work hours per seat (depending on airplane configuration) to accomplish the proposed inspection. Each airplane has 2 seats (the captain and first officer seats); therefore, it will take approximately between 2 and 6 work hours per airplane (depending on airplane configuration) to accomplish the required inspection, at the average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $176,150 and $528,450, or between $130 and $390 per airplane, depending on airplane configuration.

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.

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:

McDonnell Douglas: Docket FAA–2003–16647.

Applicability: This AD applies to the airplanes listed in Table 1 of this AD, certificated in any category:

TABLE 1.—APPLICABILITY

McDonnell Douglas model	As listed in
DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, DC–9–51, DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes.	Boeing Alert Service Bulletin DC9–25A350, Revision 01, dated June 14, 2002.
MD–90–30 airplanes	Boeing Alert Service Bulletin MD90–25A009, Revision 01, dated July 1, 2002

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded seat movement during takeoff and/or landing, which could result in interference with the operation of the airplane and consequent temporary loss of control of the airplane, accomplish the following:

Service Bulletin Reference

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the applicable service bulletins listed in Table 1 of this AD.

Inspection for Engagement and Excessive Wear of the Seat Locking Pins

(b) Within 18 months after the effective date of this AD, do the actions specified in paragraphs (b)(1) and (b)(2) of this AD, per the service bulletin.

(1) Do a detailed inspection of the seat locking pin for minimum engagement with

the detent holes in the seat track of the captain's and first officer's seat assemblies.

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.''

(2) Do a detailed inspection of the seat lock pins for excessive wear.

Corrective Actions

(c) If any discrepancy is detected during the inspections required by paragraph (b) of this AD, before further flight, do the corrective action(s), as applicable, per the service bulletin. Those corrective actions include adjusting/replacing the seat locking pin with a new pin and/or adjusting/repairing/replacing the seat track with a new track.

Alternative Methods of Compliance

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

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30674 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2003–16646]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 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 Boeing Model 757–200 series airplanes. This proposal would require repetitive inspections of the intercostals that back up the door stops and hinges at door 2 left and door 2 right for cracks, and corrective action, if necessary. This proposal also would provide for an optional terminating action for the repetitive inspections. This action is necessary to prevent fatigue cracks from propagating in the intercostals, which could lead to the loss of a door in flight and subsequent rapid decompression. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 26, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. FAA–2003–16646, 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. FAA–2003–16646'' 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Freisthler, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6426, fax (425) 917–6590.

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 FAA–2003–16646.'' 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. FAA–2003–16646, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of cracking in the intercostals that provide structural support for the door stops and hinges at door 2 left and door 2 right for Boeing Model 757–200 series airplanes. The cause of the cracks is fatigue caused by the cyclic pressurization of the cabin. If left undetected, the fatigue cracks will continue to propagate. This condition, if not corrected, could result in the loss of a door in flight and subsequent rapid decompression.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Special Attention Service Bulletin 757–53–0086, dated March 14, 2002. The service bulletin describes the following procedures:

- Performing an initial detailed inspection for cracks in the intercostals that back up the door stops and hinges at door 2 left and door 2 right;
- For cases of no crack findings, performing repetitive dye penetrant or eddy current inspections for cracks in the intercostals that back up the door stops and hinges at door 2 left and door 2 right;

• For cases of crack findings or for an optional terminating action, installing a preventative modification of the intercostal (*i.e.* cut off the integral clips at the bend relief on the forward end of the intercostals and install new, separate clips to attach the intercostals to the frame at station 660); and/or replacing the intercostal with a new improved intercostal. Accomplishment of the preventative modification or replacement would eliminate the need for the repetitive inspections.

Accomplishment of the actions specified in the service bulletin 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 bulletin described previously.

The FAA is not proposing to mandate the preventative modification of each intercostal or the replacement of each intercostal for several reasons:

1. Accessing the intercostals for inspection at the intervals is easily accomplished.
2. The cracks at the intercostals are easily detected by means of a detailed inspection.
3. The cracking of the intercostals could result in compromised structural integrity of the door stops; however, the detailed inspections will preclude the potential occurrence of continued cracking.

Cost Impact

There are approximately 95 airplanes of the affected design in the worldwide fleet. The FAA estimates that 55 airplanes of U.S. registry would be affected by this proposed AD.

We estimate that it would take approximately 8 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the inspection on U.S. operators is estimated to be $28,600, or $520 per airplane, per inspection cycle.

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

The optional preventative modification terminating action, if done, would take approximately 50 work hours per airplane at an average labor rate of $65 per work hour. Based on these figures, we estimate the cost of this optional terminating action to be $3,250 per airplane.

Parts for the optional replacement terminating action would cost approximately $692 for each Top Kit—Door Stop 1 Intercostal (L/H or R/H) and $4,581 for each Top Kit—Intercostal Replacement (L/H or R/H).

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:

Boeing: Docket FAA–2003–16646.

Applicability: Model 757–200 series airplanes, line numbers 1 through 95 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracks from propagating in the intercostals, which could lead to the loss of a door in flight and subsequent rapid decompression, accomplish the following:

Service Bulletin References

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–53–0086, dated March 14, 2002.

Initial Inspection

(b) Prior to the accumulation of 12,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later: Perform a detailed inspection for cracks of the intercostals that back up the door stops and hinges at door 2 left and door 2 right, per Part I of the service bulletin.

No Crack Findings: Repetitive Inspections

(c) If no crack is found during the inspection required by paragraph (b) of this AD, before further flight, do a dye penetrant or eddy current inspection for cracks of the intercostals that back up the door stops and hinges at door 2 left and door 2 right, per Part I of the service bulletin. Repeat thereafter at intervals not to exceed 3,000 flight cycles, until the preventative modification specified in paragraph (g) of this AD or the replacement specified in paragraph (h) of this AD has been accomplished.

Crack Findings: Modification/Replacement

(d) If, during the inspections required by paragraph (b) and/or (c) of this AD, any intercostal for door stop 1, 4, 5, 6, upper hinge, or lower hinge has cracks, but not beyond the aft edge of the bend relief radius: Before further flight, do the preventative modification specified in paragraph (g) of this AD or the replacement specified in paragraph (h) of this AD.

(e) If, during the inspections required by paragraph (b) and/or (c) of this AD, any intercostal for door stop 2 or 3 has cracks: Before further flight, do the replacement specified in paragraph (h) of this AD.

(f) If, during the inspections required by paragraph (b) and/or (c) of this AD, any intercostal has cracks that extend beyond the aft edge of the bend relief radius: Before further flight, do the replacement specified in paragraph (h) of this AD.

Terminating Actions

(g) Do the preventative modification on the intercostal per Part II of the service bulletin. Accomplishment of the preventative modification on an intercostal per Part II of the service bulletin constitutes terminating action for the repetitive inspection

requirements of this AD for the modified intercostal only.

(h) Replace the intercostal with a new improved intercostal per Part III of the service bulletin. Accomplishment of the replacement of an intercostal with a new improved intercostal per Part III of the service bulletin constitutes terminating action for the repetitive inspection requirements of this AD for the replaced intercostal only.

Alternative Methods of Compliance

(i) 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.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30675 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2003–16645]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 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 EMBRAER Model EMB–120 series airplanes. This proposal would require a one-time inspection for signs of overheating of wiring splices of the pitot/static 1, 2, and auxiliary sensors; the angle-of-attack sensors; the side slip sensors; and the current sensors. This proposal also would require follow-on actions. This action is necessary to prevent overheating of cockpit wiring, which could result in loss of operation of the affected systems, or smoke or fire in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 12, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. FAA–2003–16645, 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. FAA–2003–16645'' 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 Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. 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 FAA–2003–16645.'' 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. FAA–2003–16645, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–120 series airplanes. The DAC advises that there have been several reports of an electrical burning odor in the cockpit. These occurrences have been attributed to overheating of wiring splices of the pitot/static 1, 2, and auxiliary sensors; left- and right-hand angle-of-attack sensors; side slip sensors; and current sensors. This overheating is caused by concentration of heat from components located next to each other. This condition, if not corrected, could result in overheating of cockpit wiring, which could result in loss of operation of the affected systems, or smoke or fire in the cockpit.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 120–30–0030, Change 01, dated November 28, 2000. Part I of the Accomplishment Instructions of that service bulletin describes procedures for a one-time visual inspection for signs of overheating of wiring splices of the pitot/static 1, 2, and auxiliary sensors; the angle-of-attack sensors; the side slip sensors; and the current sensors. Signs of overheating include discoloration on the electrical wires, terminations, or splices. Part II of the Accomplishment Instructions of the service bulletin describes procedures for follow-on actions, including replacing certain wires and relays and eliminating or relocating splices in the wiring of the pitot/static 1, 2, and auxiliary sensors; the angle-of-attack sensors; the side slip

sensors; and the current sensors. Part III of the Accomplishment Instructions of the service bulletin contains instructions specifically intended for airplanes that have been inspected and modified per the original issue of the service bulletin, dated January 31, 2000. For airplanes on which Part I of the Accomplishment Instructions of the original issue of the service bulletin has been accomplished, but Part II of the Accomplishment Instructions of the original issue of the service bulletin has not been accomplished, Part III of the Accomplishment Instructions of Change 01 of the service bulletin describes procedures for a one-time detailed inspection for signs of overheating of wiring splices of the pitot/static 1, 2, and auxiliary sensors; the angle-of-attack sensors; and the side slip sensor located at the circuit breaker panel. For airplanes on which Part II of the Accomplishment Instructions of the original issue of the service bulletin has been accomplished, Part III of the Accomplishment Instructions of Change 01 of the service bulletin describes procedures for installing new identifications.

Accomplishment of the applicable actions specified in Change 01 of the service bulletin is intended to adequately address the identified unsafe condition. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 2001–06–02, dated June 26, 2001, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, 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.

Difference Between Proposed AD and Referenced Service Bulletin

The service bulletin refers only to a ''visual inspection'' to detect signs of overheating of the subject wiring splices. We have determined that the procedures in the service bulletin should be described as a ''detailed inspection.'' Note 1 has been included in this proposed AD to define this type of inspection.

Difference Between Proposed AD and Brazilian Airworthiness Directive

This proposed AD would differ from the parallel Brazilian airworthiness directive in that this proposed AD provides for accomplishment of Part III of the Accomplishment Instructions of Change 01 of the service bulletin on airplanes inspected or modified previously per the original issue of the service bulletin. The Brazilian airworthiness directive does not refer to Part III of the Accomplishment Instructions of Change 01 of the service bulletin.

Cost Impact

The FAA estimates that 250 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed inspection, 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 $65,000, or $260 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:

Empresa Brasileira De Aeronautica S.A. (EMBRAER): Docket FAA–2003–16645.

Applicability: Model EMB–120 series airplanes, certificated in any category; serial numbers 120004, and 120006 through 120352 inclusive.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of cockpit wiring, which could result in loss of operation of the affected systems, or smoke or fire in the cockpit, accomplish the following:

Airplanes Not Inspected/Modified Previously: One-Time Detailed Inspection

(a) For airplanes on which neither Part I nor Part II of the Accomplishment Instructions of EMBRAER Service Bulletin 120–30–0030, dated January 31, 2000, was accomplished prior to the effective date of this AD: Within 400 flight hours after the effective date of this AD, do a one-time detailed inspection for signs of overheating of wiring splices of the pitot/static 1, 2, and auxiliary sensors; the angle-of-attack sensors; the side slip sensors; and the current sensors, per Part I of the Accomplishment Instructions of EMBRAER Service Bulletin 120–30–0030, Change 01, dated November 28, 2000. Signs of overheating include

discoloration on the electrical wires, terminations, or splices.

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.''

Airplanes Inspected or Modified Previously: Follow-on Actions

(b) For airplanes on which Part I of the Accomplishment Instructions of EMBRAER Service Bulletin 120–30–0030, dated January 31, 2000, but not Part II of the Accomplishment Instructions of that service bulletin, was accomplished prior to the effective date of this AD: Within 400 flight hours after the effective date of this AD, do a one-time detailed inspection for signs of overheating of wiring splices of the pitot/static 1, 2, and auxiliary sensors; the angle-of-attack sensors; and the side slip sensor located at the circuit breaker panel; per Part III of the Accomplishment Instructions of Embraer Service Bulletin 120–30–0030, Change 01, dated November 28, 2000.

(c) For airplanes on which Part II of the Accomplishment Instructions of EMBRAER Service Bulletin 120–30–0030, dated January 31, 2000, was accomplished prior to the effective date of this AD: Within 400 flight hours after the effective date of this AD, install new identifications by doing all actions in paragraphs 2.4.2. of Part III of the Accomplishment Instructions of Embraer Service Bulletin 120–30–0030, Change 01, dated November 28, 2000.

Follow-On Actions

(d) For all airplanes subject to paragraph (a) or (b) of this AD: At the applicable compliance time specified in paragraph (d)(1) or (d)(2) of this AD, replace wires and relays with new wires and relays; and eliminate or relocate splices in the wiring of the pitot/static 1, 2, and auxiliary sensors; the angle-of-attack sensors; the side slip sensors; and the current sensors; as applicable; by doing all actions in paragraphs 2.3.1 through 2.3.23 of Part II of the Accomplishment Instructions of EMBRAER Service Bulletin 120–30–0030, Change 01, dated November 28, 2000.

(1) If no sign of overheating is found during any inspection per paragraph (a) or (b) of this AD: Do the actions in paragraph (d) of this AD within 2,000 flight hours after the inspection.

(2) If any sign of overheating is found during any inspection per paragraph (a) or (b) of this AD: Do the actions in paragraph (d) of this AD before further flight after the inspection.

Alternative Methods of Compliance

(e) 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 2: The subject of this AD is addressed in Brazilian airworthiness directive 2001–06–02, dated June 26, 2001.

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

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30676 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–79–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 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 Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. This proposal would require a one-time inspection to determine the serial numbers of the elevator and aileron servos of the drive assemblies of the automatic flight control system, and follow-on corrective actions if necessary. This action is necessary to prevent separation of the screws from the autopilot clutch assembly of the SM–300 servo, which could result in uncommanded engagement of the autopilot servo and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 12, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–79–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–79–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 Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7520; fax (516) 568–2716.

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–79–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–79–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, –314, and –315 airplanes. TCCA advises that investigation of an incident involving higher-than-normal aileron control forces revealed that the screws in the SM–300 autopilot clutch assembly had backed out sufficiently, causing the clutch to mechanically engage the autopilot servo. Further investigation showed that inadequate adhesive was used on the screws during manufacture of the assembly. The adhesive was used on both elevator and aileron servo assemblies. This condition, if not corrected, could result in uncommanded engagement of the autopilot servo, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin A8–22–18, Revision ''B'' dated November 19, 2001, which describes procedures for a one-time inspection to determine the serial numbers of the elevator and aileron servo drive assemblies of the automatic flight control system, and follow-on corrective actions if necessary. The corrective actions involve replacing any elevator or aileron servo having any serial number between 4826 and 5935 inclusive (part number (P/N) 7002260–922 for the elevator servo and P/N 7002260–923 for the aileron servo), and doing an adjustment/test procedure. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The Bombardier service bulletin includes Honeywell Alert Service Bulletin 7002260–22–A0013, dated July 26, 2001, which contains procedures for replacing the clutch screws and applying an epoxy adhesive in lieu of the retaining compound currently used to hold the screws in place, replacing the identification plate, and testing to verify the screw retention.

TCCA classified the Bombardier service bulletin as mandatory and issued Canadian airworthiness directive CF–2001–40, dated November 9, 2001, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept us informed of the situation described above. We have examined the findings of TCCA, 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 Among Canadian Airworthiness Directive, Service Bulletin, and This Proposed AD

Although paragraph 1.B. of the Honeywell Alert Service Bulletin included in Bombardier Alert Service Bulletin A8–22–18, Revision ''B'', specifies accomplishment of concurrent requirements, the modifications specified in that paragraph have been done by operators before the effective date of this AD; therefore, this AD does not include those requirements.

Whereas the service bulletin specifies a check for certain serial numbers, and the Canadian airworthiness directive specifies a visual inspection, this proposed AD would require a general visual inspection. A note has been added to the proposed rule to define that inspection.

Bombardier Model DHC–8–314 is not included in the applicability of this AD; it has not been U.S. type certificated.

Cost Impact

We estimate that 200 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $13,000, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or 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:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 2002–NM–79–AD.

Applicability: Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes; serial numbers 003 through 580 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the screws in the autopilot clutch assembly of the SM–300 servo, which could result in uncommanded engagement of the autopilot servo and consequent reduced controllability of the airplane, accomplish the following:

One-Time Inspection/Follow-on Corrective Action, if Necessary

(a) Within 12 months after the effective date of this AD: Do a general visual inspection to determine the serial numbers of the elevator and aileron servo drive assemblies of the automatic flight control system per paragraphs III.1. and III.2. of the Accomplishment Instructions of Bombardier Alert Service Bulletin A8–22–18, Revision ''B'', dated November 19, 2001.

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.''

(1) If any elevator or aileron servo, P/N 7002260–922, or any aileron servo, P/N 7002260–923, with serial numbers 4826 through 5935 inclusive, is found: Before further flight, do all the follow-on actions per paragraphs III.3. and III.4. of the Accomplishment Instructions of Bombardier Alert Service Bulletin A8–22–18, Revision ''B'', dated November 19, 2001; and per paragraphs 3.A. through 3.F. of the Honeywell Accomplishment Instructions specified on pages 14 through 17 of the Bombardier service bulletin.

(2) If no serial number specified in paragraph (a)(1) of this AD is found, no further action is required by this paragraph.

Part Installation

(b) As of the effective date of this AD, no person may install an elevator or aileron servo, P/N 7002260–922, or an aileron servo, P/N 7002260–923, with serial numbers 4826 through 5935 inclusive, on any airplane.

Note 2: Although Bombardier Alert Service Bulletin A8–22–18, Revision ''B'', dated November 19, 2001, specifies accomplishment of concurrent requirements, this AD does not include those requirements.

Alternative Methods of Compliance

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

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–40, dated November 9, 2001.

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

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30677 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

17 CFR Part 403

RIN 1505–AA94

Government Securities Act Regulations: Protection of Customer Securities and Balances

AGENCY: Office of the Assistant Secretary for Financial Markets, Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury (''Treasury,'' or ''We,'' or ''Us'') is publishing for comment a proposed amendment to the customer protection rules in § 403.4 of the regulations issued under the Government Securities Act of 1986 (''GSA''), as amended.[1] This provision requires entities registered with the Securities and Exchange Commission (''SEC'') as specialized government securities brokers and dealers (''registered government securities brokers and dealers'') under section 15C(a)(2) of the Securities Exchange Act of 1934 (''the Exchange Act'')[2] to comply with the requirements of the SEC customer protection rule (''SEC Rule 15c3–3'') with certain modifications. The SEC recently amended Rule 15c3–3 to allow for the expansion of collateral that general purpose brokers and dealers may pledge when borrowing securities from customers. This proposed amendment makes certain conforming technical changes to the GSA regulations that would similarly allow for the expansion of collateral that registered government securities brokers and dealers may pledge when borrowing fully paid or excess-margin securities from customers. The proposed amendment would allow Treasury to designate additional categories of collateral or make subsequent changes to collateral by issuing an order.

DATES: Submit comments on or before January 12, 2004.

ADDRESSES: You may send hard copy comments to: Government Securities Regulations Staff, Bureau of the Public Debt, 999 E Street, NW., Room 315, Washington, DC 20239–0001. You may also send us comments by e-mail at *govsecreg@bpd.treas.gov.* When sending comments by e-mail, please provide your full name and mailing address. You may download this proposed rule, and review the comments we receive, from the Bureau of the Public Debt's Web site at *http://www.publicdebt.treas.gov.* The proposed rule and comments will also be available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Lee Grandy (Associate Director), Deidere Brewer (Government Securities Specialist), or Kevin Hawkins (Government Securities Specialist), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 691–3632 or e-mail us at *govsecreg@bpd.treas.gov.*

SUPPLEMENTARY INFORMATION: The implementing regulations Treasury issued in 1987 under the Government Securities Act of 1986[3] adopted the SEC's customer protection rule at 17 CFR 240.15c3–3 with certain modifications.[4] In adopting regulations to protect customer securities and balances, Treasury attempted to avoid duplicating existing regulations and to minimize the regulations' impact by using existing SEC standards with which many firms were already familiar. Currently, the GSA regulations maintain for registered government securities brokers and dealers the customer protection standards set out in the SEC rules for brokers and dealers when borrowing fully paid or excess-margin securities from customers. Section 403.4 of the GSA regulations requires registered government

[1] 15 U.S.C. 78*o*–5.

[2] 15 U.S.C. 78*o*–5(a)(2).

[3] Pub. L. 99–571, 100 Stat. 3208 (1986).

[4] 52 FR 27910 (July 24, 1987).

securities brokers and dealers to comply with the requirements of SEC Rule 15c3–3 regarding reserves and custody of customer securities.

On March 17, 2003, the SEC published a final amendment to Rule 15c3–3 to allow, through the issuance of an SEC order, the expansion of collateral that brokers and dealers may pledge when borrowing fully paid or excess-margin securities from customers.[5] Since an SEC order cannot be incorporated by reference to apply to registered government securities brokers and dealers, we are proposing a conforming technical change to § 403.1[6] and § 403.4[7] of the GSA regulations. The change would allow Treasury to expand the categories of permissible collateral by issuing an exemptive order. We believe the proposed amendment would continue to protect customer securities and balances while adding liquidity to the securities lending markets and lowering borrowing costs for registered government securities brokers and dealers. In this notice we first provide background on the rule and then describe the proposed changes.

I. Background

A. SEC Rule 15c3–3

In 1972, the SEC adopted the customer protection rule, Rule 15c3–3, to protect customer funds held by brokers and dealers.[8] At that time, securities brokers and dealers were required to pledge cash, U.S. Treasury bills and notes, or letters of credit as collateral when borrowing customer securities. In 1989, the SEC issued a no-action letter that expanded the categories of permissible collateral.[9]

On June 10, 2002, the SEC issued a proposed amendment to Rule 15c3–3 to allow for expanding the categories of collateral brokers and dealers may pledge when borrowing fully paid or excess-margin securities from customers.[10] Under the proposed amendment, the SEC could expand the collateral categories by issuing an SEC order. Prior to amending the customer protection rule, brokers and dealers that pledged fully paid or excess-margin customer securities were required to provide the lenders with collateral covering at a minimum the full amount of the securities loaned, and consisting exclusively of cash, U.S. Treasury bills and notes, or an irrevocable letter of credit issued by a bank. In the proposed amendment the SEC identified categories of collateral being considered for the SEC order. It also discussed certain conditions for the use of the identified types of collateral. The SEC received three favorable comment letters in response to its proposal.[11]

On March 17, 2003, the SEC issued a final amendment to Rule 15c3–3 that was substantially the same as the proposed amendment.[12] The amendment permits brokers and dealers to pledge additional categories of collateral pursuant to orders issued by the SEC. The preamble to the SEC's final amendment stated that the amended rule provides flexibility to ensure receipt of full collateral by customers while allowing for a wider range of permissible collateral, thereby adding liquidity to the securities lending markets and lowering borrowing costs for brokers and dealers.

On April 22, 2003, the SEC issued by order the list of permissible categories of collateral under Rule 15c3–3.[13] The order expands permissible collateral when borrowing a customer's securities to: ''government securities'' as defined in sections 3(a)(42)(A) and (B) of the Exchange Act; certain ''government securities'' meeting the definition in section 3(a)(42)(C) of the Exchange Act; securities issued or guaranteed by certain Multilateral Development banks; ''mortgage related securities'' as defined in section 3(a)(41) of the Exchange Act; certain negotiable certificates of deposit and bankers acceptances; foreign sovereign debt securities; foreign currency; and certain corporate debt securities.

B. Government Securities Act Regulations

When Treasury first issued the implementing regulations[14] for the GSA[15] in 1987, we considered the existing regulation of brokers and dealers registered with the SEC under section 15(b) of the Exchange Act in order to avoid overly burdensome or duplicative regulations. In that regard, the GSA regulations at 17 CFR Chapter IV incorporate, by reference, many of the SEC's rules regulating brokers and dealers including, with modifications, SEC Rule 15c3–3.

Since the SEC does not have the authority to grant exemptions from section 15C or the rules and regulations thereunder,[16] Treasury is issuing a proposed rule that is similar to the SEC's final rule.

The amended rule would allow for expanding the categories of collateral designated as permissible through the issuance of a Treasury exemptive order. We believe the proposed amendment and order would increase liquidity in the securities lending markets and lower borrowing costs for registered government securities brokers and dealers.

II. Analysis

Treasury is considering a more limited list of acceptable collateral for registered government securities brokers and dealers than the list the SEC provided in its order. Registered government securities brokers and dealers,[17] as defined in the GSA regulations, may hold certain non-exempted securities for proprietary purposes. For example, registered government securities brokers and dealers can hold limited positions in foreign sovereign debt as investments; however, they cannot ''deal'' in such securities. We understand, from discussions with SEC staff, that if a registered government securities broker or dealer were to pledge such securities in a transaction with a customer, it could be viewed as ''dealing'' in such securities, which consequently could cause it to have to change its registration.

Therefore, after Treasury issues a final rule amendment, the categories of collateral we are considering designating as permissible by order include only exempted securities such as:

1. ''Government securities'' as defined in Section 3(a)(42)(A) and (B) of the Exchange Act.

2. ''Government securities'' as defined in Section 3(a)(42)(C) of the Exchange Act issued or guaranteed as to principal or interest by the following corporations: (i) The Federal Home Loan Mortgage Corporation, (ii) the Federal National Mortgage Association, (iii) the Student Loan Marketing Association, or (iv) the Financing Corporation.

[5] 68 FR 12780 (March 17, 2003).

[6] 17 CFR 403.1.

[7] 17 CFR 403.4.

[8] 17 CFR 240.15c3–3.

[9] See Letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, SEC, to Frances R. Bermanzohn, Esq., Senior Vice President of the Public Securities Association (March 2, 1989). The SEC no-action letter provided that under certain facts and circumstances, a broker or dealer could provide to a customer lender as the collateral in a government securities borrowing transaction any of the following: ''government securities'' as defined in section 3(a)(42)(A) and section 3(a)(42)(B) of the Exchange Act, and securities issued or guaranteed by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Student Loan Marketing Association, or the Financing Corporation.

[10] 67 FR 39642 (June 10, 2002).

[11] See *supra* note 10.

[12] See *supra* note 5.

[13] 68 FR 19864 (April 22, 2003).

[14] See *supra* note 4.

[15] See *supra* note 3.

[16] 15 U.S.C. 78mm(b).

[17] *See* 52 FR 5660 (February 25, 1987) and 17 CFR 400.3(o).

3. Securities issued by, or guaranteed as to principal and interest by, the following Multilateral Development Banks—whose obligations are backed by the participating countries, including the U.S.: (i) The International Bank for Reconstruction and Development, (ii) the Inter-American Development Bank, (iii) the Asian Development Bank, (iv) the African Development Bank, (v) the European Bank for Reconstruction and Development, and (vi) the International Finance Corporation.

The categories of permissible collateral would not include securities that have no principal component (*e.g.*, STRIPS).

We believe this proposed rule amendment would protect customers by ensuring their receipt of full collateral, while providing us with the flexibility to expand the categories of collateral that may be pledged by registered government securities brokers and dealers. In developing the proposed rules, we have consulted with the staff of the SEC.

We welcome comments on this proposed rule, in particular whether this proposal meets the customer protection principles of Rule 15c3–3, as modified by § 403.4 of the GSA regulations for these types of collateral.

The rules on collateral discussed in this notice apply only in the context of the customer protection requirement in the GSA regulations as applied to registered government securities brokers and dealers. We note that it does not apply to U.S. Treasury Fiscal Service collateral programs governed by 31 CFR Part 380, Collateral Acceptability and Valuation.

III. Special Analysis

This proposed amendment does not meet the criteria for a ''significant regulatory action'' under Executive Order 12866.

In addition, under the Regulatory Flexibility Act,[18] we certify that the proposed amendments, if adopted, would not have a significant economic impact on a substantial number of small entities. Currently, there are no registered government securities brokers or dealers which would be considered ''small'' under the SEC's definition of ''small entity.''[19] Accordingly, the number of small entities pledging customer securities when borrowing fully paid or excess-margin securities from customers is not significant. As a result, a regulatory flexibility analysis is not required.

[18] 5 U.S.C. 601.

[19] 63 FR 37688, 37672 (July 13, 1998).

The proposed amendment to § 403.4 of the GSA regulations would expand the range of collateral that registered government securities brokers and dealers may pledge when borrowing customer securities. Although the proposed rule amendment is technical in nature, it does not impose any additional burdens on such firms, but provides a broader list of collateral. The amendment should increase liquidity in the government securities market and lower borrowing costs for registered government securities brokers and dealers. The collections of information under the Government Securities Act regulations have previously been reviewed and approved by the Office of Management and Budget under control number 1535–0089.

List of Subjects in 17 CFR Part 403

Banks, Banking, Brokers, Government Securities.

For the reasons set out in the preamble, we propose that 17 CFR Part 403 be amended as follows:

PART 403—PROTECTION OF CUSTOMER SECURITIES AND BALANCES

1. The authority citation for Part 403 continues to read as follows:

Authority: Pub. L. 99–571, § 101, 100 Stat. 3209; Pub. L. 101–432, section 4(b) 104 Stat. 963; Pub. L. 103–202, sections 102, 106, 107 Stat. 2344 (15 U.S.C. 78o–5(a)(5), (b)(1)(A), (b)(4)).

2. Section 403.1 is revised to read as follows:

§ 403.1 Application of part to registered brokers and dealers.

With respect to their activities in government securities, compliance by registered brokers or dealers with § 240.8c–1 of this title (SEC Rule 8c–1), as modified by § 403.2 (a), (b) and (c), with § 240.15c2–1 of this title (SEC Rule 15c2–1), with § 240.15c3–2 of this title (SEC Rule 15c3–2), as modified by § 403.3, and with § 240.15c3–3 of this title (SEC Rule 15c3–3), as modified by §§ 403.4 (a)–(d), (f)(2)–(3), (g)–(j), and (m), constitutes compliance with this part.

3. Section 403.4 is amended by re-designating paragraphs (e) through (l) as paragraphs (f) through (m), respectively, and by adding new paragraph (e) to read as follows:

§ 403.4 Customer Protection—reserves and custody of securities.

* * * * *

(e) For purposes of this section, § 240.15c3–3(b)(3)(iii)(A) of this title is modified to read as follows:

''(A) Must provide to the lender upon the execution of the agreement, or by the close of the business day of the loan if the loan occurs subsequent to the execution of the agreement, collateral that fully secures the loan of securities, consisting exclusively of cash or United States Treasury bills or Treasury notes or an irrevocable letter of credit issued by a bank as defined in section 3(a)(6)(A)–(C) of the Act (15 U.S.C. 78c(a)(6)(A)–(C)) or such other collateral as the Secretary designates as permissible by order as consistent with the public interest, the protection of investors, and the purposes of the Act, after giving consideration to the collateral's liquidity, volatility, market depth and location, and the issuer's creditworthiness; and''

* * * * *

Dated: December 3, 2003.

Brian C. Roseboro,

Assistant Secretary for Financial Markets.

[FR Doc. 03–30485 Filed 12–10–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–157164–02]

RIN 1545–BB57

Special Depreciation Allowance; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document cancels a public hearing on proposed regulations under Sections 168 and 1400L of the Internal Revenue Code relating to the depreciation of property subject to section168 of the Internal Revenue Code (MACRS property) and the depreciation of computer software subject to section 167.

DATES: The public hearing originally scheduled for December 18, 2003, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Sonya M. Cruse of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration), at (202) 622–4693 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking by cross-

reference to temporary regulations and notice of public hearing that appeared in the **Federal Register** on Monday, September 8, 2003, (68 FR 53008), announced that a public hearing was scheduled for December 18, 2003 at 10 a.m., in the auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under sections 168 and 1400L of the Internal Revenue Code.

The public comment period for these regulations expired on November 27, 2003. The notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Thursday, December 4, 2003, no one has requested to speak. Therefore, the public hearing scheduled for December 18 2003 is cancelled.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 03–30638 Filed 12–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR 1

[REG–153319–03]

RIN 1545–BC74

Guidance Under Section 1502; Application of Section 108 to Members of a Consolidated Group

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations relating to section 1502. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments must be received by January 12, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–153319–03), room 5203, Internal Revenue Service, POB 7604 Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–153319–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Amber Renee Cook or Marie C. Milnes-Vasquez at (202) 622–7530; concerning submission of comments, La Nita Van Dyke at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 1 relating to section 1502. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Further, it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses. Moreover, the number of taxpayers affected and the average burden are minimal. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Marie C. Milnes-Vasquez of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Section 1.1502–28 also issued under 26 U.S.C. 1502. * * *

2. Section 1.1502–28 is added to read as follows:

§ 1.1502–28 Consolidated section 108.

(The text of this proposed section is the same as the text of § 1.1502–28T published elsewhere in this issue of the **Federal Register**).

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–30637 Filed 12–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 19 and 20

RIN 2900–AL77

Board of Veterans' Appeals: Obtaining Evidence and Curing Procedural Defects

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs proposes to amend the Appeals Regulations and Rules of Practice of the Board of Veterans' Appeals (Board) by removing the Board's authority to develop evidence for initial consideration. Under its current Appeals Regulations and Rules of

Practice, the Board is permitted to obtain evidence, clarify the evidence, cure a procedural defect, or perform any other action essential for a proper appellate decision in any appeal properly before it without having to remand the appeal to the agency of original jurisdiction. Some of the regulatory provisions governing this practice were recently invalidated by the United States Court of Appeals for the Federal Circuit. By way of this rulemaking, we propose removing the invalidated portions of the Board's development regulations and changing those regulations to provide that, with certain exceptions, the Board will remand a case to the agency of original jurisdiction when there is a need to obtain evidence, clarify the evidence, correct a procedural defect, or take any other action deemed essential for a proper appellate decision. We also propose to amend the definition of ''agency of original jurisdiction,'' add a new provision that allows the Board to consider additional evidence without having to refer it to the agency of original jurisdiction for consideration in the first instance when this procedural right is waived by the appellant or the appellant's representative, and make other related changes and technical corrections to certain Appeals Regulations and Rules of Practice. The intended effect of this amendment is to make these regulations comply with a recent court decision.

DATES: Comments must be received on or before January 12, 2004.

ADDRESSES: Mail or hand-deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1064, Washington, DC 20420; or fax comments to (202) 273–9026; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to ''RIN 2900-AL77.'' All written comments will be available for public inspection at the above address in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals (01C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202–565–5978).

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board or BVA) is the component of Department of Veterans Affairs (VA) in Washington, DC, that decides appeals from denials of claims for veterans' benefits. An agency of original jurisdiction (AOJ), typically one of VA's 57 regional offices, makes the initial decision on a claim and subsequent decisions if VA receives additional evidence. A claimant who is dissatisfied with an AOJ's decision may appeal to the Board. After a claimant perfects an appeal to the Board, the AOJ certifies the appeal to the Board and transfers the record to the Board, so that the Board can decide the appeal.

While considering an appeal, a BVA veterans law judge, or panel of veterans law judges, sometimes discovers that more evidence is needed, that the current evidence must be clarified, or that a procedural defect must be cured for the appeal to be properly decided. Prior to regulatory changes effective in February 2002, if the Board determined that additional evidence needed to be obtained, current evidence clarified, or a procedural defect cured for the appeal to be properly decided, the case, pursuant to 38 CFR 19.9 (2001), generally had to be remanded to the AOJ to perform the needed action. In addition, any pertinent evidence submitted by the appellant or representative that was accepted by the Board, as well as any such evidence referred to the Board by the AOJ under 38 CFR 19.37(b), was required to be referred to the AOJ for review and preparation of a Supplemental Statement of the Case, unless this procedural right was waived by the appellant or representative, or unless the Board determined that the benefit or benefits to which the evidence related could be allowed on appeal without such referral. 38 CFR 20.1304(c) (2001).

In order to address a growing backlog of claims awaiting decision at VA's Regional Offices and to provide more expeditious processing of appeals, VA modified provisions of its Appeals Regulations and the Board's Rules of Practice to permit the Board to develop the record or cure procedural defects itself without remanding the appeal to the AOJ, and without having to obtain the appellant's waiver. These changes, which most significantly involved the amendment of 38 CFR 19.9 and 20.1304, were published in the **Federal Register** as final amendments on January 23, 2002, 67 FR 3099 (2002), with an effective date of February 22, 2002.

Under the changes made to 38 CFR 19.9 at that time, the Board was still permitted to remand a case needing further development, but no longer was required to do so. Additionally, under the new 38 CFR 19.9(a)(2)(ii), if the Board decided to provide the appellant with the notice required by 38 U.S.C. 5103(a) and/or 38 CFR 3.159(b)(1) (evidence required to substantiate a claim), the appellant would have 30 days to respond to the notice and furnish the requested evidence. Evidence submitted after the Board's decision, but before the expiration of the one-year period following the notice, would be referred to the AOJ for due consideration. 38 CFR 19.31 and 20.1304 also were revised to facilitate the development that could be undertaken at the Board.

A number of petitions challenging the 2002 revisions made to 38 CFR 19.9, 19.31, 20.903 and 20.1304 were filed with the United States Court of Appeals for the Federal Circuit (Federal Circuit). On May 1, 2003, the Federal Circuit issued a decision in *Disabled American Veterans* v. *Secretary of Veterans Affairs,* 327 F.3d 1339 (Fed. Cir. 2003), that invalidated 38 CFR 19.9(a)(2), and 19.9(a)(2)(ii). The Court concluded that the changes made to § 19.9(a)(2) were contrary to 38 U.S.C. 7104(a) because, if the Board obtained new evidence and rendered a decision on the basis of such evidence without obtaining a waiver from the claimant, such action would deprive the claimant of ''one review on appeal'' of the additional evidence.

On May 21, 2003, the VA Office of the General Counsel (OGC) issued a precedential opinion addressing the impact and effect of the Federal Circuit's decision in *Disabled American Veterans* on the authority of the Board to develop evidence with respect to cases pending before the Board on appeal. In pertinent part, the OGC found that the Court's decision does not prohibit the Board from developing evidence in a case on appeal before the Board, provided that the Board first obtains the appellant's waiver of initial consideration of such evidence by the agency of original jurisdiction. VAOPGCPREC 1–2003 (May 21, 2003).

Although the authority found in VAOPGCPREC 1–2003 still exists, it has been decided that, given its resources and experience, the Veterans Benefits Administration (VBA) is the most appropriate organization within the Department of Veterans Affairs to shoulder responsibility for developing most types of evidence and correcting procedural deficiencies in cases that have been appealed to the BVA. Therefore, in order to remove the two regulatory provisions invalidated by the Federal Circuit, and to effectuate the decision that the development of most types of evidence and correction of procedural deficiencies should be accomplished by VBA, VA proposes to amend 38 CFR 19.9 to require the Board to remand a case to the AOJ if it is found

that further evidence, clarification of the evidence, or correction of a procedural defect is needed. The currently existing exceptions to this requirement that are contained in 38 CFR 19.9(b) are being retained. These exceptions were in effect prior to the 2002 changes made to § 19.9, and one—the Board's consideration of a change in law without the necessity of a remand to the AOJ—was specifically upheld as being a valid provision by the Federal Circuit in the *Disabled American Veterans* decision. A new remand exception also is being added to reflect, as further discussed below, the addition of § 20.1304(c). That new provision will provide appellants with the option of waiving initial consideration by the AOJ of evidence referred to, or received by, the Board.

VA also proposes to revise the definition of ''agency of original jurisdiction,'' as set forth in 38 CFR 20.3(a), to mean ''the Department of Veterans Affairs activity or administration, that is, the Veterans Benefits Administration, Veterans Health Administration, or National Cemetery Administration, that made the initial determination on a claim.'' This change is being made to broaden the definition of AOJ so that it is not limited to a particular office within one of the VA activities and administrations, including the office that made the initial determination on a claim. The term ''activity'' comes from the definition of agency of original jurisdiction included in 38 U.S.C. 7105(b)(1). The purpose of this change is to provide the Administrations, particularly VBA, with the requisite flexibility to process remanded appeals in the most efficient and effective manner possible by reassigning work to different offices as deemed appropriate by management. *See* The Veterans' Benefits Improvements Act of 1994, Public Law 103–446, sections 302, 108 Stat. 4645, 4658 (1994), 38 U.S.C.A. 5101 (West 2003) (Historical and Statutory Notes). This will enable VBA to use its available resources to complete any necessary development and readjudication of a remanded appeal at the most appropriate location.

Additionally, VA proposes to re-promulgate former § 20.1304(c) in substantially the same form as it existed prior to the 2002 regulatory amendments and its removal at that time from the Board's Rules of Practice. Under certain circumstances pertinent evidence may be submitted directly to and accepted by the Board, or may be referred to the Board by the AOJ pursuant to 38 CFR 19.37(b). Unless the Board determines that the benefit or benefits to which the evidence relates may be fully allowed on appeal, and hence there is no possibility of prejudice to the appellant, such newly received evidence must be referred to the AOJ for initial review. Under the proposed revision, such referral will not be required when the appellant or the appellant's representative waives the procedural right to have the newly submitted evidence considered by the AOJ in the first instance. Allowing an appellant to affirmatively waive initial AOJ consideration of newly submitted evidence will reduce the need for Board remands whenever new pertinent evidence is received and considered by the Board in the first instance. In turn, this proposed change will allow for the faster processing of the claims of individual appellants, as well as the processing of appeals at both the AOJ and Board levels, due to the reduction in the number of cases that otherwise would require remand.

Several technical corrections also are being made to 38 CFR 20.1304 to reflect the redesignation of current paragraph (c) as paragraph (d), and the addition of the new paragraph (c) discussed above. In addition, the redesignated paragraph (d) is being amended to reflect that a waiver, in accordance with new paragraph (c) of this section, of initial AOJ consideration of pertinent evidence received by the Board must be obtained from each claimant when a simultaneously contested claim is involved. The purpose of this change is to fully protect the procedural rights of all of the parties involved in a simultaneously contested claim.

This proposed rulemaking also would make several minor amendments and technical corrections to the rules affected by this rulemaking. In addition to the above amendments, we propose revising 38 CFR 19.9 to change the title of ''Board Member'' to ''Veterans Law Judge.'' On February 10, 2003, 38 CFR 19.2 was revised to allow the use of the title ''Veterans Law Judge'' as an alternative to ''Member of the Board.'' 68 FR 6621 (2003). The change in language in § 19.9 is being proposed to conform to the new § 19.2.

An amendment is being proposed to 38 CFR 19.38, ''Action by agency of original jurisdiction when remand received,'' to remove the requirement that the AOJ must notify the Board as to the action it has taken on a remanded case. Prior to the Veterans Appeal Control and Locator System (VACOLS) becoming the Department's sole computer appeals tracking system, the AOJs were required to keep the Board informed of the status of Board remand cases. Such action is no longer needed, however, because VACOLS is now the sole appeals tracking system within the Department for both the Board and the AOJs, and any final action taken on a case by the AOJ will be reflected in VACOLS. It is the responsibility of the AOJs to return remanded cases to the Board that are not fully granted by the AOJ on remand. The Board does not have any jurisdiction to take further action on a remanded matter until it is returned by the AOJ. This amendment will make the regulation conform to current practice.

Three changes are being proposed to 38 CFR 20.903, ''Notification of evidence secured and law to be considered by the Board and opportunity for response.'' Section 20.903(a) currently provides that, if the Board requests a legal or medical opinion, both the appellant and the appellant's representative will be notified of the request, but when the opinion is received a copy of the opinion is only provided to the representative or to the appellant, but not to both. Except in circumstances governed by 38 U.S.C. 5701(b)(1), where disclosure of an opinion could possibly be injurious to the physical or mental health of a claimant, it makes no sense to provide an appellant with a copy of an opinion request, but not with a copy of the opinion that is obtained in response to that request. Accordingly, we propose amending § 20.903(a) to state that the Board will furnish a copy of any legal or medical opinion obtained to both the appellant and the appellant's representative, if any. This change will ensure that the appellant is fully informed about and aware of any such opinions obtained by the Board.

The second change being proposed to § 20.903 relates to paragraph (b). If, pursuant to 38 CFR 19.9(a) or 19.37(b), the Board obtains pertinent evidence that was not submitted by the appellant or appellant's representative, Rule 903(b) currently provides that the Board must notify the appellant and the appellant's representative, if any, of the evidence obtained by furnishing a copy of such evidence, and providing a period of 60 days for response, which may include the submission of relevant evidence or argument. With certain exceptions covered elsewhere in the regulations, the AOJ, rather than the Board, will be developing evidence for initial consideration. Consequently, it is being proposed that Rule 903(b) be removed as a result of this change in practice.

The third and final change being proposed to § 20.903 relates to paragraph (c), which is being redesignated as paragraph (b) in light of

the proposed removal of Rule 903(b). A cross-reference is being added to the first sentence to make reference to § 19.9(b)(2) as the source of the Board's authority to consider, in the first instance, law not already considered by the AOJ.

Comment Period

Section 6(a)(1) of Executive Order 12866 indicates that, in most cases, a comment period for proposed regulations should be ''not less than 60 days.'' However, for this rulemaking we have provided a comment period of 30 days for the following reasons. First, this rulemaking primarily concerns rules of agency procedure or practice, which are not subject to the Administrative Procedure Act's general requirement of publication for notice and comment. Second, prompt issuance of the proposed amendments is necessary to remove those provisions of our current rules regarding the development of claims on appeal that were invalidated by the United States Court of Appeal for the Federal Circuit in *Disabled American Veterans* v. *Secretary of Veterans Affairs,* 9 327 F. 3d 1339 (Fed. Cir. 2003). Third, and finally, the proposed amendments facilitate the processing of claims remanded from the Board by providing flexibility to VBA in deciding where those remands can best be handled. In that regard, it is important for the final rule to be published expeditiously in order to ensure the efficient and effective processing of appeals under valid regulations.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This proposed rule would have no consequential effect on State, local, or tribal governments, or the private sector.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would affect only VA beneficiaries and would not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects in 38 CFR Parts 19 and 20

Administrative practice and procedure, Claims, Veterans.

Approved: October 30, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR parts 19 and 20 are proposed to be amended as set forth below:

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

Subpart A—Operation of the Board of Veterans' Appeals

2. Section 19.9 is amended by revising paragraphs (a) and (b) to read as follows:

§ 19.9 Remand for further development.

(a) *General.* If further evidence, clarification of the evidence, correction of a procedural defect, or any other action is essential for a proper appellate decision, a Veterans Law Judge or panel of Veterans Law Judges shall remand the case to the agency of original jurisdiction, specifying the action to be undertaken.

(b) *Exceptions.* A remand to the agency of original jurisdiction is not necessary for the purposes of:

(1) Clarifying a procedural matter before the Board, including the appellant's choice of representative before the Board, the issues on appeal, or requests for a hearing before the Board;

(2) Consideration of an appeal, in accordance with § 20.903(b) of this chapter, with respect to law not already considered by the agency of original jurisdiction. This includes, but is not limited to, statutes, regulations, and court decisions; or

(3) Reviewing additional evidence received by the Board, if, pursuant to § 20.1304(c) of this chapter, the appellant or the appellant's representative waives the right to initial consideration by the agency of original jurisdiction, or if the Board determines that the benefit or benefits to which the evidence relates may be fully allowed on appeal.

* * * * *

Subpart B—Appeals Processing by Agency of Original Jurisdiction

§ 19.38 [Amended]

3. Section 19.38 is amended by removing ''the Board and'' from the third sentence.

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

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

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

5. Section 20.3 is amended by revising paragraph (a) to read as follows:

§ 20.3 Rule 3. Definitions.

* * * * *

(a) *Agency of original jurisdiction* means the Department of Veterans Affairs activity or administration, that is, the Veterans Benefits Administration, Veterans Health Administration, or National Cemetery Administration, that made the initial determination on a claim.

* * * * *

6. Section 20.903 is amended by:

a. Revising the second sentence in paragraph (a);

b. Removing paragraph (b);

c. Redesignating paragraph (c) as paragraph (b); and

d. Revising the first sentence in newly redesignated paragraph (b).

The revisions read as follows:

§ 20.903 Rule 903. Notification of evidence secured and law to be considered by the Board and opportunity for response.

(a) * * * When the Board receives the opinion, it will furnish a copy of the opinion to the appellant, subject to the limitations provided in 38 U.S.C. 5701(b)(1), and to the appellant's representative, if any. * * *

(b) * * * If, pursuant to § 19.9(b)(2) of this chapter, the Board intends to consider law not already considered by the agency of original jurisdiction and such consideration could result in denial of the appeal, the Board will notify the appellant and his or her representative, if any, of its intent to do so and that such consideration in the first instance by the Board could result in denial of the appeal. * * *

7. Section 20.1304 is amended by:

a. In paragraphs (a) and (b)(1)(ii), removing ''paragraph (c)'' from each, and adding, in each place, ''paragraph (d)''.

b. In paragraph (b)(2), removing ''paragraph (b) or (c)'' each place it appears, and adding, in each place, ''paragraph (a) or (b)''.

c. Redesignating paragraph (c) as paragraph (d).

d. Adding new paragraph (c).

e. In newly designated paragraph (d), adding a new sentence immediately after ''additional evidence in rebuttal.''

The additions read as follows:

§ 20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.

* * * * *

(c) *Consideration of additional evidence by the Board or by the agency of original jurisdiction.* Any pertinent evidence submitted by the appellant or representative which is accepted by the Board under the provisions of this section, or is submitted by the appellant or representative in response to a § 20.903 of this part, notification, as well as any such evidence referred to the Board by the agency of original jurisdiction under § 19.37(b) of this chapter, must be referred to the agency of original jurisdiction for review, unless this procedural right is waived by the appellant or representative, or unless the Board determines that the benefit or benefits to which the evidence relates may be fully allowed on appeal without such referral. Such a waiver must be in writing or, if a hearing on appeal is conducted, the waiver must be formally and clearly entered on the record orally at the time of the hearing. Evidence is not pertinent if it does not relate to or have a bearing on the appellate issue or issues.

(d) * * * For matters over which the Board does not have original jurisdiction, a waiver of initial agency of original jurisdiction consideration of pertinent additional evidence received by the Board must be obtained from each claimant in accordance with paragraph (c) of this section. * * *

[FR Doc. 03–30668 Filed 12–10–03; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Required Number of Pieces Increased for 5-Digit and 5-Digit Scheme Packages of Low-Weight Standard Mail Flats

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes amending *Domestic Mail Manual* (DMM) standards by raising the minimum number of pieces at which required 5-digit and optional 5-digit scheme presort destination packages may be prepared in a Standard Mail job consisting of flat-size pieces that weigh no more than 5 ounces (0.3125 pound) and measure no more than ¾ inch thick. The maximum thickness permitted for nonautomation flats under DMM C050.3.0 and flats prepared in 5-digit scheme presort destination packages under DMM L007 is ¾ inch.

Under current standards, mailers have the option to prepare 5-digit and 5-digit scheme presort destination packages (collectively referred to in this proposed rule as 5-digit packages) of flat-size pieces not more than ¾ inch thick, regardless of weight, whenever there are as few as 10 pieces to the same 5-digit ZIP Code or the same 5-digit scheme destination in DMM L007. Under those same standards, mailers must prepare such packages when there are 17 or more pieces to these destinations. If a mailer selects an optional minimum 5-digit package size from 10 to 16 pieces, that same size must be used consistently throughout the mailing job for all 5-digit packages.

Under the proposed changes, for Standard Mail mailings of flat-size pieces that weigh no more than 5 ounces, mailers would be required to prepare 5-digit packages whenever there are 15 or more pieces to a destination. Mailers would not be permitted to prepare such pieces in 5-digit packages when there are fewer than 15 pieces to a 5-digit ZIP Code or optional 5-digit scheme destination. For mailings of pieces that weigh more than 5 ounces, mailers would be required to prepare 5-digit packages whenever there are 10 or more pieces to a destination.

DATES: Comments must be received on or before January 12, 2004.

ADDRESSES: Send written comments to the Manager, Mailing Standards, ATTN: Neil Berger, U.S. Postal Service, 1735 North Lynn Street, Room 3025, Arlington, VA 22209–6038. Written comments may be submitted via fax to 703–292–4058. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at Postal Service Headquarters Library, 475 L'Enfant Plaza, SW., Room 11800, Washington, DC 20260–1540.

FOR FURTHER INFORMATION CONTACT: Cheryl Beller, Product Redesign, at (703) 292–3747; or Neil Berger, Mailing Standards, at (703) 292–3645.

SUPPLEMENTARY INFORMATION: Effective September 5, 2002, DMM M610 for nonautomation rate Standard Mail flats, DMM M820 for automation rate Standard Mail flats, and DMM 950 for advanced preparation options of Standard Mail flat-size pieces were revised to allow mailers to select a number from 10 to 17 as the minimum number of pieces at which 5-digit packages are prepared in a Standard Mail job of flat-size pieces no more than ¾ inch thick, without regard to the weight of the individual pieces. Prior to that date, mailers were required to prepare 5-digit packages whenever there were 10 or more pieces to a destination. Effective January 9, 2003, mailing standards in the DMM were amended to permit the preparation of optional 5-digit scheme packages (DMM L007) using the same flexible minimum of 10 to 17 pieces. Under the current standards, mailers may prepare 5-digit (and 5-digit scheme) packages with as few as 10 pieces.

Increased Processing Efficiencies

The Postal Service adopted the current optional 5-digit package minimum (optional with 10 to 16 pieces, required with 17 pieces) based in large part on an examination of the productivities and piece processing efficiencies of the automated flat sorting machine (AFSM) 100, which can handle flat-size pieces up to ¾ inch thick.

Initial analysis of piece, package, and container handling costs indicates that the appropriate minimum for 5-digit packages of Standard Mail flat-size pieces is, on average, above 10 pieces, and that the minimum could be increased for flats likely to be processed on the AFSM 100. AFSM 100-compatible flats are limited to flat-size pieces measuring no more than 12 inches high, 15 inches long, and ¾ inch thick. Increasing the minimum for 5-digit packages could help reduce overall Postal Service processing costs with the additional AFSM 100 piece handlings for pieces moving from 5-digit to 3-digit packages more than offset by reduced package handling costs. Package handling costs include processing the packages, either on a small parcel and bundle sorter (SPBS) or manually, and

opening the packages and preparing the mail for piece processing.

Reduced Mailer Production Costs

Increasing the package minimum would also lower mailer production costs, as mailers would prepare fewer packages, with no negative impact on rates or service for pieces that move from 5-digit to 3-digit packages. Analysis of mailings that used a 17-piece minimum for preparing 5-digit packages showed reductions in the total number of 5-digit and 3-digit packages.

Specifically, for low-weight pieces, more packages were eliminated because more pieces that would have been prepared in small 5-digit packages of less than 17 pieces were added to existing 3-digit packages or combined into a single new 3-digit package, and these larger packages were still within the 20-pound maximum package weight. For heavier pieces, fewer packages were eliminated, and the savings in package handlings did not sufficiently offset the costs of the additional piece handlings.

An informal survey of the mailing industry revealed that only a small number of mailers are taking advantage of the option to set their 5-digit package minimum higher than 10 pieces (up to 17 pieces), particularly for mailings of low-weight pieces. With such limited participation by the mailing industry, the Postal Service and mailers are unable to realize the potential cost saving opportunities associated with fewer package handlings.

New Proposed Required Preparation

Because the proposed changes in minimum package size would help reduce mail processing costs—which in turn would help to mitigate future rate increases—and because these proposed changes would have no negative impact on mailers' postage or Postal Service revenue, the Postal Service now believes that it would be in the mutual interests of the mailing industry and the Postal Service to implement the proposed changes before the next omnibus rate case.

Pieces weighing 5 ounces or less represent approximately 80 percent of the volume of Standard Mail flats (both regular and nonprofit rates) not mailed at Enhanced Carrier Route rates. For heavier pieces weighing more than 5 ounces up to the maximum weight of less than 16 ounces, there is a significant drop in cost savings when a 5-digit package minimum higher than 10 pieces is used because fewer total packages, and associated reduced handlings, are eliminated to offset the increased piece handlings. The number of packages that can be eliminated is limited by the maximum package weight of 20 pounds and by restrictions on package height, such as the maximum height of 3 inches for some packages prepared in sacks, related to maintaining package integrity (*see* DMM M020).

The fact that many mailers set their maximum package size below 20 pounds (*e.g.*, 15 pounds) for other reasons, such as creating more uniform packages for building pallets or to limit counterstacking within packages, also reduces the potential savings from using a higher package minimum. For pieces weighing up to 5 ounces, mailers would no longer be able to use an optional minimum higher than 15 pieces. Current standards permit a minimum up to 17 pieces. At the same time, under this proposed rule, mailers would not be permitted to prepare 5-digit or optional 5-digit scheme packages when there are fewer than 15 pieces to a 5-digit or 5-digit scheme destination.

For Standard Mail mailing jobs consisting of flat-size pieces that weigh more than 5 ounces or that are more than ¾ inch thick (automation rate UFSM 1000-compatible pieces only), mailers would be required to prepare 5-digit and optional 5-digit scheme packages whenever there are 10 or more pieces to a 5-digit or 5-digit scheme destination. For ease of administration, mailers would also be required to use the 10-piece 5-digit package minimum for mailing jobs of nonidentical-weight pieces when those jobs include a combination of pieces that weigh up to and including 5 ounces and pieces that weigh more than 5 ounces. Mailers would no longer be permitted to use optional 5-digit package minimums greater than 10 pieces, and up to 17 pieces, as currently permitted for such mailings.

The Postal Service and mailers recognize that the optimal 5-digit package size can vary somewhat from mailing to mailing, based on mailing characteristics such as piece weight, presort density, piece thickness, maximum package size parameters selected, containerization methods, and manufacturing processes. However, for ease of use, a single minimum for pieces weighing up to and including 5 ounces and a single minimum for pieces weighing more than 5-ounces is proposed, rather than a range of minimums (that is, the current range of 10 to 17 pieces).

There are no changes proposed to the preparation standards for other classes of mail or for other Standard Mail processing categories and presort destination package levels. Mailers would continue to be required to prepare 3-digit and area distribution center (ADC) packages whenever there are 10 or more pieces to those destinations, and carrier route packages would continue to be required to contain a minimum of 10 pieces. No changes are proposed for packages of automation rate flat-size pieces measuring more than ¾ inch thick (UFSM 100-compatible pieces) or for any type of container (*e.g.*, letter trays, sacks, pallets).

Current Recommended Preparation

For mailings of pieces that weigh no more than 5 ounces and are currently prepared using a 10-piece package minimum, pieces now prepared in 5-digit packages containing from 10 to 14 pieces, would move either to an existing 3-digit package or be consolidated into new 3-digit packages when the higher minimum of 15 pieces is used for 5-digit package preparation. In either case, the overall number of packages prepared by mailers and processed by the Postal Service would decrease. For example, when the proposed 15-piece package minimum is used, 3.2-ounce catalogs currently prepared in five 5-digit packages that each contain from 10 to 14 pieces for different ZIP Codes within the same 3-digit ZIP Code destination, could be combined with other pieces already in a 3-digit package; alternatively, those pieces could be placed in one new 3-digit package (that weighs less than 20 pounds).

The Postal Service recommends that mailers begin using a minimum of 15 pieces for 5-digit and optional 5-digit scheme package preparation permitted under current mailing standards as soon as possible for mailings of pieces that weigh no more than 5 ounces. The Postal Service also recommends that mailers limit the number of packages they produce and take necessary steps to ensure package integrity, by setting their maximum package size as close to the maximums permitted in DMM M020, particularly for packages prepared on pallets (*e.g.*, 20 pounds).

Movement of pieces from 5-digit packages to 3-digit packages as a result of using a 15-piece minimum under the proposed changes would not impact postage paid by mailers because Standard Mail flats are eligible for the ⅗ rates whether prepared in 5-digit or 3-digit packages, and placed on any pallet level, or when placed in 5-digit sacks, followed by 3-digit sacks, containing at least 125 pieces or 15 pounds of pieces.

The Postal Service is proposing the required use of the 15-piece 5-digit package minimum beginning April 4,

2004. At that time, mailings consisting of flat-size pieces that weigh more than 5 ounces or automation rate pieces that are more than ¾ inch thick regardless of weight would no longer be permitted to use a 5-digit package minimum greater than 10 pieces. Also on that date, mailings of flat-size pieces that weigh no more than 5 ounces (and measure no more than ¾ inch thick) would not be permitted to use a 5-digit package minimum other than 15 pieces.

The April 4, 2004 required implementation date would allow mailers adequate time to install any software changes needed for compliance with the new standards and to test their systems. It will also ensure that all Postal Service personnel and systems are prepared for the change. April 4 is the first Sunday following the required use date (April 1, 2004) of the Postal Service Address Information System (AIS) database released February 1, 2004. This should enable software vendors to include the proposed changes in a regularly scheduled release of their software. Although mailers using the new 15-piece 5-digit package minimum would not be required to use Presort Accuracy Validation and Evaluation (PAVE)-certified software (except for palletized mailings prepared under the package reallocation option in DMM M045, or mailings prepared under DMM M920, M930 or M940), PAVE tests would be available for presort software vendors to test this new minimum.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. 553 (b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the *Domestic Mail Manual* (DMM) incorporated by reference in the *Code of Federal Regulations. See* 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual (DMM) as follows:

Domestic Mail Manual (DMM)

* * * * *

E Eligibility

* * * * *

E600 Standard Mail

* * * * *

E620 Presorted Rates

1.0 BASIC STANDARDS

1.1 All Pieces

* * * * *

[Revise 1.1b to read as follows:]

b. Except as provided in 1.2, be part of a single mailing of at least 200 pieces or 50 pounds of pieces qualifying for Presorted Standard Mail. Basic rate and ⅗ rate pieces prepared as part of the same mailing are subject to a single minimum volume standard. Regular and Nonprofit mailings must meet separate minimum volumes.

* * * * *

2.0 RATES

[Revise 2.0 by reorganizing text to read as follows:]

2.1 Application

Presorted rates for Regular and Nonprofit Standard Mail apply to letters, flats, and machinable and irregular parcels that meet the eligibility standards in E610 and the preparation standards in M045, M610, or, for flat-size mail only, M900.

2.2 Basic Rate

The basic rate applies to pieces that do not meet the standards for ⅗ rates described in 2.3.

2.3 ⅗ Rates

The ⅗ rate applies to qualifying pieces if they are presented:

a. For letter-size pieces (*see* C050.2.0), in quantities of 150 or more pieces for a single 3-digit area, prepared in 5-digit or 3-digit trays.

b. For flat-size pieces (*see* C050.3.0):

(1) In a 5-digit or 5-digit scheme (under M950) package of 10 or more pieces, or 15 or more pieces, as applicable; or in a 3-digit package of 10 or more pieces; placed in a 5-digit, 5-digit scheme (under M920), or 3-digit sack containing at least 125 pieces or 15 pounds of pieces.

(2) In a 5-digit package of 10 or more pieces, or 15 or more pieces, as applicable, that is part of a group of packages sorted to a merged 5-digit sack or merged 5-digit scheme sack (under M920) that contains either at least one qualifying carrier route package of 10 or more pieces, or contains at least 125 pieces or 15 pounds of pieces prepared in 5-digit packages (both automation and Presorted rate 5-digit packages count toward the 125-piece or 15-pound sack minimum).

(3) In a 5-digit or 5-digit scheme package of 10 or more pieces, or 15 or more pieces, as applicable; or in a 3-digit package of 10 or more pieces; palletized under M045, M920, M930, or M940.

c. For machinable parcels (*see* C050.4.0):

(1) In a 5-digit scheme, 5-digit, ASF, or BMC sack containing at least 10 pounds of parcels. (The ⅗ rates are available for parcels in 5-digit scheme or 5-digit sacks only when all possible 5-digit scheme and 5-digit sacks are prepared.)

(2) On a 5-digit scheme, 5-digit, ASF, or BMC pallet. (The ⅗ rates are available for parcels on 5-digit scheme or 5-digit pallets only when all possible 5-digit scheme and 5-digit pallets are prepared.)

d. For irregular parcels (*see* C050.5.0), in a 5-digit scheme, 5-digit, or 3-digit sack containing at least 125 parcels or 15 pounds of parcels.

e. For commingled machinable and irregular parcels, in a 5-digit scheme or 5-digit sack containing at least 10 pounds of parcels. (The ⅗ rates are available for parcels in 5-digit scheme or 5-digit sacks only when all possible 5-digit scheme and 5-digit sacks are prepared.)

* * * * *

E640 Automation Rates

1.0 REGULAR AND NONPROFIT RATES

* * * * *

1.5 Rate Application—Flats

Automation rates apply to each piece that is sorted under M045, M820, or M900 into the qualifying groups:

[Revise 1.5a to read as follows:]

a. Pieces in 5-digit or 5-digit scheme packages of 10 or more pieces, or 15 or more pieces, as applicable; or in 3-digit packages of 10 or more pieces qualify for the ⅗ automation rate.

* * * * *

M Mail Preparation and Sortation

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M600 Standard Mail (Nonautomation)

M610 Presorted Standard Mail

* * * * *

4.0 PREPARATION—FLAT-SIZE PIECES

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4.2 Packaging and Labeling

Preparation sequence, package size, and labeling:

[Revise 4.2a to read as follows:]

a. 5-digit (required):

(1) For pieces each weighing no more than 5 ounces (0.3125 pound): 15-piece minimum; red Label 5 or OEL.

(2) For pieces each weighing more than 5 ounces (0.3125 pound): 10-piece minimum; red Label 5 or OEL.

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M800 All Automation Mail

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M820 Flat-Size Mail

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5.0 STANDARD MAIL

5.1 Packaging and Labeling

Preparation sequence, package size, and labeling:

[Revise 5.1a and 5.1b to read as follows:]

a. 5-digit scheme (optional):

(1) For pieces weighing no more than 5 ounces (0.3125 pound) each: 15-piece minimum; optional endorsement line (OEL) required.

(2) For pieces weighing more than 5 ounces (0.3125 pound) each: 10-piece minimum; OEL required.

b. 5-digit (required):

(1) For pieces weighing no more than 5 ounces (0.3125 pound) each and measuring no more than ¾ inch thick: 15-piece minimum; red Label 5 or OEL.

(2) For pieces weighing more than 5 ounces (0.3125 pound) each or measuring more than ¾ inch thick: 10-piece minimum; red Label 5 or OEL.

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M900 Advanced Preparation Options for Flats

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M950 Co-Packaging Automation Rate and Presorted Rate Pieces

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3.0 STANDARD MAIL

* * * * *

3.2 Package Preparation

Package size, preparation sequence, and labeling:

[Revise 3.2a and 3.2b to read as follows:]

a. 5-digit scheme (optional):

(1) For pieces weighing no more than 5 ounces (0.3125 pound) each: 15-piece minimum; optional endorsement line (OEL) required.

(2) For pieces weighing more than 5 ounces (0.3125 pound) each: 10-piece minimum; OEL required.

b. 5-digit (required):

(1) For pieces weighing no more than 5 ounces (0.3125 pound) each and measuring no more than ¾ inch thick: 15-piece minimum; red Label 5 or OEL.

(2) For pieces weighing more than 5 ounces (0.3125 pound) each or measuring more than 3/4 inch thick: 10-piece minimum; red Label 5 or OEL.

* * * * *

We will publish an appropriate amendment to 39 CFR 111.3 to reflect these changes if the proposal is adopted.

Neva R. Watson,

Attorney, Legal Policy and Ratemaking Law.

[FR Doc. 03–30664 Filed 12–10–03; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN159–1b; FRL–7598–5]

Approval and Promulgation of Implementation Plans; Indiana; Oxides of Nitrogen Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve, through direct final procedure, revisions to the oxides of nitrogen budget trading program plan submitted by Indiana on June 26, 2003, and August 4, 2003. These changes revise Indiana's NO_X State Implementation Plan (SIP) and NO_X budget approved by EPA on November 8, 2001. The most significant change adds three sources to the NO_X trading portion of the Indiana plan. The plan revision also includes: A compliance date change to accommodate revised deadlines under the NO_X SIP call; a revised definition of ''energy efficiency project'' to include anaerobic digestion systems; the addition of formulas to describe an energy efficiency and renewable energy ''set aside''; and minor wording changes and correction of typographical errors. These changes are consistent with Indiana's previously approved ''Phase I budget.''

In the Final Rules section of this **Federal Register**, EPA is approving these revisions to the State plan for oxides of nitrogen as a direct final rule without prior proposal because we view this action as noncontroversial and anticipate no adverse comments. If no written adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives meaningful written adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. Any party interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before January 12, 2004.

Comments may also be submitted electronically or through hand delivery/courier, please follow the detailed instructions described in Part(I)(B)(1)(i) through (iii) of the **SUPPLEMENTARY INFORMATION** section of the related direct final rule which is published in the Rules section of this **Federal Register**.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. *bortzer.jay@epa.gov.*

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Chicago, Illinois 60604. E-Mail Address: *paskevicz.john@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 4201 *et seq.*

Dated: December 2, 2003.

Bharat Mathur,

Regional Administrator, Region 5.

[FR Doc. 03–30697 Filed 12–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[NM–40–2–7445b; FRL–7598–7]

Approval of the Clean Air Act Section 112(l) Program for Hazardous Air Pollutants and Delegation of Authority to the State of New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The New Mexico Environment Department (NMED) has

submitted updated regulations for receiving delegation of EPA authority for implementation and enforcement of National Emission Standards for Hazardous Air Pollutants (NESHAPs) for all sources (both part 70 and non-part 70 sources). These regulations apply to certain NESHAPs promulgated by EPA, as amended through September 1, 2001 and September 1, 2002. The delegation of authority under this action does not apply to sources located in Bernalillo County, New Mexico or sources located in Indian Country. EPA is providing notice proposing to approve the delegation of certain NESHAPs to NMED.

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

ADDRESSES: Comments must be submitted to Mr. Jeffery Robinson, Air Permits Section, Multimedia Planning and Permitting Division (6PD–R), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in section I.C–I.F of the Supplementary Information section of the direct final rule located in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffery Robinson, Air Permits Section, Multimedia Planning and Permitting Division (6PD–R), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, at (214) 665–6435, or at *robinson.jeffrey@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving NMED's request for delegation of authority to implement and enforce certain NESHAPs for all sources (both part 70 and non-part 70 sources). NMED has adopted certain NESHAPs by reference into New Mexico's state regulations. In addition, EPA is waiving its notification requirements so sources will only need to send notifications and reports to NMED.

The EPA is taking direct final action without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for this approval is set forth in the preamble to the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: November 26, 2003.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

[FR Doc. 03–30709 Filed 12–10–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 031031272–3272–01; I.D. 102903A]

RIN 0648–AR76

Fisheries of the United States; Essential Fish Habitat

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; consideration of revision to Essential Fish Habitat (EFH) guidelines.

SUMMARY: NMFS is seeking public input on the EFH guidelines promulgated through regulation in the January 17, 2002, final rule. Such input is intended to fulfill NMFS' commitment to continually evaluate the efficacy of the EFH guidelines using an appropriate public process.

DATES: Written comments must be received no later than 5 p.m., e.s.t., on or before January 26, 2004.

ADDRESSES: Written comments must be sent to Mr. Rolland A. Schmitten, Director, Office of Habitat Conservation, NOAA National Marine Fisheries Service, F/HC, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to (301) 427–2570. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Karen Abrams at (301) 713–4300 xt. 149.

SUPPLEMENTARY INFORMATION: In January 2002, NMFS promulgated a final rule (67 FR 2343) that established guidelines (50 CFR 600.805 to 600.930) to assist the Regional Fishery Management Councils (Councils) and the Secretary of Commerce (Secretary) in the description and identification of EFH in fishery management plans (FMPs), the identification of adverse effects to EFH, and the identification of actions required to conserve and enhance EFH. The final rule also detailed procedures the Secretary (acting though NMFS), other Federal agencies, and the Councils will use to coordinate, consult, or provide recommendations on Federal and state actions that may adversely affect EFH. Such guidelines promulgated through regulation were mandated in the 1996 amendments incorporated into the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855(b)(1)(A)). The intended effect of the guidelines is to promote the protection, conservation, and enhancement of EFH.

After a 5–year public process, NMFS finalized the EFH guidelines in 2002. Nevertheless, NMFS recognized that a great deal of interest remained from various stakeholders in how to integrate habitat considerations into fishery management. As a result of this interest, NMFS committed to evaluating the efficacy of the EFH guidelines as they are implemented, to apply the lessons learned from such implementation as appropriate, and to consider changing the regulations if warranted through an appropriate public process.

NMFS recognizes that implementation of the MSA's EFH provisions is complex and requires considerable species and habitat information not always equally available across species or geography. In addition, NMFS recognizes that not all habitats exhibit the same characteristics, and that implementation of the EFH guidelines continues to attract public interest from its stakeholders.

Given ongoing interest in EFH and NMFS' commitment to evaluate the efficacy of the EFH guidelines through an appropriate public process, NMFS solicits input from the public regarding, (1) whether the EFH guidelines (50 CFR 600.805 to 600.930) should be revised and (2) if revisions are desired, what parts of the guidelines should be revised, how should they be revised, and why. NMFS will use this information in determining whether to proceed with a revision to the EFH guidelines, and, if so, the issues to be addressed.

This advance notice of proposed rulemaking has been determined to be significant for the purposes of Executive Order 12866.

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: December 5, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30728 Filed 12–10–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 238

Thursday, December 11, 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

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fresno County Resource Advisory Committee will meet in Clovis, California. The purpose of the meeting is to discuss and to recommend project proposals for FY2004 funds regarding the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) for expenditure of Payments to States Fresno County Title II funds.

DATES: The meeting will be held on January 13, 2004, from 6:30 p.m. to 9:30 p.m.

ADDRESSES: The meeting will be held at the Supervisors Office, Sierra National Forest, 1600 Tollhouse, Clovis, California 93611. Send written comments to Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest, High Sierra Ranger District, 29688 Auberry Road, Prather, CA 93651 or electronically to *rekman@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Robbin Ekman, Fresno County Resource Advisory Committee Coordinator, (559) 855–5355, ext. 3341.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Fresno County Title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Public sessions will be provided and individuals who made written requests by January 13, 2004, will have the opportunity to address the Committee at those sessions. Agenda items to be covered include: (1) Call for new projects; (2) Status report from project recipients; and (3) Public comment.

Dated: December 4, 2003.

Ray Porter,

District Ranger.

[FR Doc. 03–30685 Filed 12–10–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

[120803B]

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: An Observer Program for Catcher Vessels in the Pacific Coast Groundfish Fishery.

Form Number(s): None.

OMB Approval Number: 0648–0423.

Type of Request: Regular submission.

Burden Hours: 1,763.

Number of Respondents: 2,116.

Average Hours Per Response: 0.167 (10 minutes).

SUPPLEMENTARY INFORMATION: *Needs and Uses*: This data collection requires that a representative (owner, operator, or manager) for selected catcher vessels participating in the Pacific Coast Groundfish Fishery provide the National Marine Fisheries Service with notification at least 24 hours before departure for a fishing trip and notification when the vessel ceases to participate in the observed portion of the fleet. The information will be used to plan for fishery observer assignments.

Affected Public: Business or other for-profit organizations.

Frequency: 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: December 4, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–30727 Filed 12–10–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by January 16, 2004.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in

the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: December 5, 2003.

Joseph Schubart,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Reinstatement.

Title: Adult Education and Family Literacy Act State Plan (Pub. L. 105–220).

Abstract: It is unlikely that Congress will pass a reauthorization of the Workforce Investment Act (WIA) this year. Therefore, the enclosed Policy Memorandum is designed to advise states about how to continue their adult education program under section 422 of the General Education Provisions Act (GEPA) [20 U.S.C. 1226 (a)].

Additional Information: Section 422 of the General Education Provisions Act (GEPA) [20 U.S.C. 1226 (a)] provides for the automatic extension of current program operations for one year if current law expires and a reauthorization is anticipated, but not yet available, to take its place.

Frequency: One time state plan.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 59.

Burden Hours: 2,655.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 1907. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–30671 Filed 12–10–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 9, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 5, 2003.

Joseph Schubart,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of the Chief Financial Officer

Type of Review: Revision.

Title: Streamlined Clearance Process for Discretionary Grant Information Collections.

Frequency: Annually.

Affected Public: Individuals or household; Businesses or other for-profit; not-for-profit institutions; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1.

Burden Hours: 1.

Abstract: The information collection plan provides the U.S. Department of Education with the option of submitting its discretionary grant information collections through a streamlined Paperwork Reduction Act clearance process. This streamlined clearance process will begin when the Department submits the information collection to the Office of Management and Budget (OMB) and, at the same time, publishes a 30-day public comment period notice

in the **Federal Register.** OMB will then have 60 days after the start of the public comment period to reach a decision on the information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2421. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC. 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–30672 Filed 12–10–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 12, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 5, 2003.

Joseph Schubart,

Acting Leader Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Part B of the Individuals with Disabilities Education Act Biennial Performance Report.

Frequency: Annually.

Affected Public: State, local, or tribal gov't; SEAs or LEAs; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 60.

Burden Hours: 12,000.

Abstract: State educational agencies are required to establish goals for the performance of children with disabilities in that State that promote the purposes of Part B of the Individuals with Disabilities Education Act (Part B). States must also establish performance indicators that the State will use to assess its progress in achieving these goals. Section 612(a)(16) of Part B requires States to report to the Secretary on the progress that the State has made toward meeting its goals. The Office of Special Education Programs (OSEP) is implementing an integrated, four-part accountability strategy: (1) Verifying the effectiveness and accuracy of States' monitoring, assessment, and data collection systems; (2) attending to States at high risk for compliance, financial, and/or management failure; (3) supporting States in assessing their performance and compliance, and in planning, implementing, and evaluating improvement strategies; and (4) focusing OSEP's intervention on States with low ranking reporting requirements for States' Self-Assessments, Improvement Plans, and Biennial Performance Reports are being combined in this Part B Annual Performance Report.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2355. When you access the information collection, click on ''Download Attachments ''to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–30673 Filed 12–10–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–098]

ANR Pipeline Company; Notice of Negotiated Rate Filing

December 4, 2003.

Take notice that on December 1, 2003, ANR Pipeline Company (ANR) tendered for filing and approval three amendments to existing negotiated rate service agreements between ANR and NJR Energy Services Company.

ANR requests that the Commission accept and approve the subject negotiated rate agreement amendments to be effective 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 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 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. E3–00516 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–096]

ANR Pipeline Company; Notice of Negotiated Rate Filing

December 4, 2003.

Take notice that, on December 1, 2003, ANR Pipeline Company (ANR) tendered for filing and approval two amendments to negotiated rate service agreements between ANR and Wisconsin Public Service Corporation (WPS).

ANR requests that the Commission accept and approve the subject negotiated rate agreement amendments to be effective 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 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 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. E3–00528 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–097]

ANR Pipeline Company; Notice of Negotiated Rate Filing

December 4, 2003.

Take notice that, on December 1, 2003, ANR Pipeline Company (ANR) tendered for filing and approval three (3) amendments to existing negotiated rate service agreements between ANR and Wisconsin Gas Company.

ANR requests that the Commission accept and approve the subject negotiated rate agreement amendments to be effective 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 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 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. E3–00529 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–98–000]

Indicated Shippers v. Columbia Gulf Transmission Company; Notice of Complaint

December 4, 2003.

Take notice that on December 3, 2003, pursuant to Rule 206 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 385.206 (2003), the Indicated Shippers (BP America Inc. and BP Energy Company; ChevronTexaco Exploration & Production Company, a division of Chevron U.S.A. Inc.; ConocoPhillips Company; and ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation) filed a Complaint Requesting Fast Track Processing against Columbia Gulf Transmission Company (CGT). The Indicated Shippers allege that CGT has failed to comply with Section 4 of the Natural Gas Act as well as the Commission's regulations, 18 CFR 154.1(b), 18 CFR 154.204 and 18 CFR 284.7(c), by posting quality limitations through long-term critical notices in lieu of proposing changes to its tariff through a filing with the Commission.

The Indicated Shippers request that the Commission order CGT to cease and desist from its current practice of posting long-term critical notices to impose quality specifications.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211

and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. 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 for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: December 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00524 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–19–000]

Dominion Transmission, Inc.; Notice of Application

December 3, 2003.

Take notice that on November 24, 2003, Dominion Transmission, Inc. (Dominion), 120 Tredegar Street, Richmond, Virginia 23219, filed in Docket No. CP04–19–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon five gas storage wells in the Oakford Storage Complex in Westmoreland County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

Dominion states that the five gas storage wells are geographically located in the Oakford Storage Complex, and were intended for potential use as gas storage wells after the reservoir gas had been sufficiently depleted. However, the wells have never been utilized to provide storage service by either the injection or withdrawal of gas in the storage field. Dominion explains that the wells are, in essence, production wells and their plugging and abandonment will not affect the operational capabilities or diminution of service of the Oakford Storage Complex.

Any questions concerning this amendment may be directed to Anne E. Bomar, Managing Director, Attn.: Lorriane Cote, Dominion Transmission, Inc., 120 Tredegar Street, Richmond, Virginia 23219, at (804) 819–2881 or fax (804) 819–2064.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken; but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: December 15, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00530 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–99–000]

Indicated Shippers v. Tennessee Gas Pipeline Company; Notice of Complaint

December 4, 2003.

Take notice that on December 3, 2003, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2003), the Indicated Shippers filed a Complaint Requesting Fast Track Processing against Tennessee Gas Pipeline Company (TGP). The Indicated Shippers allege that TGP has failed to comply with Section 4 of the Natural Gas Act as well as the Commission's regulations, 18 CFR 154.1(b), 18 CFR 154.204 and 18 CFR 284.7(c), by posting quality limitations through long-term critical notices in lieu of proposing changes to its tariff through a filing with the Commission.

The Indicated Shippers request that the Commission order TGP to cease and desist from its current practice of posting long-term critical notices to impose quality specifications.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. 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 for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: December 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00525 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–13–011]

East Tennessee Natural Gas Company; Notice of Compliance Filing

December 4, 2003.

Take notice that on December 1, 2003, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Fourth Revised Sheet No. 177, proposed to be effective on November 21, 2003.

East Tennessee states that the purpose of this filing is to comply with the Commission's Order, dated October 31, 2003, in the captioned proceeding. East Tennessee also states that it filed narrative responses and a table, in Appendix B attached to the filing, in compliance with the October 31 Order.

East Tennessee states that copies of the filing were mailed to all parties on the Official Service List in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. E3–00526 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–97–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

December 4, 2003.

Take notice that on December 1, 2003, Equitrans, L.P. (Equitrans) tendered for filing, as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheets listed in Appendix A to the filing, proposed to become effective on January 1, 2004.

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. E3–00523 Filed 12–10–03 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–096]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

December 4, 2003.

Take notice that on November 24, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Fourth Revised Sheet No. 26B, to be effective December 1, 2003.

Natural states that the purpose of this filing is to reflect an amendment to an existing negotiated rate agreement between Natural and MidAmerican Energy Company under Natural's Rate Schedule DSS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. 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. E3–00527 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–95–000]

OkTex Pipeline Company, Norteño Pipeline Company; Notice Of Tariff Filing

December 4, 2003.

Take notice that on December 1, 2003, Norteño Pipeline Company (Norteño), tendered for filing a tariff sheet to cancel its First Revised Volume No. 1 in accordance with the Order issued by the Federal Energy Regulatory Commission on October 8, 2003, in Docket Nos. CP03–76, *et al*.

Norteño states that the purpose of the filing is to reflect Norteño's intended abandonment of facilities and cancellation of service and the subsequent assumption by OkTex Pipeline Company of Norteño's facilities, service, customers, delivery points, and firm and interruptible rates.

Norteño further states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in 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. E3–00521 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR04–5–000]

PanEnergy Louisiana Intrastate, LLC; Notice of Petition for Rate Approval

December 4, 2003.

Take notice that on November 28, 2003, PanEnergy Louisiana Intrastate, LLC (PELICO) filed a petition for rate approval pursuant to Section 284.123(b)(2) of the Commission's Regulations. PELICO requests the Commission to approve a rate for firm and interruptible transportation service under Section 311(a)(2) of the Natural Gas Policy Act of $0.2543 per MMBtu.

Any person desiring to participate in this rate proceeding must file a motion to intervene or 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 with the Secretary of the Commission 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 petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits I the docket number field to access the document. For Assistant, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.*Intervention and Protest Date:* December 26, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00519 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–69–000]

Piedmont Natural Gas Company, Inc. v. Transcontinental Gas Pipe Line Corporation; Notice of Complaint

December 4, 2003.

Take notice that on November 25, 2003, pursuant to Section 5 of the Natural Gas Act, 15 U.S.C. 717d, and Rule 206 of the Commission regulations, 18 CFR 385.206, Piedmont Natural Gas Company, Inc. (Piedmont) filed a Complaint Requesting Fast Track Procedures against Transcontinental Gas Pipe Line Corporation (Transco). Piedmont alleges that Transco's existing tariff is unjust and unreasonable to the extent that it does not provide for adjusted daily reservation rates for leap years.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. 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 for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web

site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: December 15, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00520 Filed 12–10–03 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP93–541–013]

Young Gas Storage Company, Ltd.; Notice of Application

December 4, 2003.

On November 24, 2003, Young Gas Storage Company, Ltd. (Young), whose mailing address is Post Office Box 1087, Colorado Springs, Colorado 80944, filed an application in the above referenced docket, pursuant to Section 7(c) of the Natural Gas Act (NGA), and Part 157of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations to further amend its certificate of public convenience and necessity issued in Docket Numbers CP93–541–000 *et al.* Young states it is seeking to amend an authorization to construct and operate three additional injection/withdrawal wells, to reclassify two existing injection/withdrawal wells as observation wells, to modify its protection acreage, and to undertake a storage field testing program in the Young Gas Storage Field (Field) located in Morgan County, Colorado, as more fully described in the application. Young further states it is estimated the proposed project will cost approximately $3,240,528. Young also states that this filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at*http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

Any questions regarding this application should be directed to Robert T. Tomlinson, Director, Regulatory Affairs Department, Colorado Interstate Gas Company, as operator for Young Gas Storage Company, Ltd., P.O. Box 1087, Colorado Springs, Colorado 80944, telephone (719) 520–3788.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

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. E3–00517 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–96–000]

Young Gas Storage Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

December 4, 2003.

Take notice that on December 1, 2003, Young Gas Storage Company, Ltd. (Young) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of January 1, 2004:

Seventh Revised Sheet No. 80
Original Sheet No. 84A
Original Sheet No. 84B

Young states that these tariff sheets provide shippers the flexibility to nominate for storage injection and withdrawal, scheduling changes at any time during the Gas Day, subject to certain operationally based conditions.

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. E3–00522 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–31–000, et al.]

SCS Energy, LLC, et al.; Electric Rate and Corporate Filings

December 3, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. SCS Energy, LLC; Astoria Energy, LLC

[Docket Nos. EC04–31–000 and ER01–3103–003]

Take notice that on November 26, 2003, SCS Energy, LLC (SCS) and AE Investor, LLC, filed with the Federal Energy Regulatory Commission an application pursuant to Section 203 of the Federal Power Act for authorization to request approval of an indirect change in control of Astoria Energy, LLC.

Comment Date: December 17, 2003.

2. Mirant Delta, LLC; Mirant Potrero, LLC

[Docket No. ER04–227–000]

Take notice that, on November 25, 2003, Mirant Delta, LLC (Mirant Delta) and Mirant Potrero, LLC (Mirant Potrero) tendered for filing certain revised tariff sheets to the Reliability Must-Run Service Agreements between Mirant Delta, Mirant Potrero, and the California Independent System Operator Corporation. The revisions include, inter alia, changes to the: (1) Air Emissions Limitations; (2) Contract Service Limits, (3) Hourly Availability Charges and Penalty Rates, (4) Capital Item Charges and Penalty Rates for the RMR; (5) Prepaid Start-up Costs, and (6) projected outage information for the generating units owned by Mirant Delta and Mirant Potrero, for the year beginning January 1, 2004.

Comment Date: December 16, 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. E3–00515 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. P–2816–026, EL03–51–001 and EL03–215–000]

North Hartland, LLC and North Hartland, LLC v. Central Vermont Public Service Corp.; Notice of Technical Conference

December 4, 2003.

The Commission Staff will convene a technical conference to discuss issues raised in the proceedings referred to above. The conference to address these issues has been scheduled for December 16, 2003, at 10 a.m. in 92–68 at the offices of the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

All parties to these proceedings may attend.

For further information, please contact Steven Rothenberg at *steven.rothenberg@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00518 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0019; FRL–7598–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced After June 11, 1973, and Prior to May 19, 1978 (40 CFR Part 60, Subpart K), EPA ICR Number 1797.03, OMB Control Number 2060–0442

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 an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the

nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 12, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0019, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Rafael Sanchez, Compliance Assurance and Monitoring Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–7028; fax number: (202) 564–0050; e-mail address: *sanchez.rafael@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 19, 2003 (68 FR 27059), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2003–0019, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, 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 Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to 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 and OMB within 30 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, 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 placed 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 *www.epa.gov/edocket.*

Title: NSPS for Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced after June 11, 1973, and Prior to May 19, 1978 (40 CFR Part 60, Subpart K).

Abstract: The New Source Performance Standards (NSPS) for the regulations published at 40 CFR part 60, subpart K were proposed on June 11, 1973, and promulgated on March 8, 1974. These regulations apply to facilities in 40 CFR part 60, subpart K that store petroleum liquids in: storage vessels with petroleum liquids which have a storage capacity greater than 151,416 liters (40,000 gallons), and for which construction commenced after June 11, 1973, and prior to May 19, 1978; storage vessels greater than 151,416 liters (40,000 gallons) but not exceeding 246,052 liters (65,000 gallons), and where construction or modification commenced after March 8, 1974, and prior to May 19, 1978; storage vessels that have a capacity greater than 246,052 liters (65,000 gallons), and where construction or modification commenced after June 11, 1973, and prior to May 19, 1978. Affected facilities report only if a storage vessel is no longer subject to 40 CFR part 60, subpart K and will now be subject to the current storage vessel standard, 40 CFR part 60, subpart Kb. The subpart K standards also require the owner/operator to document (recordkeeping) the activities of the storage period, the maximum true vapor pressure, and the type of petroleum liquid stored. This information is recorded only when a petroleum liquid is changed in the storage vessel. Facilities that are not subject to the Standards of Performance for Storage Vessels for Petroleum Liquids, 40 CFR part 60, subpart K, are storage vessels of petroleum or condensate stored, processed, and/or treated at a drilling and production facility prior to custody transfer.

Responses to this information collection are deemed to be mandatory, per section 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined not to be private. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (*see* 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 17674, March 23, 1979).

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 in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3 hours per response. 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.

Respondents/Affected Entities: Owners or operators of facilities that store petroleum liquids for which construction, reconstruction or modification commenced after June 11, 1973, and prior to May 19, 1978.

Estimated Number of Respondents: 220.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 669 hours.

Estimated Total Annual Cost: $43,000, includes $0 annualized capital/startup costs, $0 annual O&M costs, and $43,000 labor costs.

Changes in the Estimates: There is a decrease of 9 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease in burden from the most recently approved ICR is due to an adjustment. Calculation errors from the previous ICR in reference to the number of respondents were corrected in this ICR.

Dated: December 2, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–30707 Filed 12–10–03; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SES Performance Review Board

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of members of the U.S. Equal Employment Opportunity Commission Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the PRB for the Equal Employment Opportunity Commission (EEOC). The Board reviews the performance appraisals of career and non-career senior executives. The Board makes recommendations regarding proposed performance appraisals, ratings, bonuses and other appropriate personnel actions.

FOR FURTHER INFORMATION CONTACT: Angelica E. Ibarguen, Chief Human Capital Officer, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507, 202–663–4306.

Composition of PRB: The Board shall consist of at least three voting members. When appraising a career appointee's performance or recommending a career appointee for a performance award, more than half of the members must be SES career appointees. The names and titles of the PRB members are as follows:

Primary Members

Angelica E. Ibarguen, Chief Human Capital Officer, EEOC—(Chairperson).

Reuben Daniels, Jr., Director, Charlotte District Office, EEOC—(Member).

James L. Lee, Deputy General Counsel, EEOC—(Member).

Sandra Ziegler, Regional Director, Office of Federal Contract Compliance, U.S. Department of Labor—(Member).

Alternate Member

Lisa Fisher—Acting Director, Office of Communications and Legislative Affairs, EEOC.

DATES: Membership is effective on the date of this notice.

Signed in Washington, DC on this 25th day of November, 2003.

For the Commission.

Cari M. Dominguez,

Chair.

[FR Doc. 03–30661 Filed 12–10–03; 8:45 am]

BILLING CODE 6570–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 03–3533]

Request for Durational Billing

AGENCY: Federal Communications Commission.

ACTION: Notice; withdrawal of petition for reconsideration.

SUMMARY: This document provides notice of the proposed withdrawal of a April 21, 1999, petition for reconsideration of the Commission's determination that the cost of imposing technology on payphone service providers in order to implement six second billing increments was prohibitive. The company which filed the reconsideration petition, PocketScience, Inc., was dissolved by its parent company more than two years ago. Thus, there is no existing entity to sponsor the reconsideration petition.

DATES: This petition will be dismissed without prejudice effective January 12, 2004, unless the Wireline Competition Bureau receives an opposition to the withdrawal prior to that date.

ADDRESSES: Oppositions to the withdrawal notice should be mailed to the Commission's Secretary through the Commission's contractor, Natek, Inc., at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Jon Stover, Wireline Competition Bureau, Pricing Policy Division, (202) 418-0390.

SUPPLEMENTARY INFORMATION: On January 28, 1999, the Commission determined in the *Third Report and Order, And Order on Reconsideration of the Second Report and Order,* 64 FR 13701 (March 22, 1999) that duration-based billing methodology would result in added expense, delay, and confusion. On April 21, 1999, PocketScience, Inc. filed a petition for reconsideration of this portion of the Third Report and Order. Subsequently, petitioner, PocketScience, Inc. was acquired by PocketMail Inc. in May, 2001. On October 21, 2003, PocketMail, Inc. stated in an e-mail to FCC staff that it had formally dissolved PocketScience Inc. and that it no longer had any interest in pursuing the April 21, 1999, petition. Accordingly, unless there is opposition to the proposed withdrawal, PocketScience's April 21, 1999, petition will be dismissed without prejudice. 47 CFR 1.748. Therefore, this proceeding will be terminated effective January 12, 2004, unless the Wireline Competition Bureau receives an opposition to the withdrawal before that date.

Parties filing oppositions to the withdrawal of this petition must file an original and four copies of each filing. The filings should reference the DA number of this public notice, DA 03–3533. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

- The filing hours at this location are 8 a.m. to 7 p.m.
- All hand deliveries must be held together with rubber bands or fasteners.
- Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.
- All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Parties are also requested to send a courtesy copy of their oppositions to Jon Stover, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission. Courtesy copies may also be sent via e-mail to *Jon.Stover@fcc.gov.*

Authority: 47 U.S.C. 152, 153, 154, 155, 303, 307, 308, 309, 315, 317; 44 FR 18501, 67 FR 13223, 47 CFR 0.291, 1.749

Federal Communications Commission.

Tamara Preiss,

Chief, Pricing Policy Division.

[FR Doc. 03–30657 Filed 12–10–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, December 11, 2003, 10 a.m. Meeting open to the public.

The following item was added to the agenda: Electioneering Communications Dates. The following item was withdrawn from the agenda: Eligibility Report—John R. Edwards/Edwards for President.

DATE AND TIME: Monday, December 15, 2003, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, December 18, 2003, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Merit and Service Awards.

Election of Officers.

Draft Advisory Opinion 2003–30: Fitzgerald for Senate Committee and Senator Peter Fitzgerald by counsel, Benjamin L. Ginsberg and Glenn M. Willard.

Draft Advisory Opinion 2003–34: Viacom, Inc., Networks, Inc. (Showtime), and TMD Productions, Inc., by counsel, Jan Witold Baran.

Future Meeting Dates.

Routine Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–30819 Filed 12–9–03; 3:00 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 8135N.
Name: C & F Worldwide Agency Corp.
Address: Carr. 848 KM 3.2, Calle Diaz Final, Saint Just-Carolina, PR 00983.
Date Revoked: November 15, 2003.
Reason: Failed to maintain a valid bond.

License Number: 4507NF.
Name: Cargo Systems Int'L. Corp.
Address: 1426 NW 82nd Avenue, Miami, FL 33126.
Date Revoked: November 28, 2003.
Reason: Failed to maintain valid bonds.

License Number: 4527F.
Name: Colonial Trade Co., Inc.
Address: 8319 Lages Lane, Baltimore, MD 21244.
Date Revoked: November 27, 2003.
Reason: Failed to maintain a valid bond.

License Number: 3288F.
Name: H. Conrad & Associates, Inc.
Address: 2206 East 7th Avenue, Tampa, FL 33605.
Date Revoked: November 13, 2003.
Reason: Failed to maintain a valid bond.

License Number: 4663NF.
Name: International Freight Services, Inc.
Address: 10125 NW 116th Way, Suite 18, Medley, FL 33178.
Date Revoked: November 30, 2003.
Reason: Failed to maintain valid bonds.

License Number: 17442NF.
Name: Klasman-Varnak USA, Inc.
Address: 1099 Wall Street West, Suite 170, Lyndhurst, NJ 07071.
Date Revoked: November 18, 2003.
Reason: Failed to maintain valid bonds.

License Number: 16329N.
Name: Lanna International Corp.
Address: 69–40 Garfield Avenue, Woodside, NY 11377.
Date Revoked: November 13, 2003.
Reason: Failed to maintain a valid bond.

License Number: 18276N.
Name: Nisco Pacific, Inc.
Address: 500 W. Victoria Street, Compton, CA 90220.
Date Revoked: November 21, 2003.
Reason: Surrendered license voluntarily.

License Number: 10526N.
Name: Polamer, Inc.
Address: 3094 N. Milwaukee Avenue, Chicago, IL 60618.
Date Revoked: November 15, 2003.
Reason: Failed to maintain a valid bond.

License Number: 17668N.
Name: Power Light Shipping Co., Inc.
Address: 15358 Valley Blvd., City of Industry, CA 91746.
Date Revoked: November 21, 2003.
Reason: Failed to maintain a valid bond.

License Number: 15863N.
Name: Seatrex International Corp.
Address: 175 Armstrong Road, Des Plaines, IL 60018.
Date Revoked: November 27, 2003.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–30665 Filed 12–10–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
17656NF	Coltrans (USA), Inc., 10925 NW 27th Street, Suite 102, Miami, FL 33172	November 1, 2003.

License No.	Name/address	Date reissued
16950NF	Global Cargo Corporation, 8470 NW 30th Terrace, Miami, FL 33122	September 25, 2003.
14125N	Transtainer Corp., 8100 NW 29th Street, Miami, FL 33122	November 6, 2003.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–30666 Filed 12–10–03; 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 part 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

Expert Cargo Int'l Co., 11200 S. Hindry Avenue, 2nd Floor, Los Angeles, CA 90045, Scott Jang, Sole Proprietor.

Seahawk Logistics, Inc., 520 Carson Plaza Court, Suite #206, Carson, CA 90746, Officer: Sang Gyu Park, President (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Dietrich Exccel LLC. dba Nautilus Global Shipping LLC, 7818 NW 46th Street, Miami, FL 33166, Officers: Waldyr Silva, General Manager (Qualifying Individual), Joao Carlos Villaca, Partner.

MH Transport, LLC, 1720 North Sam Houston Parkway East, Houston, TX 77032, Officers: Thomas Lyle Armel, Vice President (Qualifying Individual), Olivia Decaro, President.

Dated: December 5, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–30667 Filed 12–10–03; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–14]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

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. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-E11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Ecology of Bats in Households: A Case-Control Study for Assessing Knowledge, Attitudes, and Health Risks—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

Bats are associated with many different kinds of infectious diseases that may be pathogenic to humans. Anthropogenic change from urban sprawl provides new roosts for bats in homes and buildings while reducing available natural roosts and putting humans in more frequent contact with bats. The largest public health concern with respect to bat exposure is the transmission of rabies virus—about 75% of human rabies deaths are from bat-associated rabies variants. The current U.S. guidelines for animal rabies prevention and control recommend that bats be excluded from houses and adjacent structures to prevent direct association with humans. While direct association with bats is certainly a risk factor for rabies transmission, little is known about the effects of indirect association with bats and potential adverse health effects. This is of public health concern because many organizations actually promote interactions between bats and humans, without consideration of public health consequences.

The proposed study consists of an investigator-administered questionnaire conducted on site. The survey asks individuals to describe knowledge and attitudes of household members toward cohabitation with bats, including knowledge of rabies risk, general attitude toward bats, and attempts to exterminate the roosts. The questionnaire will also evaluate health outcomes among household members and their pets by administering a survey focused on general well-being, incidence of allergies, frequency and nature of hospital/clinic visits, frequency of bat and bat-ectoparasite exposure, and frequency of post-exposure prophylaxis for rabies. We will also conduct a serological survey for evidence of exposure to bat-associated infectious diseases.

The list of households with roosts is provided by Colorado State University bat researchers, identified through radio-tagging of bats. We plan to improve the knowledge of the ecology of bats and associated rabies transmission by assimilating rabies prevalence data in a bat population with data regarding the roost ecology and bat/human interaction ecology in a rapidly sprawling suburban area in Ft. Collins, Colorado. There is no cost to the respondents.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)	Total burden (in hours)
Telephone enrollment	150	1	6/60	15
Investigator-administered survey	600	1	45/60	450
Total				465

Dated: December 2, 2003.

Alvin Hall,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 03–30678 Filed 12–10–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–15]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

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. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E–11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Surveillance for Ciguatera Fish Poisoning in Recreational Fishers Utilizing Texas Gulf Coast Oil Rigs—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

This public health surveillance activity will quantify the scope of ciguatera poisonings in the recreational fishing community of coastal Texas. The Texas Department of Health has received reports of ciguatera-toxic fish caught on Texas offshore oil rigs, but anecdotal reports to researchers at the University of Texas suggest that the incidence of ciguatera fish poisoning is greater than what has been reported to the Texas Department of Health. We propose to conduct surveillance activities to identify the prevalence of ciguatera fish poisoning in Texas Gulf Coast oil rigs. This study will provide critical data in guiding efforts to characterize the scope of ciguatera poisonings, to identify risk factors, and to prevent an emerging illness associated with reef ecosystems.

A questionnaire will be administered over a one-year period to recreational spear-fishers and to hook-and-line anglers who have consumed fish caught on the reef ecosystems off the Texas gulf coast. There is no cost to respondents.

Respondent	Number of respondents	Number of responses/ respondent	Average burden per response (in hours)	Total burden (in hours)
Texas Saltwater Fishers	500	1	20/60	167
Total				167

Dated: December 4, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–30679 Filed 12–10–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Research Resources Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contact proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.

Date: January 22, 2004.

Open: 8:30 a.m. to 2:45 p.m.

Agenda: Report of Center Director and other issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 2:45 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Louise E. Ramm, PhD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, (301) 496–6023.

Information is also available on the Institute's/Center's home page: www.ncrr.nih.gov/newspub/minutes.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: December 4, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30725 Filed 12–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institutes; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Resource Related Research Projects.

Date: January 27, 2004.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Zoe Huang, MD, Health Scientist Administrator, Review Branch, Room 7190, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924. 301–435–0314.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 932.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 4, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30720 Filed 12–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Collaborative Clinical Studies in Drug Abuse.

Date: December 10, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Mark R. Green, PhD, Chief, CEASRB, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1431.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: December 4, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30721 Filed 12–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering, Strategic Plan Development Subcommittee.

Date: January 14, 2004.

Time: 9:30 a.m. to 3:30 p.m.

Agenda: Development of Strategic Plan.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Joan T. Harmon, Director, Division of Extramural Activities, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd., Suite 200, Bethesda, MD 20892, (301) 451–4776, *harmonj@nibib.nih.gov.*

Dated: December 4, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30723 Filed 12–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4)

and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: December 19, 2003.

Time: 3 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20895, (Telephone conference Call).

Contact Person: Katherine L. White, PhD, Scientific Review Administrator, AIDS Preclinical Research Review Branch, Scientific Review Program, NIH/NIAID, 6700 B Rockledge Drive, Room 3131, Bethesda, MD 20892, (301) 435–1615, *Kw174b@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research 93.856, and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 4, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30724 Filed 12–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: December 17, 2003.

Time: 11:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20895, (Telephone Conference Call).

Contact Person: Katherine L. White, PhD, Scientific Review Administrator, AIDS Preclinical Research Review Branch, Scientific Review Program, NIH/NIAID, 6700 B Rockledge Drive, Room 3131, Bethesda, MD 20892, (301) 435–1615, *kw174b@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: December 18, 2003.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20895, (Telephone Conference Call).

Contact Person: Katherine L. White, PhD, Scientific Review Administrator, AIDS Preclinical Research Review Branch, Scientific Review Program, NIH/NIAID, 6700 B Rockledge Drive, Room 3131, Bethesda, MD 20892, (301) 435–1615, *kw174b@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 4, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30726 Filed 12–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Drug Resistance.

Date: December 11, 2003.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892. (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–5 (06) M: PKD Studies.

Date: December 17, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call).

Contact Person: M. James Scherbenske, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892. 301–435–1173.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG 1 SSS–5 (04) M: Transport Studies.

Date: December 18, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Contact Person: M. James Scherbenske, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892. 301–435–1173.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, APO E and Gamma Secretases.

Date: January 6, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7850, Bethesda, MD 20892. (301) 435–1251. *bannerc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 4, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30719 Filed 12–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, December 11, 2003, 1 p.m. to December 11, 2003, 2 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on November 28, 2003, 68 FR 66841–66842.

The meeting will be held on December 29, 2003, from 1 p.m. to 3 p.m. The location remains the same. The meeting is closed to the public.

Dated: December 4, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30722 Filed 12–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG), Notice of Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Cancellation of meeting.

SUMMARY: The Bureau of Reclamation is canceling the Adaptive Management Work Group Meeting scheduled for January 7–8, 2004, in Phoenix, Arizona due to additional time required to prepare the Fiscal Year 2005 budget and other agenda items. The meeting will be rescheduled for March 2004 and will be noticed in the **Federal Register** when arrangements have been made.

FOR FURTHER INFORMATION CONTACT: Dennis Kubly, telephone (801) 524–3715; faxogram (801) 524–3858; or via e-mail at *dkubly@uc.usbr.gov.*

Dated: November 26, 2003.

Dennis Kubly,

Chief, Adaptive Management Group, Environmental Resources Division, Upper Colorado Regional Office, Salt Lake City, Utah.

[FR Doc. 03–30680 Filed 12–10–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1062 (Preliminary)]

Kosher Chicken From Canada

AGENCY: International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–1062 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of kosher chicken from Canada, provided for in subheadings 0207.11.00, 0207.12.00, 0207.13.00, or 0207.14.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by January 15, 2004. The Commission's views are due at Commerce within five business days thereafter, or by January 23, 2004.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: December 1, 2003.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: Background—This investigation is being instituted in response to a petition filed on December 1, 2003, by Empire Kosher Poultry, Inc., Mifflintown, PA.

Participation in the investigation and public service list—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on December 22, 2003, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Debra Baker (202–205–3180) not later than December 18, 2003, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before December 29, 2003, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: December 8, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–30729 Filed 12–10–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreements in *Philip Services Corporation* Under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and Resource Conservation and Recovery Act (RCRA)

Notice is hereby given that on December 4 and/or 7, 2003, four proposed Settlement Agreements were filed with the United States Bankruptcy Court for the Southern District of Texas in *In re Philip Services Corporation*, No. 03–37718–H2–11 (Bankr. S.D. Tex.). The Settlement Agreements among the United States on behalf of U.S. EPA, the States of Michigan, South Carolina, Alabama, and Washington, and Debtor Philip Services Corporation and its affiliated Debtors resolve CERCLA and RCRA claims as provided in the Settlement Agreements for facilities located on Schaefer Highway in Detroit, Michigan; Vernsdale Road in Rock Hill, South Carolina; 27th Avenue in Birmingham, Alabama; the Pasco Sanitary Landfill in Pasco, Washington; the Pier 91 Site in Seattle, Washington; and the Landsburg Mine Site near Ravensdale, Washington.

Under the Michigan Settlement Agreement, the Governmental Parties will receive the benefit of $559,126 from financial assurance and $823,000 to be paid over five years. Under the South Carolina Settlement Agreement, the Governmental Parties will receive the benefit of $2,981,934 in financial assurance and $1.3 million to be paid over five years. Under the Alabama Settlement Agreement, the Governmental Parties will receive the benefit of $500,000 over five years. Under the Washington Agreement, Debtors are paying $1,000,050 and providing an additional allowed general unsecured claim of $45,000,000 for the Pasco Sanitary Landfill site, paying $740,000 for the Pier 91 Site, and paying $150,000 towards the Landsberg Mine Site.

The Department of Justice will receive comments relating to the Settlement Agreements if such comments are received by the close of Business on December 18, 2003. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, should refer to *In re Philips Services Corporation*, No. 03–37718–H2–11 (Bankr. S.D., Tex.), D.J. Ref. 90–11–3–06852/1, and may be faxed to (202) 514–0097, Attn: Alan Tenenbaum. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Settlement Agreements may be examined at the Office of the United States Attorney for the Southern District of Texas, 910 Travis, Suite 1500, Houston, TX 77005, and at the United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. During the public comment period, the Settlement Agreements may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Settlement Agreements may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S., Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the a;mount of $8.00 for the Michigan Settlement Agreement, $8.25 for the South Carolina Settlement Agreement, $8.25 for the Alabama Settlement Agreement, and $10.50 for the Washington Settlement Agreement and related documents (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–30660 Filed 12–10–03; 8:45 am]

BILLING CODE 4410–15–M

MARINE MAMMAL COMMISSION

Committee Management; Notice of Establishment; Advisory Committee on Acoustic Impacts on Marine Mammals

AGENCY: Marine Mammal Commission.

ACTION: Charter filed for the Advisory Committee on Acoustic Impacts on Marine Mammals.

SUMMARY: The Chairman of the Marine Mammal Commission (Commission) has determined that the establishment of the Advisory Committee on Acoustic Impacts on Marine Mammals (Committee) is necessary and in the public interest in connection with fulfilling Commission mandates created under the Omnibus Appropriations Act of 2003 (Pub. L. 108–7). This determination follows consultation with the Office of Management and Budget and with the Committee Management Secretariat, General Services Administration (GSA).

In accordance with the Federal Advisory Committee Act, the charter has been filed with the GSA, the chair of the Commission, the Senate Committee on Commerce, Science, and Transportation, and the House of Representatives Committee on Resources. A copy of the charter has also been submitted to the Library of Congress.

Name of Committee: Advisory Committee on Acoustic Impacts on Marine Mammals

Purpose and Objective: Committee members will participate in a policy dialogue to review available information, identify research needs, and recommend management actions and strategies related to the impacts of antyhropogenic sound on marine mammals.

Balanced Membership Plans: In an effort to assess the need for an advisory committee, over eighty individuals from a wide variety of interested stakeholder groups were interviewed. The Commission also solicited comments and nominations for the Committee in the **Federal Register**.

The Committee will consist of approximately 26 members representing entities who activities introduce anthropogenic sounds into the marine environment, government regulatory and funding agencies, non-governmental organizations including environmental groups, and scientists with pertinent expertise. Every effort has been made to select Committee members who have a high level of expertise and interest concerning the impacts of sound on marine mammals and other components of the marine environment, who have decision-making authority, and who have demonstrated their ability to represent a constituency and communicate effectively with constituents whose interests they represent.

Duration: Continuing.

Responsible Commission Official: David Cottingham, Executive Director, Marine Mammal Commission, 4340 East-West Hwy., Rm. 905, Bethesda, MD 20814.

DATES: The Commission intends to appoint Committee members in December 2003 and convene the Committee's first meeting in early February 2004. A list of Committee members will be posted on the Commission's Web site (*www.mmc.gov*).

FOR FURTHER INFORMATION CONTACT: Erin Vos, Project Manager for Sound-Related Meetings and Actions, Marine Mammal Commission, 4340 East-West Hwy., Rm. 905, Bethesda, MD 20814, e-mail: *evos@mmc.gov,* tel.: (301) 504–0087, fax: (301) 504–0099; or visit the Commission Web site at *www.mmc.gov.*

Dated: December 4, 2003.

David Cottingham,

Executive Director.

[FR Doc. 03–30682 Filed 12–10–03; 8:45 am]

BILLING CODE 6820–31–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369, 50–370, 50–413, and 50–414]

Duke Energy Corporation, McGuire Nuclear Station, Unit Nos. 1 and 2; North Carolina Electric Membership Corporation, Saluda River Electric Cooperative, Inc. for Catawba Nuclear Station, Unit No. 1; and North Carolina Municipal Power Agency No. 1, Piedmont Municipal Power Agency for Catawba Nuclear Station, Unit No. 2; Notice of Issuance of Renewed Facility Operating License Nos. NPF–9, NPF–17, NPF–35, and NPF–52 for an Additional 20-Year Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Renewed Facility Operating License Nos. NPF–9, NPF–17, NPF–35, and NPF–52 to Duke Energy Corporation (the licensee), the operator of the McGuire Nuclear Station, Unit Nos. 1 and 2 (McGuire, Units 1 and 2), and North Carolina Electric Membership Corporation and Saluda River Electric Cooperative, Inc. for Catawba Nuclear Station, Unit No. 1 (Catawba, Unit 1), and North Carolina Municipal Power Agency No. 1 and Piedmont Municipal Power Agency for Catawba Nuclear Station, Unit No. 2 (Catawba, Unit 2). Renewed Facility Operating License No. NPF–9 authorizes operation of McGuire, Unit 1, by the licensee at reactor core power levels not in excess of 3411 megawatts thermal in accordance with the provisions of the McGuire, Unit 1, renewed license and its Technical Specifications. Renewed Facility Operating License No. NPF–17 authorizes operation of McGuire, Unit 2, by the licensee at reactor core power levels not in excess of 3411 megawatts thermal in accordance with the provisions of the McGuire, Unit 2, renewed license and its Technical Specifications. Renewed Facility Operating License No. NPF–35 authorizes operation of Catawba, Unit 1, by Duke Energy Corporation at reactor core power levels not in excess of 3411 megawatts thermal in accordance with the provisions of the Catawba, Unit 1, renewed license and its Technical Specifications. Renewed Facility Operating License No. NPF–52 authorizes operation of Catawba, Unit 2, by Duke Energy Corporation at reactor core power levels not in excess of 3411 megawatts thermal in accordance with the provisions of the Catawba, Unit 2, renewed license and its Technical Specifications.

McGuire, Units 1 and 2, are pressurized water nuclear reactors located in Mecklenburg County, 17 miles northwest of Charlotte, North Carolina. Catawba, Units 1 and 2, are pressurized water nuclear reactors located in York County, 18 miles southwest of Charlotte, North Carolina.

The applications for the renewed licenses complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR Chapter I, the Commission has made appropriate findings, which are set forth in each license. Prior public notice of the action involving the proposed issuance of these renewed licenses and of an opportunity for a hearing regarding the proposed issuance of these renewed licenses was published in the **Federal Register** on July 16, 2001 (66 FR 37072).

For further details with respect to this action, see (1) the Duke Energy Corporation's license renewal applications for McGuire, Units 1 and 2, and Catawba, Units 1 and 2, dated June 13, 2001, as supplemented by letters dated March 1, March 8, March 11, March 15, April 15, June 25 (two letters), June 26, July 9, October 2, October 28, November 5, November 14, November 18, November 21, and December 16, 2002; (2) the Commission's safety evaluation report, dated August 14, 2002, and March 2003 (NUREG–1772); (3) the licensee's updated final safety analysis report; and (4) the Commission's final environmental impact statement (NUREG–1437, Supplements 8 and 9), dated December 2002. These documents are available at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, first floor, Rockville, Maryland 20852, and can be viewed from the NRC Public Electronic Reading Room at (*http://www.nrc.gov/reading-rm/adams.html*).

Copies of Renewed Facility Operating License Nos. NPF–9, NPF–17, NPF–35, and NPF–52 may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of Regulatory Improvement Programs. Copies of the safety evaluation report (NUREG–1772), and the final

environmental impact statement (NUREG–1437, Supplements 8 and 9) may be purchased from the National Technical Information Service, Springfield, Virginia 22161–0002 (*http://www.ntis.gov*), 1–800–553–6847, or the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954 (*http://www.access.gpo.gov/su_docs/index.html*), 202–512–1800. All orders should clearly identify the NRC publication number and the requestor's Government Printing Office deposit account number or VISA or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 5th day of December 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. 03–30686 Filed 12–10–03; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Request for Internet Services.

The RRB uses a Personal Identification Number (PIN)/Password system that allows RRB customers to conduct business with the agency electronically. As part of the system, the RRB collects information needed to establish a unique PIN/Password that allows customer access to RRB Internet-based services. The information collected is matched against records of the railroad employee that are maintained by the RRB. If the information is verified, the request is approved and the RRB mails a Password Request Code (PRC) to the requestor. If the information provided cannot be verified, the requestor is advised to contact the nearest field office of the RRB to resolve the discrepancy. Once a PRC is obtained from the RRB, the requestor can apply for a PIN/Password online. Once the PIN/Password has been established, the requestor has access to RRB Internet-based services. The RRB estimates that approximately 12,000 requests for PRC's and PIN/Passwords are received annually and that it takes 5 minutes per response to secure a PRC and 1.5 minutes to establish a PIN/Password. Completion is voluntary, however, the RRB will be unable to provide a PRC or allow a requestor to establish a PIN/Password (thereby denying system access), if the requests are not completed. The RRB proposes minor, non-burden impacting, editorial changes to the PRC and PIN/Password screens.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–30662 Filed 12–10–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27771]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

December 5, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 29, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 29, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

KeySpan Corporation, et al.

[70–9957]

KeySpan Corporation (''KeySpan''), a registered holding company, and its subsidiary, KeySpan Insurance Company (''KIC'') (collectively, ''Applicants''), One MetroTech Center, Brooklyn, New York 11201, have filed, under sections 9(a), 10, 12(b) and 13(b) of the Act and rules 45 and 54 under the Act, a post-effective amendment to a previous application.

Applicants ask to expand the authority granted to KeySpan by order dated April 24, 2003 (Holding Co. Act Release No. 27669) (''Captive Order''). In the Captive Order, the Commission authorized KeySpan to organize a subsidiary to engage in activities associated with a captive insurance company. In accordance with the Captive Order, KeySpan formed KIC to provide certain insurance services to KeySpan and its subsidiaries (''KeySpan System''). Applicants request authority for KIC to expand the insurance it provides to include property, boiler and machinery, and ''all risk'' insurance services for the KeySpan System.

The Captive Order authorized KeySpan to organize a captive insurance company that would reinsure certain commercial insurance bought by the KeySpan System from commercial insurance companies. In particular, KIC is authorized to provide to the KeySpan System automobile liability, workers' compensation and general liability insurance coverage. In addition, KIC is authorized to provide general liability and workers' compensation insurance to its principal contractor under an Owner's Controlled Insurance Program (''OCIP''). The contractor provides

scheduled gas main construction and maintenance to the KeySpan System. Except for the general liability and workers' compensation insurance provided to the principal contractor under OCIP, KIC does not intend to extend or provide to any non-affiliated company any insurance services, unless otherwise expressly authorized by the Commission. Currently, KIC assumes the risk of the more predictable loss layer from the commercial insurers for automobile and general liability losses and for workers' compensation. Commercial insurance continues to be purchased for ''unpredictable'' losses above the predictable loss layers for automobile and general liability and for workers' compensation from various commercial insurance companies. To the extent that KIC procures insurance at a lower cost than could be obtained through traditional insurers, the savings in the premiums flow through ratably to the KeySpan System companies through the operation of the allocation methodology used to establish premiums.

Applicants propose that KIC offer property, boiler and machinery, and ''all risk'' insurance services to the KeySpan System. KeySpan currently insures these property-related risks through the traditional, commercial insurance market. It has various deductibles ranging from $100,000 on common structures to $2,500,000 on the KeySpan System's power generation units. It purchases limits up to $2 billion from the commercial insurance market. Due to the state of the commercial insurance market, KeySpan has not been able to obtain coverage below the minimum $100,000 deductible. KeySpan says that this has created a burden for some of the smaller KeySpan System companies that do not want to expose themselves to such a large self-insured retention.

KIC could be utilized, Applicants state, to provide property-related coverage with smaller self-insured retentions to those KeySpan System companies that do not have such a large capacity for risk. KIC would allocate premiums based on the property values at KeySpan System company locations down to a level of a $10,000 deductible. This added service would not increase costs to the KeySpan System because such costs are currently, and would continue to be, paid through operating expenses, Applicants state. There would be no additional staffing requirements for KeySpan System companies. To the extent that KIC can provide insurance at a lower cost than that which could be obtained through traditional insurers, the savings will continue to flow through ratably to the KeySpan System companies through the allocation methodology used to establish premiums.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–30700 Filed 12–10–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48872; File No. SR–Amex–2003–100]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Broker Voting on Stock Option and Equity Compensation Plans

December 3, 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 19, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On November 21, 2003, the Amex filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal and Amendment No. 1 on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 577 and section 723 of the Amex *Company Guide* to provide that a member organization holding a customer's securities in ''street'' name will not be permitted to give a proxy to vote such shares without instructions from the customer when the matter to be voted upon authorizes the implementation of or material amendment to a stock option or equity compensation plan.

Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deleted language is [bracketed].

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American Stock Exchange Constitution and Rules

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Rule 577. Giving Proxies by Member Organization

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* * * Commentary

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.11 When member organization may not vote without customer instructions.—In the list of meetings of stockholders, after proxy material has been reviewed by the Exchange, each meeting will be designated by an appropriate symbol to indicate either (a) that members may vote a proxy without instructions of beneficial owners, (b) that members may not vote specific matters on the proxy, or (c) that members may not vote the entire proxy.

Generally speaking, a member organization may not give a proxy to vote without instructions from beneficial owners when the matter to be voted upon:

(1) through (8)—No change.

(9) involves waiver or modification of preemptive rights [(except when the company's proposal is to waive such rights with respect to shares being offered pursuant to stock option or purchase plans involving the additional issuance of not more than 5% of the company's outstanding common shares (see Item 12))];

(10) and (11)—No change.

(12) [authorizes issuance of stock, or options to purchase stock, to directors, officers, or employees in an amount which exceeds 5% of the total amount of the class outstanding] *authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan (whether or not stockholder approval of such plan is required by Section 711 of the Exchange's Company Guide);*

(13) through (18)—No change.

* * * * *

American Stock Exchange Company Guide

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated November 20, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange made technical corrections to the proposed rule change to correct typographical errors in the proposed rule text and an incorrect footnote citation in the proposal.

Section 723. Giving Proxies By Member Organization (See Exchange Rule 577)

* * * * *

.11 When member organization may not vote without customer instructions.—In the list of meetings of stockholders, after proxy material has been reviewed by the Exchange, each meeting will be designated by an appropriate symbol to indicate either (a) that members may vote a proxy without instructions of beneficial owners, (b) that members may not vote specific matters on the proxy, or (c) that members may not vote the entire proxy.

Generally speaking, a member organization may not give a proxy to vote without instructions from beneficial owners when the matter to be voted upon:

(1) through (8)—No change.

(9) involves waiver or modification of preemptive rights [(except when the company's proposal is to waive such rights with respect to shares being offered pursuant to stock option or purchase plans involving the additional issuance of not more than 5% of the company's outstanding common shares (see Item 12))];

(10) and (11)—No change.

(12) [authorizes issuance of stock, or options to purchase stock, to directors, officers, or employees in an amount which exceeds 5% of the total amount of the class outstanding] *authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan (whether or not stockholder approval of such plan is required by Section 711 of the Exchange's Company Guide);*

(13) through (18)—No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

According to the Amex, the Amex and the New York Stock Exchange, Inc. (''NYSE'') have historically had virtually identical rules with respect to the circumstances under which a broker holding a customer's securities in ''street name'' may give a proxy to vote such shares on a particular issuer proposal without the beneficial owner's instructions. Amex Rule 577 and section 723 of the Amex *Company Guide* provide that the Exchange will review issuer proxy materials and designate with respect to each proposal whether Amex member organizations holding customer shares may vote without instructions from the beneficial owner (*i.e.,* the proposal is ''routine'') or may only vote with instructions (*i.e.,* the proposal is ''non-routine'').

On June 30, 2003, the Commission jointly approved NYSE and National Association of Securities Dealers, Inc. (''NASD'')/The Nasdaq Stock Market, Inc. (''Nasdaq'') proposals that required companies to obtain shareholder approval of all equity compensation plans, subject to limited exceptions, and approved rules in the NYSE proposal that classified such plans as ''non-routine'' for broker voting purposes.[4] On October 9, 2003, the Commission approved a comparable Amex proposal with respect to shareholder approval of stock option and equity compensation plans.[5] That proposal, however, did not address the proxy voting issue being addressed in this instant filing.

The Amex represents that the prior NYSE rules had provided, and that the current Amex rules do provide, that stock option plans are ''routine'' if all proposals included in the proxy to be voted on do not authorize the issuance of in excess of 5% of the total amount of the shares outstanding to directors, officers or employees. In order to provide greater consistency between marketplaces, the Amex proposes to amend Amex Rule 577 and section 723 of the Amex *Company Guide* to classify stock option and equity compensation plans as ''non-routine'' for broker voting purposes, thereby requiring instructions from the beneficial owner before a broker can give a proxy on matters related to the implementation of or material amendment to an equity compensation plan. The Amex further proposes that this proposed change become effective as of January 31, 2004.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act[7] in general and furthers the objectives of section 6(b)(5)[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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.

[4] The Commission notes that NASD rules do not allow broker voting on any matters. *See* Securities Exchange Act Release No. 48108 (June 30, 2003), 68 FR 39995 (July 3, 2003) (order approving File Nos. SR–NYSE–2002–46 and SR–NASD–2002–140) (''NYSE and Nasdaq proposals''). *See also* Securities Exchange Act Release No. 48627 (October 14, 2003), 68 FR 60426 (October 22, 2003) (notice of filing and order granting accelerated approval to File No. SR–NASD–2003–130, incorporating amendments to the NASD's recently approved shareholder approval rules for equity compensation plans applicable to Nasdaq quoted securities). The Commission also published a correction to the notice of File No. SR–NASD–2003–130. *See* Securities Exchange Act Release No. 48627A (October 22, 2003), 68 FR 61532 (October 28, 2003). The **Federal Register** subsequently published another correction. *See* Securities Exchange Act Release No. 48627A, 68 FR 62161 (October 31, 2003). Most recently, on October 31, 2003, the Commission simultaneously approved similar proposals regarding shareholder approval of equity compensation plans, including a preclusion on broker voting on such plans, for the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc, the Pacific Exchange Inc., the Philadelphia Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., and the Cincinnati Stock Exchange on an accelerated basis. *See* Securities Exchange Act Release Nos. 48733 (October 31, 2003), 68 FR 63143 (November 7, 2003); 48734 (October 31, 2003), 68 FR 63159 (November 7, 2003); 48735 (October 31, 2003), 68 FR 63173 (November 7, 2003); 48736 (October 31, 2003), 68 FR 63180 (November 7, 2003); 48737 (October 31, 2003), 68 FR 63150 (November 7, 2003); and 48738 (October 31, 2003), 68 FR 63166 (November 7, 2003) (collectively, ''the Regional Exchange proposals'').

[5] *See* Securities Exchange Act Release No. 48610 (October 9, 2003), 68 FR 59650 (October 16, 2003) (order approving File No. SR–Amex–2003–42).

[6] The Amex has represented that it will notify its members of the effective date of the proposed rule change on the Amex's website. Telephone conversation between Claudia Crowley, Vice President, Listing Qualifications, Amex, and Sapna C. Patel, Special Counsel, Division of Market Regulation, Commission, on November 20, 2003.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

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. 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–Amex–2003–100. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hard copy or by e-mail, but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2003–100 and should be submitted by January 2, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the Amex's proposal is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b) of the Act.[9] Specifically, the Commission finds that approval of the Amex's proposal is consistent with section 6(b)(5) of the Act[10] in that it is designed to, among other things, facilitate transactions in securities; 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 a national market system; and in general, to protect investors and the public interest, and does not permit unfair discrimination among issuers.

When it approved Amex's proposal relating to shareholder approval of equity compensation plans,[11] the Commission had urged the Amex to adopt a rule similar to the NYSE's rules prohibiting members and member organizations from giving a proxy to vote without explicit instructions from beneficial owners when the matter to be voted on authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan.[12]

The Commission believes that the Amex's amended provision precluding broker voting on equity compensation plans is consistent with the Act. The Commission notes that equity compensation plans have become an important issue for shareholders. Because of the potential for dilution from such issuances, shareholders should be making the determination rather than brokers on their behalf. The Commission further notes that, generally under Amex rules, only matters that are considered routine are allowed to be voted on by a broker on behalf of a beneficial owner. Because of the recent significance and concern about equity compensation plans, the Commission believes that it is appropriate for the Amex to decide that shareholder approval of equity compensation plans is not a routine matter and must be voted on by the beneficial owner. As noted above, NASD rules do not provide for broker voting on any matters, and NYSE rules prohibit broker voting on equity compensation plans.[13] Most recently, the Commission approved similar broker voting prohibitions for all of the regional exchanges.[14] Therefore, the Exchange's proposed provision would be consistent with NASD and NYSE rules regarding broker voting on equity compensation plans, as well as with the rules of the regional exchanges. In its approval of the NYSE and Nasdaq proposals, the Commission had considered the impact on smaller issuers, such as those listed on Nasdaq and the Amex, in response to the comments received on this issue.[15] The Commission believes that the benefit of ensuring that the votes reflect the views of beneficial shareholders on equity compensation plans outweighs the potential difficulties in obtaining the vote.

The Commission notes that the Amex has implemented a transition period that would make the proposed new preclusion on broker voting on equity compensation plans effective as of January 31, 2004. The Commission further notes that this transition period is consistent with the transition periods recently approved for the regional exchanges and should ensure that the Amex's broker voting prohibition is in place for the upcoming proxy season and will be implemented by the same time as the other marketplaces.

V. Accelerated Approval of the Amex's Proposal and Amendment No. 1

The Commission finds good cause for approving the Amex's proposal and Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** The Commission notes that the Amex's proposal is similar to rules that it has recently approved for the NYSE and the regional exchanges on this issue, and is consistent with current NASD rules.[16] The Commission believes that it has already considered and addressed issues that may be raised by the Amex's proposal when it approved the NYSE and Nasdaq proposals.[17] The Commission believes that accelerated approval of the Amex's proposal will allow for immediate harmonization of, and consistency in, the broker voting requirements on equity compensation plans among all of the exchanges and the NASD/Nasdaq. The Commission further believes that making the Amex's rule change effective as of January 31, 2004, is consistent with the transition periods that the Commission has recently approved for the regional exchanges, and will allow the Amex's new broker voting prohibition to be in place for this upcoming proxy season. Further, accelerated approval should allow sufficient time for Amex members to make any necessary adjustments to implement the change by the transition date. Finally, accelerated approval of the Amex proposal will immediately

[9] 15 U.S.C. 78f(b). In approving the Amex's proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] *See supra* note 5.

[12] *See* NYSE Rule 452 and section 402.08 of the NYSE's *Listed Company Manual.*

[13] *See* NASD Rule 2260 and *supra* note 12.

[14] *See* the Regional Exchange proposals, *supra* note 4.

[15] *See also supra* notes 4, 12, and 13.

[16] *See supra* note 4. *See also* section 303A(8) of the NYSE's *Listed Company Manual;* NASD Rule 4350(i) and IM–4350–5. *See also* supra notes 12 and 13.

[17] *See supra* note 4.

impose the same regulatory standards on Amex members as those imposed on members of other exchanges and the NASD/Nasdaq. Based on the above, the Commission finds good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act [18] to approve the Amex's proposal and Amendment No. 1 on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[19] that the proposed rule change (SR–Amex–2003–100) and Amendment No. 1 are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–30663 Filed 12–10–03; 8:45 am]

BILLING CODE 8010–01–P

[18] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48886; File No. SR–Amex–2003–103]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Issuer Fees

December 5, 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 25, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. 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 Amex proposes to amend Sections 140, 141, 142 and 144 of the Amex *Company Guide* to designate as non-refundable the current one-time $5,000 application processing fee, to establish a late charge of $2,500 payable by issuers whose annual listing fees are more than 60 days past due, and to increase fees for listing additional shares. The Exchange proposes to further amend Sections 141 and 142 of the Amex *Company Guide* to clarify that annual listing fees and additional listing fees do not apply to Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Sections 140 through 146 of the Amex *Company Guide* describe the Exchange's listing fees. In this proposed rule change, the Exchange proposes to amend Sections 140, 141, 142 and 144 to: (i) Designate as non-refundable the current one-time $5,000 application processing fee, (ii) establish a late charge of $2,500 payable by issuers whose annual listing fees are more than 60 days past due, and (iii) increase fees for listing additional shares. The Exchange believes these fee changes are necessary to adequately fund the Exchange's listed equities business and to develop value-added services for Amex listed issuers. In addition, the Exchange proposes to further amend Sections 141 and 142 to clarify that annual listing fees and additional listing fees do not apply to Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges.

(i) *Section 140 (Original Listing Fees) and Section 144 (Refunds of Listing Fees).* The Exchange collects original listing fees for new equity, warrant and debt issues in accordance with Section 140 of the Amex *Company Guide.* In addition to original listing fees, a one-time $5,000 application processing fee is assessed companies that do not have a stock, warrant or debt issue already listed on the Exchange.[3] Pursuant to paragraphs (a) and (b) of Section 144, the Exchange refunds $3,500 of the application processing fee if the applicant: (i) Withdraws its application, (ii) fails to gain listing approval, or (iii) cancels a listing authorization without issuing the authorized securities. The Exchange proposes to amend Sections 140 and 144 to designate the full amount of the $5,000 application processing fee as non-refundable.

(ii) *Section 141 (Annual Fees).* The Exchange collects annual listing fees in accordance with Section 141 of the Amex *Company Guide.* Currently, no penalties are assessed issuers that do not pay such fees in a timely manner. To encourage timely payment, the Exchange proposes to amend Section 141 to establish a late charge of $2,500 payable by issuers that fail to remit annual listing fees within 60 days of the billing date.[4] The Exchange proposes to delete the requirement that annual fees that are prorated are payable within thirty days of the date the company receives the invoice. In addition, the Exchange also proposes to delete the requirement that annual fees that are prorated for bond issues are payable in December of year in which they are listed. According to the Exchange, these deletions would result in these fees being payable within sixty days of the invoice date, after which time the proposed late fee would apply.[5] Finally, the Exchange proposes to amend Section 141 to clarify that annual listing fees do not apply to Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges as specified in Commentary .01 of Section 950 of the Amex *Company Guide.*

(iii) Section 142 (Additional Listing Fees). In accordance with paragraph (a) of Section 142 of the Amex *Company Guide,* the current fee for listing additional shares is 2 cents per share, subject to a minimum fee of $2,000 (for 100,000 shares or less) and a maximum fee of $22,500 (for 1,125,000 shares or more) per application. The annual maximum fee per company for listing additional shares is currently $45,000. The Exchange proposes to amend paragraph (a) of Section 142 to: (i) Increase the maximum fee per application from $22,500 to $45,000

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Index Fund Shares listed under Rule 1000A, Trust Issued Receipts listed under Rule 1200 and Closed-End Funds listed under Section 101 of the Amex *Company Guide* are assessed an original listing fee of $5,000 for each series or fund, but not an application processing fee.

[4] The proposed $2,500 late fee will not apply to Trust Issued Receipts, Index Fund Shares, or debt issues.

[5] Telephone conversation between Eric Van Allen, Assistant General Counsel, Amex and Kelly M. Riley, Senior Special Counsel, Division of Market Regulation, Commission, on December 5, 2003.

and, as a result, raise the number of shares associated with the maximum fee from 1,125,000 to 2,250,000 shares ($0.02 × 2,250,000 = $45,000); and (ii) increase the annual maximum fee per company from $45,000 to $60,000. The minimum fee per application would remain unchanged. The Exchange also proposes to amend paragraph (d) of Section 142 (''Substitution Listing'') to raise the maximum fee for substituted shares and excess shares from $27,500 to $50,000 per application (corresponding to the proposed $22,500 increase in maximum fees for listing additional shares under Section 142(a)). Furthermore, similar to the abovementioned proposed amendment to Section 141, the Exchange proposes to amend Section 142(a) to clarify that the additional listing fees do not apply to Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges as specified in Commentary .01 of Section 950 of the Amex *Company Guide.*

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4) of the Act,[7] in particular in that the proposed rule change provides for the equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using Exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to 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 Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Amex has requested accelerated effectiveness pursuant to Section 19(b)(2) of the Act.[8] In support of its request, the Exchange represents that these fee changes are necessary to adequately fund the Exchange's listed equities business and develop value-added services for Amex listed issuers.

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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–Amex–2003–103. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 Amex. All submissions should refer to File No. SR–Amex–2003–103 and should be submitted by January 2, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30701 Filed 12–10–03; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78(f)(b)(4).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48879; File No. SR–CBOE–2003–36]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Trading Crowd Space Dispute Resolution Procedures

December 4, 2003.

I. Introduction

On October 20, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new CBOE Rule 24.21, ''Index Crowd Space Dispute Resolution Procedures,'' which establishes guidelines and procedures for resolving disputes among CBOE members concerning the ability to occupy a space in an index option trading crowd.

The proposed rule change was published for comment in the **Federal Register** on October 31, 2003.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[4] which requires, among other things, that the rules of a national securities exchange be 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 a national market system, and, in general, to protect investors and the public interest.[5] The proposal is also consistent with Section 6(b)(4) of the Act,[6] which requires, among other things, the equitable allocation of reasonable dues, fees and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48702 (October 27, 2003), 68 FR 62122.

[4] 15 U.S.C. 78f(b)(5).

[5] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(4).

other charges among members. The Commission believes that the procedures established by the proposal are designed to provide a fair and impartial process for resolving trading crowd space disputes among CBOE members. According to the CBOE, the recent increase in trading volume and size of trading crowds for certain index options has created a lack of trading spots in certain trading pits.[7] The proposal permits any CBOE member to request the CBOE's assistance in resolving an index option trading crowd space dispute.[8] The proposal is designed to encourage mediated resolutions by requiring the parties to a trading crowd space dispute to cooperate with the Chairman of the FPC in his efforts to mediate before they may request a hearing. In addition, the Hearing Fee, which escalates under certain circumstances set forth in CBOE Rule 24.21(e), should further encourage parties to resolve trading crowd space disputes through mediation rather than through the hearing process.

If a dispute is not resolved through mediation, a CBOE member may request a hearing. The Commission believes that the proposal establishes procedures for selecting impartial Hearing Panels and that the written guidelines in CBOE Rule 24.21(j) should provide the Hearing Panels with guidance in rendering decisions. In addition, the Commission notes that any party may appeal the decision of a Hearing Panel under Chapter XIX of the CBOE's rules.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CBOE–2003–36) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30702 Filed 12–10–03; 8:45 am]

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[7] The proposal will apply only to CBOE members who trade OEX, SPX, DJX, and DIA options on the floor of the CBOE or who trade any other index options not located at a station shared with equity options, as determined by the appropriate floor procedure Committee (''FPC'').

[8] *Id.*

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48871; File No. SR–CHX–2003–38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated To Extend a Pilot Rule Interpretation Relating to Trading of Nasdaq/NM Securities in Subpenny Increments

December 3, 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 December 1, 2003, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through June 30, 2004, the pilot rule interpretation relating to the trading of Nasdaq/NM securities in subpenny increments. The pilot is due to expire on December 1, 2003. The CHX does not propose to make any substantive or typographical changes to the pilot; the only change is an extension of the pilot's expiration date through June 30, 2004. The text of the proposal is available at the Commission and at the CHX.

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 CHX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 6, 2001, the Commission approved, on a pilot basis through July 9, 2001, a pilot rule interpretation (CHX Article XXX, Rule 2, Interpretation and Policy .06 ''Trading in Nasdaq/NM Securities in Subpenny Increments'')[5] that requires a CHX specialist (including a market maker who holds customer limit orders) to better the price of a customer limit order in his book which is priced at the national best bid or offer (''NBBO'') by at least one penny if the specialist determines to trade with an incoming market or marketable limit order. The pilot has been extended several times and is now due to expire on December 1, 2003.[6] The CHX now proposes to extend the pilot through June 30, 2004. The CHX proposes no other changes to the pilot, other than extending it through June 30, 2004.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[7] In particular, the CHX believes the proposal is consistent with Section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). The Commission waived the 5-day pre-filing notice requirement.

[5] *See* Securities Exchange Act Release No. 44164 (April 6, 2001), 66 FR 19263 (April 13, 2001) (SR–CHX–2001–07).

[6] *See* Securities Exchange Act Release Nos. 44535 (July 10, 2001), 66 FR 37251 (July 17, 2001) (extending the pilot through November 5, 2001); 45062 (November 15, 2001), 66 FR 58768 (November 23, 2001) (extending the pilot through January 14, 2002); 45386 (February 1, 2002), 67 FR 6062 (February 8, 2002) (extending the pilot through April 15, 2002); 45755 (April 15, 2002), 67 FR 19607 (April 22, 2002) (extending the pilot through September 30, 2002); 46587 (October 2, 2002), 67 FR 63180 (October 10, 2002) (extending the pilot through January 31, 2003); and 47372 (February 14, 2003), 68 FR 8955 (February 26, 2003) (extending the pilot through May 31, 2003); 47961 (May 30, 2003), 68 FR 34448 (June 9, 2003) (extending the pilot through December 1, 2003).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] 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.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through June 30, 2004, and allow the Commission to further study the trading of Nasdaq/NM securities in subpenny increments. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to SR–CHX–2003–38. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 CHX. All submissions should refer to file number SR–CHX–2003–38 and should be submitted by January 2, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–30704 Filed 12–10–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48878; File No. SR–NASD–2003–173]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Nasdaq Closing Cross

December 4, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 25, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. 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

Nasdaq's proposed rule change would establish the Nasdaq Closing Cross for certain Nasdaq National Market securities. There would be three components of the Nasdaq Closing Cross: (1) The creation of On Close and Imbalance Only order types (''Nasdaq Closing Orders'') (2) the dissemination of an order imbalance indicator via electronic means; and (3) closing cross processing in SuperMontage at 4:00:00 that would execute the maximum number of shares at a single, representative price that would be the Nasdaq Official Closing Price. The text of the proposed rule change is set forth below. Proposed new language is in *italics.*

* * * * *

Rule 4709 Nasdaq Closing Cross

(a) Definitions. For the purposes of this rule the term:

(1) ''Imbalance'' shall mean the number of shares of buy or sell MOC or LOC orders that cannot be matched with other MOC or LOC or IO order shares at any given time.

(2) ''Imbalance Only Order'' or ''IO'' shall mean an order to buy or sell at a specified price or better that may be executed only during the Nasdaq Closing Cross and only against an Imbalance. IO orders can be entered between 9:30:01 a.m. and 3:59:59 p.m., but they cannot be cancelled or modified after 3:50:00 except to increase the number of shares or to increase (decrease) the buy (sell) limit price. IO sell (buy) orders will only execute at or above (below) the 4:00:00 SuperMontage offer (bid). All IO orders must be available for automatic execution.

(3) ''Limit On Close Order'' or ''LOC'' shall mean an order to buy or sell at a specified price or better that is to be executed only during the Nasdaq Closing Cross. LOC orders can be entered, cancelled, and corrected between 9:30:01 a.m. and 3:50:00 p.m. and will execute only at the price determined by the Nasdaq Closing Cross. All LOC orders must be available for automatic execution.

(4) ''Market on Close Order'' shall mean an order to buy or sell at the market that is to be executed only during the Nasdaq Closing Cross. MOC orders can be entered, cancelled, and corrected between 9:30:01 a.m. and 3:50:00 p.m. and will execute only at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

price determined by the Nasdaq Closing Cross. All MOC orders must be available for automatic execution.

(5) ''Nasdaq Closing Cross'' shall mean the process for determining the price at which orders shall be executed at the close and for executing those orders.

(6) ''Order Imbalance Indicator'' shall mean a message disseminated by electronic means containing information about MOC, LOC, and IO orders and the price at which those orders would execute at the time of dissemination.

(b) Order Imbalance Indicator. Beginning at 3:50 p.m., Nasdaq shall disseminate by electronic means an Order Imbalance Indicator every 30 seconds until 3:55, and then every 15 seconds until 3:58, and then every 5 seconds until 3:59, and then every second until market close. The Order Imbalance Indicator shall contain the following real time information:

(1) The number of shares represented by MOC, LOC, and IO orders that are paired at the current SuperMontage inside;

(2) The MOC and LOC imbalance at the current SuperMontage best bid or offer, depending on the direction of the imbalance;

(3) The buy/sell direction of any imbalance at the current SuperMontage inside; and

(4) An indicative price range at which the Nasdaq Closing Cross would occur if the Nasdaq Closing Cross were to occur at that time and the percent by which that range varies from the then current SuperMontage inside. The indicative price range contains the following values:

(A) The price at which the MOC, LOC, and IO orders in the Nasdaq Closing Book would execute, and

(B) The price at which both the MOC, LOC, and IO orders and all executable orders in SuperMontage (excluding volume that is available only by order delivery) would execute.

(C) If no price satisfies subparagraph (A) or (B) above, Nasdaq will disseminate the phrase ''market buy'' or ''market sell''.

(c) Processing of Nasdaq Closing Cross.

(1) The Nasdaq Closing Cross will begin at 4:00:00, and after hours trading will commence when the Nasdaq Closing Cross concludes.

(2) The Nasdaq Closing Cross will occur at the price that:

(A) Maximizes the number of shares executed. If more than one such price exists, the Nasdaq Closing Cross shall occur at the price that:

(B) Minimizes the imbalance of on-close orders. If more than one such price exists, the Nasdaq Closing Cross shall occur at the price that:

(C) Minimizes the distance from the 4:00:00 SuperMontage bid-ask midpoint.

(D) If the Nasdaq Closing Cross price established by subparagraphs (A) through (C) above is outside the benchmarks established by Nasdaq by a threshold amount, the Nasdaq Closing Cross will occur at a price within the threshold amounts that best satisfies the conditions of subparagraphs (A) through (C) above. Nasdaq management shall set and modify such benchmarks and thresholds from time to time upon prior notice to market participants.

(3) If the Nasdaq Closing Cross price is selected and fewer than all MOC, LOC and IO orders and fewer than all continuous orders that are available for automatic execution in SuperMontage would be executed, orders will be executed at the Nasdaq Closing Cross price in the following priority:

(A) MOC orders, with time as the secondary priority;

(B) LOC orders, limit orders, IO orders, displayed quotes and reserve interest priced more aggressively than the Nasdaq Closing Cross price;

(C) LOC orders, displayed interest of limit orders, and displayed interest of quotes at the Nasdaq Closing Cross price with time as the secondary priority;

(D) Reserve interest and IO orders at the Nasdaq Closing Cross price with time as the secondary priority; and

(E) Unexecuted MOC, LOC, and IO orders will be canceled.

(4) All orders executed in the Nasdaq Closing Cross will be executed at the Nasdaq Closing Cross price and reported to the consolidated tape with SIZE as the contra party. The Nasdaq Closing Cross price will be the Nasdaq Official Closing Price for stocks that participate in the Nasdaq Closing Cross.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to establish the Nasdaq Closing Cross, a new process for determining the Nasdaq Official Closing Price (''NOCP'') for the most liquid Nasdaq stocks. Nasdaq represents that the proposed Nasdaq Closing Cross is designed to create a more robust close that would allow for price discovery, and an execution that would result in an accurate, tradable closing price. SuperMontage would operate as it does today up until the close. Nasdaq would create two new on-close orders types (''Nasdaq Closing Orders'') that would be executable only during the SuperMontage closing cross. Information about the contents and likely market clearing price of the Nasdaq Closing Orders would be disseminated. In the closing process, the Nasdaq Closing Orders and SuperMontage continuous orders would be brought together to create a single Nasdaq Closing Cross. To be executable, all orders and quotes would be required to be subject to automatic execution to avoid the uncertainty and delay associated with order delivery trading interest. Following the Nasdaq Closing Cross, after hours trading would proceed as it does today.

There would be three components of the Nasdaq Closing Cross: (1) The creation of On Close and Imbalance Only order types; (2) the dissemination of an order imbalance indicator via a Nasdaq proprietary data feed; and (3) closing cross processing in SuperMontage at 4:00:00 that would execute the maximum number of shares at a single, representative price that would be the Nasdaq Official Closing Price. Each component is described in detail below.

On Close and Imbalance Only Orders In The Closing Book. The closing process would begin with market participants entering On-Close and Imbalance Only order types in SuperMontage. On-Close orders would be able to be un-priced and entered as market-on-close (''MOC''), or priced and entered as limit-on-close (''LOC''). On-Close orders would be able to be entered, cancelled, and corrected between 9:30:01 a.m. EST and 3:50:00 p.m. but they would not be displayed in the Nasdaq Order Display Facility or disseminated via any data feed. On-Close orders, both MOC and LOC, would execute only at the price determined by the closing Nasdaq cross. Thus, LOC orders would be subject to

price improvement if the buy (sell) order were to be greater than (less than) the closing price.

Imbalance Only (''IO'') orders would supplement the liquidity provided by On Close orders and they would execute only within the closing cross against any imbalance in liquidity. IO order types would be required to be priced limit orders; SuperMontage would reject IO orders entered without a price. Like On Close orders, IO orders would not be displayed in the Nasdaq Order Display Facility or disseminated via any data feed. IO orders would be able to be entered until 3:59:59, but they would not be able to be cancelled or modified after 3:50:00 except to increase the number of shares or to increase (decrease) the buy (sell) limit price. IO sell orders would only execute at or above the 4:00:00 SuperMontage inside offer, and IO buy orders would only execute at or below the 4:00:00 SuperMontage inside bid.

The On Close and IO orders would constitute the ''Nasdaq Closing Orders'' which, as described below, would serve as the basis for the Closing Cross Order Imbalance Indicator.

Order Imbalance Indicator. At 3:50:00, Nasdaq would begin the closing auction calculation and would disseminate an order imbalance indicator on Nasdaq's proprietary data feed. Imbalance information would include several pieces of information regarding the closing cross: (1) The number of shares represented by MOC, LOC, and IO orders that paired at the current SuperMontage inside; (2) the MOC and LOC imbalance at the current SuperMontage best bid or offer, depending on the direction of the imbalance; (3) the buy/sell direction of that imbalance, and the current inside price; (4) an indicative clearing price range at which the Nasdaq Closing Cross would occur if the Nasdaq Closing Cross were to occur at that time; and (5) the percent by which that indicative price varies from the SuperMontage inside price. The indicative clearing price range would be bounded on the far side by the price at which the MOC, LOC, and IO orders would clear with only each other. It would be bounded on the near side by the price at which the Nasdaq Closing Orders and the SuperMontage continuous orders (excluding volume available only by order delivery) would clear. Where no clearing price exists, Nasdaq would disseminate the phrase ''market buy'' or ''market sell.''

Nasdaq would disseminate the order imbalance indicator via the Nasdaq Total View data feed at no additional charge to subscribers. The indicator would be disseminated beginning at 3:50:00 and then at more frequent intervals as the time to market close decreases: every 30 seconds beginning at 3:50, every 15 seconds beginning at 3:55, every 5 seconds beginning at 3:58, and every second from 3:59 until market close.

For example, if the SuperMontage Book at 3:59:00 pm were to contain the following orders:

BUY ORDERS

Size	Price
4000	*19.99*
3000	19.98
2000	19.97
10000	19.96

SELL ORDERS

Size	Price
500	*20.00*
35000	20.01
3000	20.02
10000	20.04

And the Nasdaq Closing Orders at that time contains the following orders:

BUY ORDERS

Size	Price
3000	20.02
8000	*Market*
1000	19.99
4000	19.97
500	19.97

SELL ORDERS

Size	Price
5000	*Market*
3000	19.98
1000	20.00
1000	20.02
1000	19.98

Nasdaq would disseminate the following indicative closing information:

- 10,000 shares paired at $20.00;
- 1,000 share buy imbalance;
- Indicative Price Range: $20.01–20.02; and
- Variance from SuperMontage inside of less than 10 percent.

Nasdaq Closing Cross. The Nasdaq Closing Cross would begin at 4:00:00 and, thus, would not affect SuperMontage processing that exists today during normal market hours. The Nasdaq Closing Cross would conclude at approximately 4:00:05 at which time the closing executions would be reported to the consolidated tape for Nasdaq securities and after hours trading would commence just as it does today. The Nasdaq Closing Cross would be designed to accomplish three goals in decreasing priority: (1) Maximize the number of shares executed, (2) minimize the imbalance of on-close orders; and (3) minimize the distance from the 4:00:00 SuperMontage inside bid-ask midpoint.

If the Nasdaq Closing Cross price were to be selected and fewer than all Nasdaq Closing Orders and all continuous orders available for automatic execution in SuperMontage would be executed, the system would execute orders in the following priority:

(1) MOC orders, with time as the secondary priority;

(2) LOC orders, limit orders, IO orders, displayed quotes and reserve interest priced more aggressively than the Nasdaq Closing Cross price;

(3) LOC orders, displayed interest of limit orders, and displayed interest of quotes at the Nasdaq Closing Cross price with time as the secondary priority; and

(4) Reserve interest and IO orders at the Nasdaq Closing Cross price with time as the secondary priority.[3]

All executable orders would be executed at the Nasdaq Closing Cross price and reported to the consolidated tape with SIZE as the contra party. The Nasdaq Closing Cross price and the associated paired volume would then be disseminated via the UTP Trade Data Feed (''UTDF'') as the NOCP.

For example, if the continuous SuperMontage and Nasdaq Closing Orders were to contain the following orders:

[3] Short sale orders that participate in the Nasdaq Closing Cross would be required to comply with the applicable Nasdaq short sale rule.

BUY ORDERS

Entry time	Side	Size	Price
3:00	Buy—OC	8000	*Market*
2:30	Buy—OC	3000	20.02
3:31	Buy—Day	4000	19.99
3:35	Buy—OC	1000	19.99
3:59	Buy—Day	3000	19.98
3:59	Buy—Day	2000	19.97
3:40	Buy—OC	4000	19.97
3:52	Buy—IO	500	19.97
3:30	Buy—Day	10000	19.96

SELL ORDERS

Entry time	Side	Size	Price
2:45	Sell—OC	5000	*Market*
3:00	Sell—OC	3000	19.98
3:55	Sell—IO	1000	19.98
3:59	Sell—Day	500	20.00
3:35	Sell—IO	1000	20.00
3:48	Sell—Day	5000	20.01
3:31	Sell—GTC	3000	20.02
3:40	Sell—OC	1000	20.02
3:30	Sell—Day	10000	20.04

The Nasdaq Closing Cross would execute 11,000 shares at $20.01.

Nasdaq would establish a circuit breaker for the closing cross to protect against very unusual occurrences where the price discovery mechanism at the close did not function as expected. Nasdaq has selected two benchmark values representing market conditions approximately five seconds prior to the close: (1) The Volume Weighted Average Nasdaq Inside (''VWAI'') over the period from 3:59:54 to 3:59:57;[4] and (2) the Volume Weighted Average Price (''VWAP'') based upon SuperMontage executions over the period from 3:59:55 to 4:00:00.[5] After the Nasdaq Crossing Price is selected, Nasdaq would then compare it to the two benchmarks. If the expected Nasdaq Crossing Price were to be within a preset boundary of either the VWAI or the VWAP, the cross would occur at the expected Nasdaq Crossing Price.

If the expected Nasdaq Crossing Price were to be outside a preset boundary (''Threshold Percentage'') of both benchmarks, Nasdaq would change the Nasdaq Crossing Price such that it would be within the threshold percentage. The Threshold Percentage would be set by Nasdaq officials and would vary based on market conditions and experience with the close. Nasdaq would publish the Threshold Percentages via its public NasdaqTrader Web site.[6] The modified price would then follow the principles for ordinary crosses: Maximizing volume executed, minimizing the imbalance of On Close orders, and minimizing the distance from the 4:00 SuperMontage bid-ask midpoint (unexecuted shares would be canceled).

Implementation. Upon initial implementation, Nasdaq proposes to apply the closing process to its most liquid issues, namely securities included in the Nasdaq 100 Index, the S&P 500 Index, and the Nasdaq Biotech Index. Nasdaq would have the authority to apply the closing cross to any and all Nasdaq NMS securities. For those securities, the Nasdaq Closing Cross price would be the NOCP. Issues that are not subject to the closing auction would continue to have their NOCP value calculated and disseminated as today. All NOCP values will be disseminated by 4:02:00 with the .M sale condition modifier.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[7] in general, and with Section 15A(b)(6) of the Act,[8] in particular, in that Section 15A(b)(6) requires the NASD's rules to be designed, among other things, to protect investors and the public interest. Nasdaq's believes that its current proposal is consistent with the NASD's obligations under these provisions of the Act because it would result in the public dissemination of information that more accurately reflects the trading in a particular security at the close. Furthermore, to the extent a security is a component of an index, Nasdaq believes the index would more accurately reflect the value of the market, or segment of the market, the index is designed to measure. Nasdaq believes the corresponding result should be trades, or other actions, executed at prices more reflective of the current market when the price of an execution, or other action, is based on the last sale, the high price or low price of a security, or the value of an index.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[4] For example, Nasdaq would take every Nasdaq Inside Ask in effect 3:59:54:000 through 3:49:56:999, weight the Ask Price by the product of the time (milliseconds) the quote was in effect and the displayed size (roundlots). The weighted average of all the Inside Ask updates during the indicated time period would be the VWAI Ask for the stock.

[5] For example, Nasdaq would take every last sale eligible SuperMontage Trade report between 3:59:55:000 and the start of the closing process and weight the trade price by the reported volume. The weighted average of all the SuperMontage trade reports would be the VWAP for the stock.

[6] Nasdaq would also be able to also employ the Benchmark Values and Threshold Percentages for determining the Nasdaq Official Closing Price for stocks that are not included in the Nasdaq Closing Cross.

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq neither solicited nor received written comments with respect to 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 such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2003–173. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–173 and should be submitted by January 2, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30699 Filed 12–10–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48877; File No. SR–NASD–2003–179]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for the Operation of the Short Sale Rule in a Decimals Environment

December 4, 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 December 1, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend through June 30, 2004, the penny ($0.01) legal short sale standard contained in NASD Interpretative Material 3350 (''IM–3350'').[5] Without such an extension this standard would terminate on December 1, 2003. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through June 30, 2004. Nasdaq requests that the Commission waive both the 5-day notice and 30-day operative requirements contained in Rule 19b–4(f)(6)(iii)[6] of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 2, 2001, the Commission approved, on a one-year pilot basis ending March 1, 2002,[7] Nasdaq's proposal to establish a $0.01 above the bid standard for legal short sales in Nasdaq National Market securities as part of the Decimals Implementation Plan for the Equities and Options Markets. The pilot program has been continuously extended since that date and is currently set to expire on December 1, 2003.[8] Nasdaq now proposes to extend, through June 30, 2004, that pilot program. Extension until June 30th, will allow Nasdaq and the Commission to continue to evaluate the impact of the penny short sale pilot and thereafter take action on Nasdaq's separate pending proposal to make the penny short sale standard permanent.[9] If approved, Nasdaq would continue during the pilot period to require NASD members seeking to effect ''legal'' short sales when the current best (inside) bid displayed by Nasdaq is lower than the previous bid, to execute those short sales at a price that is at least $0.01 above the current inside bid in that security. Nasdaq believes that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] In its filing, Nasdaq inadvertently referred to text changes in subparagraph (b)(1) of IM–3350 instead of subparagraph (b)(2). Changes to NASD Rule 3350 and IM–3350 renumbered subparagraph (b)(1) as subparagraph (b)(2). *See* Securities Exchange Act Release No. 46999 (December 13, 2002), 67 FR 78534 (December 24, 2002). Telephone call between Gregory J. Dumark, Division of Market Regulation, Commission, and Thomas P. Moran, Office of General Counsel, Nasdaq.

[6] 17 CFR 240.19b–4(f)(6)(iii).

[7] Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001).

[8] Securities Exchange Act Release No. 47309 (February 4, 2003), 68 FR 6981 (February 11, 2003).

[9] *See* SR–NASD 2002–09.

continuation of this pilot standard appropriately takes into account the important investor protections provided by the short sale rule and the ongoing relationship of the valid short sale price amount to the minimum quotation increment of the Nasdaq market (currently also $0.01).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[10] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] 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.

Nasdaq has requested that the Commission waive both the 5-day notice and the 30-day operative delay. The Commission believes waiving the 5-day notice and 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through June 30, 2004, and will provide Nasdaq and the Commission with an opportunity to evaluate the impact of the penny short sale pilot. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to SR–NASD–2003–179. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 Nasdaq. All submissions should refer to file number SR–NASD–2003–179 and should be submitted by January 2, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–30703 Filed 12–10–03; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78o–3(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48876; File No. SR–NASD–2003–180]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for Limit Order Protection of Securities Priced in Decimals

December 4, 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 December 1, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend through June 30, 2004, the current pilot price-improvement standards for decimalized securities contained in NASD Interpretative Material 2110–2—Trading Ahead of Customer Limit Order (''Manning Interpretation'' or ''Interpretation''). Without such an extension these standards would terminate on December 1, 2003. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through June 30, 2004. Nasdaq requests that the Commission waive both the 5-day notice and 30-day operative requirements contained in Rule 19b–4(f)(6)(iii)[5] of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19b–4(f)(6)(iii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD's Manning Interpretation requires NASD member firms to provide a minimum level of price improvement to incoming orders in NMS and SmallCap securities if the firm chooses to trade as principal with those incoming orders at prices superior to customer limit orders they currently hold. If a firm fails to provide the minimum level of price improvement to the incoming order, the firm must execute its held customer limit orders. Generally, if a firm fails to provide the requisite amount of price improvement and also fails to execute its held customer limit orders, it is in violation of the Manning Interpretation.

On April 6, 2001,[6] the Commission approved, on a pilot basis, Nasdaq's proposal to establish the following price improvement standards whenever a market maker wished to trade proprietarily in front of its held customer limit orders without triggering an obligation to also execute those orders:

(1) For customer limit orders priced at or inside the best inside market displayed in Nasdaq, the minimum amount of price improvement required is $0.01; and

(2) For customer limit orders priced outside the best inside market displayed in Nasdaq, the market maker must price improve the incoming order by executing the incoming order at a price at least equal to the next superior minimum quotation increment in Nasdaq (currently $0.01).[7]

Since approval, these standards have operated on a pilot basis and are currently scheduled to terminate on December 1, 2003. After consultation with Commission staff, Nasdaq seeks an extension of its current Manning pilot until June 30, 2004. Nasdaq believes that such an extension provides for an appropriate continuation of the current Manning price-improvement standard while the Commission analyzes the issues related to customer limit order protection for decimalized securities, and reviews Nasdaq's separately filed rule proposal to make this pilot permanent.[8]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[9] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] 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.

Nasdaq has requested that the Commission waive both the 5-day notice and the 30-day operative delay. The Commission believes waiving the 5-day notice and 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through June 30, 2004, and will allow Nasdaq and the Commission to analyze the issues related to customer limit order protection in a decimals environment. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to SR–CHX–2003–180. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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

[6] *See* Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001) (order approving proposed rule change modifying NASD's Interpretative Material 2110–2—Trading Ahead of Customer Limit Order).

[7] Pursuant to the terms of the Decimals Implementation Plan for the Equities and Options Markets, the minimum quotation increment for Nasdaq securities (both National Market and SmallCap) at the outset of decimal pricing is $0.01. As such, Nasdaq displays priced quotations to two places beyond the decimal point (to the penny). Quotations submitted to Nasdaq that do not meet this standard are rejected by Nasdaq systems. *See* Securities Exchange Act Release No. 43876 (January 23, 2001), 66 FR 8251 (January 30, 2001).

[8] *See* SR–NASD 2002–10.

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 Nasdaq. All submissions should refer to file number SR–NASD–2003–180 and should be submitted by January 2, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–30705 Filed 12–10–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3555]

State of California (Amendment #2)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective October 30, 2003, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to January 9, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is July 27, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 4, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–30659 Filed 12–10–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4551]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Women's Political, Educational, and Economic Development for Afghanistan

SUMMARY: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs, United States Department of State, on behalf of the U.S.-Afghan Women's Council and in cooperation with the Office of International Women's Issues of the U.S. Department of State, announces an open competition for grants to support a series of exchanges and training programs promoting ''Women's Political, Educational, and Economic Development in Afghanistan.'' U.S. public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to develop and implement exchanges and training programs involving participants from Afghanistan, including training conducted in Afghanistan. These U.S. organizations should have a current presence in Afghanistan, or experience working in Afghanistan, and work in conjunction with Afghan NGO partners. This competition is in direct support of the work plan developed by the U.S.-Afghan Women's Council, which seeks to carry out training programs in partnership with provincial Women's Resource Centers. Up to five grants, not exceeding $150,000 each, may be awarded. Depending on the types and number of proposals received, more than one award may be made in some areas of focus and no awards may be made in others. Proposals that clearly demonstrate significant cost-sharing—with 50% of the amount requested from ECA as the preferred target—will be judged more competitive. For example, an organization requesting $150,000 would be more competitive if the proposal presents at least $75,000 in allowable cost sharing. *A maximum of 10 Afghans traveling to the U.S. will be permitted for each grant awarded under this competition, and all individuals traveling to the U.S. should use their U.S. experience directly for carrying out programs in Afghanistan after their return home.* Deadline for submissions is Friday, February 6, 2004.

Important Note: This Request for Grant Proposals contains language in the ''Shipment and Deadline for Proposals'' section that is significantly different from that used in the past. Please pay special attention to procedural changes as outlined.

Program Information

Overview: On January 28, 2002, Presidents Bush and Karzai announced the creation of the U.S.-Afghan Women's Council to promote private/public partnerships between U.S. and Afghan institutions and to mobilize private resources to ensure that Afghan women are provided access to the education and skills to which they had no access during the years of Taliban misrule. The Council is co-chaired by the Under Secretary of State for Global Affairs, the Afghan Minister of Women's Affairs and the Minister of Foreign Affairs. The Council is staffed in the United States by the State Department's Office of International Women's Issues. The U.S.-Afghan Women's Council seeks to help integrate women into Afghan society and to prepare them for positions of leadership and management. The priority themes listed below reflect the goals and work plan of the Council, and the exchange and training programs being funded will be carried out as programs of the U.S.-Afghan Women's Council. Please refer to the following Web site for more information on the Council: *http://usawc.state.gov.*

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs (ECA) consults with and supports American public and private nonprofit organizations in developing and implementing multi-phased, often multi-year, exchanges of professionals, community leaders, scholars and academics, public policy advocates, etc. These exchanges address issues of critical importance to both the United States and to the countries with which the exchanges will be conducted. They encourage substantive and cooperative interaction among counterparts, and they entail both theoretical and experiential learning for all participants. A primary goal is the development of sustained, international institutional and individual linkages. In addition to providing a context for professional development and collaborative problem-solving, these projects are intended to introduce participants to one another's political, social, and economic structures, facilitating improved communication and enhancing mutual understanding.

Special Note: The Afghan Ministry of Women's Affairs is establishing Women's Resource Centers throughout Afghanistan. The US-Afghan Women's Council and the Department of State are dedicated to supporting the work of these centers. All proposals submitted in response to this RFGP must feature activities organized in close cooperation with and promoting the work of these centers, including training activities taking place inside these centers in provinces outside of Kabul. All proposals must display an understanding of the work of the Afghan Ministry of Women's Affairs and the Women's Resource Centers and discuss how proposed exchange activities will further the work of these centers. To the extent possible, exchange and training activities in Afghanistan will take place at or center around the Resource Centers in provinces where such Centers have been established. Proposals should also reflect a clear understanding of the work of USAID in support of the Centers and demonstrate how exchanges will complement and further that support.

[13] 17 CFR 200.30–3(a)(12).

The Office of Citizen Exchanges solicits proposals for exchange projects that involve the following priority themes:

1. Women's Leadership

Proposals should focus on promoting women's political leadership by strengthening the capacity of grassroots women's organizations to develop the skills of current and future women political leaders and by compiling a repertoire of practical material in the local language(s) for use in workshops, mock campaigns and elections, educational sessions, or other activities. Proposals must reflect a practical knowledge of the political and legislative environment in the partner country. Projects may include components listed in ''Guidelines'' below and may focus on the following:

• *Workshops for Political Leaders* might include such topics as public speaking, message development, leadership, campaign management, accountability and constituencies, consensus building, surveying, polling, advocacy, voter outreach, networking, working with the media, and fundraising, with the goal of increasing the effectiveness of women's participation in the political process.

• *Women's Political Awareness Campaigns* should educate women on the political process with the goal of increasing their participation in government and politics. Awareness campaigns should be jointly developed and grass-roots, get-out-the-vote campaigns conducted with partner organizations. These should reach the widest possible audience in various regions of the country, in large and small cities, and in towns and villages, with the goal of increasing women's participation in the political process.

• *Women's Human Rights Education* should improve women's understanding of human rights issues and the rule of law. Exchanges and training should be jointly conducted by U.S. and Afghan partner organizations and should reach the widest possible audience.

2. Educational Development and Literacy for Women and Girls

Proposals should focus on exchanges and training for educational administrators and community leaders who are actively involved in managing, delivering or promoting education in formal, informal, and non-traditional settings, including accelerated learning programs for out-of-school and hard-to-reach populations, self-study and distance education, and life skill-based, job skill-related, or functional literacy training. Emphasis should be on providing assistance and support to administrators and others promoting education and literacy. Potential topics for activities include, but are not limited to, promoting professional competence in educational methodology and practice, especially in the area of promoting literacy; strengthening local capacity to support education; increasing understanding of the importance of women's and girls' education for the family and for society and public life; developing leadership and enhancing values of civic responsibility; and developing mentoring programs. Only adult professionals or grassroots practitioners who are not being trained as teachers may be selected to travel internationally for exchange activities. Girls and women may take part as students in pilot sessions and other in-country educational activities.

3. Women-Led Small Business Development

Projects should foster the development of local women-led businesses in Afghanistan and create ongoing international partnerships. Project components in the U.S. or in Afghanistan, with examples of possible topics, include: seminars for women considering micro-enterprise activities (*e.g.* entrepreneurship, management, finance and registration issues); workshops (developing business plans, loan packages, marketing, staff training, appropriate technology); site visits (to chambers of commerce, local governments, women's business associations, small business resource centers); establishment of women's business associations or business resource centers; mentoring; consultancies; internships; job-shadowing; or other activities.

Grant funds may be used to develop or enhance exchanges and training focused on women's business resources and the development of services in Women's Resource Centers, or to further the activities of such a center, but may not be used to furnish new centers. ECA funds may also be used to support women's business associations and regularly published not-for-profit women's business newsletters in the local language and may be used on resources and development of services. No more than $10,000 may be used to purchase computer and/or office equipment. No funds may be used for micro-credit or re-lending activities, though funds may be used for training women considering micro-enterprise activities.

In certain types of program activities, Afghan participants could be linked with U.S. mentors or counterparts with similar work responsibilities in order to ensure ongoing professional interaction. In addition to activities for businesswomen, proposals may include components targeting female heads of households, such as widows, training them to start businesses.

4. Job Skills Training

Job skills training should focus on providing women with practical skills that will have market value and that will better enable them to support their families.

5. NGO Management

NGO management may be addressed as part of the program design, including workshops on NGO management and capacity building for NGOs whose work advances women's political and economic development in civil society. Topics might include strategic planning, volunteer recruitment and management, coalition building, public relations, facilitation training, peer education and outreach, public-private partnerships, information management, and Web site development.

Project Guidelines

Applicants should state expected goals and objectives in the proposal narrative and describe a clear and convincing plan for carrying out project components to fulfill them. Travel costs for a maximum of 10 Afghans per grant will be permitted under this competition.

Suggested activities might include:

1. (If necessary) Initial needs assessment/orientation or training travel by American organizers to develop contacts and relationships with both American Mission officers and counterpart organizations/individuals in the Women's Development Centers in which the exchange activities will be conducted, and to provide initial training for Afghan participants.

2. First training session in Afghanistan (may coincide with needs assessment). American professionals carry out group ''train-the-trainer'' sessions on the subject of their exchange project, and select no more than 10 outstanding Afghan women participants for further training in the U.S.

3. A U.S.-based program, including orientation for Afghan participants to program purposes and to U.S. society, discussions, site visits, additional training of trainers, or limited internships or job shadowing opportunities.

4. A return visit by American specialists to collaborate with Afghan participants from the U.S.-based

program in conducting additional workshops, seminars, or on-site training.

5. Training programs carried out in Afghanistan in Women's Resource Centers led by the Afghans who have received training in the U.S.

6. Distance learning techniques using appropriate technology and activities meant to bridge the digital divide are also encouraged to the extent possible.

This program is not academic in nature. The Office of Citizen Exchanges encourages applicants to be creative and innovative in planning projects. Activities may combine elements of skill enrichment, theoretical orientation, and experiential, community-based initiatives designed to achieve objectives. Activities should provide participants an opportunity to experience each other's culture. Cultural programming may include activities or events hosted by local institutions and home stays with community members.

Projects funded under this competition should enhance partnerships among American and foreign organizations, provide hands-on activities and training sessions with practical materials in the local language, and achieve lasting and sustainable results.

Afghan partner organizations should be identified in the proposal, with project plans developed collaboratively by both the American and Afghan partners. Applicants who have not yet identified local partners but whose proposals reflect significant regional and thematic expertise are also eligible to apply, but priority will be given to organizations that have already developed these links and identified Afghan partner organizations.

Eligibility: U.S. public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3) are eligible to apply. All proposals will receive equal consideration. U.S. organizations should have an Afghan partner, with the U.S. partner as the principal applicant.

Selection of Participants: Proposals should include a description of an open, merit-based participant selection process for all program components requiring participant selection. A draft application and a sample announcement used for recruitment advertising should be included. For exchange travel to the U.S., priority should be given to participants who have not previously traveled to the United States.

Public Affairs Section Involvement: The Public Affairs Section of the U.S. Embassy (PAS) in Kabul will play an important role in project implementation. PAS Kabul will evaluate project proposals, coordinate planning with the grantee organization and in-country partners, facilitate in-country activities, nominate participants and vet grantee nominations, observe in-country activities when feasible, debrief participants, and evaluate project impact. Applicants should expect to work closely with Embassy PAS in Kabul in selecting participants, and all Afghan exchange participants traveling to the U.S. must be approved by the U.S. Embassy Kabul PAS. PAS Kabul retains the right to nominate participants and to advise the grantee regarding participants recommended by other entities.

PAS Kabul will work with grantee organizations to assist Afghans selected for international travel in obtaining the necessary J–1 visas for entry into the United States. Although project administration and implementation are the responsibility of the grantee, the grantee is expected to inform the PAS in Kabul of its operations and procedures and to coordinate with and involve PAS officers in the development of project activities. The PAS should be consulted regarding country priorities, political and cultural sensitivities, current security concerns, and related logistic and programmatic issues.

Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of exchange programs resulting from this solicitation, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.* The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing J visa program participant status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If the applicant has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et seq.,* including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The Office of Citizen Exchanges of ECA will be responsible for issuing the DS–2019 forms to participants in this program. A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 Fourth Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Budget Guidelines

The Bureau expects to award up to five grants, not exceeding $150,000 each, to support program and administrative costs required to implement exchange programs under this competition. Applicants must submit a comprehensive line-item budget based on guidance provided in the Proposal Submission Instructions (PSI) of the Solicitation Package. Grants awarded to organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. A maximum of 10 Afghans traveling to the U.S. will be permitted for each grant awarded under this competition. Proposals which clearly demonstrate a significant cost-sharing—with 50% of the amount requested from ECA as the preferred target—will be judged more competitive. For example, an organization requesting $150,000 will be more competitive if the proposal contains at least $75,000 in allowable cost sharing.

Allowable costs include the following:

1. Direct Program Expenses (including general program expenses, such as orientation and program-related supplies, educational materials, traveling campaigns, consultants, interpreters, and room rental; and participant program expenses, such as domestic and international travel and per diem)

2. Administrative Expenses, including indirect costs (*i.e.* salaries, telephone/fax, and other direct administrative costs)

3. Travel costs for visa processing purposes: All foreign participants funded by any grant agreement resulting from this competition must travel on J–1 visas. Failure to secure a J–1 visa for the foreign participant will preclude charging the participant's cost to the grant agreement. Participants will apply for J–1 visas only after the Office of Citizen Exchanges and the mission Public Affairs Section or consulate have approved their participation in this program. The Office of Citizen Exchanges will issue DS–2019 forms and deliver to foreign program visitors through the mission Public Affairs Section. All J visas for Afghan program visitors must be issued by the U.S. Consulate in Islamabad or Peshawar, so proposals should include costs for potential participants to travel to Kabul to pick up DS–2019 forms and to Pakistan for visa interviews and processing.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions. Instructions for downloading the Solicitation Package are provided below.

Announcement Title and Number

All correspondence with the Bureau concerning this RFGP should reference the above title and number: ECA/PE/C/NEA–AF–04–41.

To Download a Solicitation Package Via Internet

The entire Solicitation Package (Request for Grant Proposal and Proposal Submission Instructions), may be downloaded from the Bureau's Web site: <*http://exchanges.state.gov/education/rfgps*>.

Please read all information before downloading. If you are unable to download the Solicitation Package from the Department of State ECA Web site, you may request a copy, which contains required application forms, specific budget instructions, and standard guidelines for proposal preparation, from the Office of Citizen Exchanges.

New OMB Requirement

An OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying on or after October 1, 2003. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf.* Please also visit the ECA Web site at *http://exchanges.state.gov/education/rfgps/menu.hum* for additional information on how to comply with this new directive.

FOR FURTHER INFORMATION CONTACT: The Office of Citizen Exchanges, ECA/PE/C/NEA—AF, U.S. Department of State, 301 Fourth St., SW., Room 216, Washington, DC 20547, Attention: Katherine Van de Vate or Thomas Johnston; Telephone number: 202/619–5320; fax number: 202/619–4350; Internet e-mail address: *vandevatek@pd.state.gov* or *tjohnsto@pd.state.gov.*

Organizations planning to submit proposals are encouraged to contact the program office for consultation. Before doing so, applicants should read the complete **Federal Register** announcement and be prepared to discuss a concrete concept specific to the guidelines set forth in this request for grant proposals (RFGP). Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

Shipment and Deadline for Proposals

Important Note: The deadline for this competition is Friday, February 6, 2004. In light of recent events and heightened security measures, proposal submissions must be made via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadline are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the proposal should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/NEA–AF–04–41, Program Management, ECA/EX/PM, Room 534, 301 Fourth St., SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary,'' ''Proposal Narrative,'' and ''Budget'' sections of the proposal in text (.txt) format on a PC-formatted disk. ECA will transmit these files electronically to the Public Affairs Sections of the relevant U.S. Embassies for review. Once the deadline for submission has passed, Bureau staff may not discuss this competition in any way with applicants until the proposal review process has been completed.

Diversity, Freedom and Democracy Guidelines

Pursuant to ECA's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by

the Program Office, as well as by Public Affairs Section Kabul, and the Global Issues Bureau Office of International Women's Issues on behalf of the US-Afghan Women's Council. Eligible proposals will be forwarded to panels of State Department officers for advisory review. Proposals may also be reviewed by the Office of the Legal Advisor or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank-ordered and all carry equal weight in proposal evaluation.

1. *Quality of Program Idea:* Proposals should be substantive, well thought-out, focused on issues of demonstrable relevance to all proposed participants, and responsive, in general, to the exchange suggestions and guidelines described above.

2. *Implementation Plan and Ability to Achieve Objectives:* A detailed project implementation plan should establish a clear and logical connection between the interest, the expertise, and the logistic capacity of the applicant and the objectives to be achieved. The proposal should discuss, in concrete terms, how the institution plans to achieve the objectives. Institutional resources—including personnel—assigned to the project should be adequate and appropriate. The substance of workshops and site visits should be included as an attachment, and the responsibilities of U.S. participants and in-country partners should be clearly described.

3. *Institution's Record/Ability:* Proposals should include an institutional record of successful exchange programs, with reference to responsible fiscal management and full compliance with reporting requirements.

4. *Cost Effectiveness and Cost Sharing:* Administrative costs should be kept to a minimum. Proposals should maximize cost sharing through in-cash and in-kind contributions from the U.S. and partner organization(s). Proposals which clearly demonstrate significant cost-sharing—with 50% of the amount requested from ECA as the preferred target—will be judged more competitive.

5. *Program Evaluation:* Proposals must include a plan and methodology to evaluate the program's successes and challenges. The evaluation plan should show a clear link between program objectives and expected outcomes, and should include a brief description of performance indicators and measurement tools. A draft questionnaire for evaluation purposes may be attached to support the proposal.

6. *Support of Diversity:* Proposals should demonstrate substantive support of ECA's policy on diversity. Program content (orientation, evaluation, program sessions, resource materials, follow-on activities) and program administration (selection process, orientation, evaluation) should address diversity in a comprehensive and relevant manner. Applicants should refer to ECA's Diversity, Freedom and Democracy Guidelines on page four of the Proposal Submission Instructions (PSI).

Authority

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and other countries of the world.''

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau or program officers that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the U.S. Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements. Organizations will be expected to cooperate with the Bureau in evaluating their programs under the principles of the Government Performance and Results Act (GPRA) of 1993, which requires federal agencies to measure and report on the results of their programs and activities.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: December 2, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 03–30616 Filed 12–10–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4552]

Bureau of Educational and Cultural Affairs Request for Grant Proposal: High School Social Science Curriculum Development and Teacher Education Project for Armenia

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs in the Department of State announces an open competition for an assistance award to support planning, implementing and evaluating a project to improve social studies education at the high school level in Armenia through subject-related curriculum development and teacher training. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 U.S.C. 501(c)(3) may submit proposals to cooperate with the Bureau in the administration of a three-year project to develop social studies curricula together with a related teaching methodology manual for high school teachers, and to pilot-test and disseminate the curricula and the teachers' manual in schools and at teacher training sites in Armenia.

Important Note: This Request for Grant Proposals contains language in the ''Shipment and Deadline for Proposals'' that is significantly different from that used in the past. Please pay special attention to procedural changes as outlined.

Project Overview

The project is intended to assist Armenian educators to improve high school-level social studies education in their country. The project will train a team of educators from Armenia to develop curricula in a limited range of social studies subjects. The same team will develop a handbook on teaching methodology for high school teachers that will relate to the subject-specific curricular materials. The materials and the teachers' handbook will be tested

and disseminated in classrooms and at teacher training sites in Armenia.

The rationale for this project is that by introducing more interactive, student-centered teaching practices tied to relevant social studies in Armenia, educators in that country will be better equipped to prepare high school students to participate as citizens in a democratic society.

As part of the effort to promote cooperative relationships within a democratic society, the project will also prepare teachers to relate effectively with other members of the educational community including administrators, parents, students, and officials responsible for educational oversight.

Project Design

The process for developing, testing, publishing, and disseminating the materials and the handbook should include a carefully designed series of exchange visits and related activities within a three-year period. Proposals should describe a strategy for administering the project effectively and for evaluating the results of project implementation. Proposals should also demonstrate that the project's objectives are feasible within the budget proposed and take into account local conditions that may affect recruitment, implementation, teacher training or pilot testing activities in Armenia.

The project design should be outlined within the general framework of three project phases. (Full details for each project phase are contained in the POGI.)

Phase One: Recruitment of Participants, Selection of Subjects, and Arrangement of Administrative Details

Although some of the activities in Phase I may be initiated and implemented through correspondence or other kinds of distance communication, the U.S. grantee organization should include within Phase I a planning trip of approximately two to four weeks to Yerevan.

(1) *Recruitment of participants:* Within the first six months of the project, the U.S. grantee organization will communicate with the Public Affairs Section of the U.S. Embassy in Yerevan and with representatives of a local NGO active in the education sector or with other local educators to coordinate the recruitment and selection of approximately six Armenian participants for the curriculum development team. The U.S. applicant should identify in the proposal an NGO or a network of high school and/or social studies educators in Armenia with whom the applicant proposes to work in the recruitment effort. The curriculum development team should include participants with previous training and professional experience with social studies education at the high school level, curriculum development and in-service teacher training.

(2) After the curriculum development team has been selected, the grantee organization should consult with the team members and with other social studies educators in Armenia to assess the high school social studies curricula and related teaching materials that are currently in use as well as the U.S. materials that may be relevant to the needs of high school teachers in Armenia. Based on that analysis, the curriculum development team will select the social studies subjects in which the curricular materials will be developed and the methodologies which the teachers' manual will target.

(3) The grantee organization should consult with the Armenian Ministry of Education regarding the following key features of the project (See POGI for contact information): (a) Approval of paid leave for the Armenian participants during their stays in the U.S. and during subsequent periods of training in Armenia; (b) facilitation of the logistics for the training sessions to be conducted in Armenia through signed agreements with the Ministry of Education or other education authorities; (c) if the project includes activities that will ultimately require government approval, the proposal should include a plan for securing the approval of the Ministry or other relevant educational authorities.

Phase Two: U.S. Workshop

In Phase II of this project, members of the curriculum development team from Armenia will spend approximately 12 weeks in the U.S. attending an intensive curriculum development workshop. The U.S. grantee organization will conduct the workshop at which the team will draft the curricular materials and the teachers' manual in consultation with U.S. specialists with expertise on the targeted subjects and methodologies. The U.S. workshop should include opportunities for the direct observation of U.S. classroom teaching, school administration, and community involvement as appropriate. Consultations with U.S. teachers and professional counterparts, including mentored attendance at professional meetings, may also be appropriate. Proposals should incorporate sufficient time for writing the curricular materials and teachers' manual so that working drafts will have been completed by the time the curriculum development team returns to Armenia.

Phase Three: Pilot-Testing, Teacher Training, Publication, and Dissemination

In Phase III of the project, the grantee organization will implement a program for testing, revising and publishing the curricular materials and teachers' manual drafted in Phase II. Proposals should describe a strategy for collaborating with local high schools, other appropriate educational organizations, and teacher training networks in Armenia to facilitate pilot testing of the curricular materials and the teachers' manual and to train teachers to use these materials in their classrooms. Targeted high schools should include those involved with the Armenia ''Connectivity Project'' sponsored by the Bureau of Educational and Cultural Affairs. (Information on the Armenia Connectivity Project can be found at *http://www.projectharmony.am).*

Proposals should demonstrate an ability to coordinate and to monitor Phase III activities. Proposals should describe the composition and size of the teacher and student populations that will benefit from the innovations to be introduced through the curriculum development and teacher training effort. In addition, proposals should describe (or outline a strategy for ascertaining) feasible options for publishing the curricular materials and the teachers' manual for dissemination at high schools throughout Armenia.

Project Duration

Pending the availability of funds, grant activities should begin on or around June 1, 2004 and should last for a three-year period. Grant activities are expected to be completed within the three-year timeframe as additional funds beyond the initial grant award are not anticipated.

Project Evaluation

Proposals should describe and budget for project evaluation. Organizations that are awarded Bureau grants must formally submit periodic reports to the Bureau on the project's activities in relation to its objectives. The formal evaluation reports should include an assessment of the status of high school social studies education in Armenia at the time of program inception with specific reference to project objectives; formative evaluation to allow for mid-course revisions in the implementation strategy; and, at the conclusion of the project, summative evaluation of the degree to which the project's objectives have been achieved. The proposal should discuss how the issues raised

throughout the formative evaluation process will be assessed and addressed. The summative evaluation should describe the project's influence on the participating institutions and participants, as well as the educational community in Armenia. The summative evaluation should also include recommendations about how to build upon project achievements without additional Bureau support. The use of external evaluators with appropriate subject, cultural, and regional expertise is encouraged. Copies of evaluation reports must be provided to the Department of State.

The grantee organization will be expected to submit intermediate program and financial reports after each project component is concluded. In addition to the formally scheduled reports, the evaluation strategy should include a mechanism for promptly providing the Bureau with information that will equip the Department of State to summarize and illustrate project activities and achievements as they occur.

Project Administration

Proposals should explain how project activities will be administered both in the U.S. and overseas in ways that will ensure that the project maintains a focus on its objectives while adjusting to changing conditions, assessments, and opportunities.

Budget Guidelines

The Bureau anticipates awarding one grant not to exceed $395,000 to support program and administrative costs required to conduct this project. Additional funds beyond the initial grant award are not anticipated. The Bureau encourages applicants to provide maximum levels of cost sharing and funding from private sources in support of its programs. These contributions may include estimated in-kind contributions. Bureau guidelines require that grants to organizations with less than four years of experience in conducting international exchanges be limited to $60,000. Therefore, organizations with less than four years' experience in conducting international exchanges are ineligible to apply under this competition.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. The summary and the detailed project and administrative budget should be accompanied by a narrative which explains and justifies the amounts requested.

Allowable costs for the program include the following:

(1) Administrative costs, including salaries and benefits.

(2) Program costs, including general program costs and program costs for individual participants in project activities. Please refer to the POGI for complete budget and formatting guidelines.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number *ECA/A/S/U–04–06.*

FOR FURTHER INFORMATION CONTACT: The Humphrey Fellowships and Institutional Linkages Branch, Office of Global Educational Programs, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone: (202) 205–8379; Fax: (202) 401–1433; or *jcebra@pd.state.gov,* to request a solicitation package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Jonathan Cebra on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

New OMB Requirement

An OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements on or after October 1, 2003. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf.* Please also visit the ECA Web site at *http://exchanges.state.gov/education/rfgps/menu.htm* for additional information on how to comply with this new directive.

Shipment and Deadline for Proposals

Important Note: The deadline for this competition is Monday, February 9, 2004.

In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.,* DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*) and **be shipped no later than the above deadline.** The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery via the Internet. Faxed documents will not be accepted at any time.

Applicants must follow all instructions in the Solicitation Package. The original and eight copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/U–04–05, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5'' diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the US Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity'

section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Pub. L. 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Grantee will be responsible for issuing DS–2019 forms to participants in this program. A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. The program office, as well as the Public Affairs Section overseas, where appropriate will review all eligible proposals. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission and responsiveness to the objectives and guidelines stated in this solicitation. Proposals should demonstrate substantive expertise in curriculum development, social studies education at the high school level, and teacher training.

2. *Creativity and feasibility of program plan:* A detailed agenda and a relevant work plan should demonstrate substantive undertaking, logistical capacity, and a creative utilization of resources and of relevant professional development opportunities. The agenda and work plan should be consistent with the program overview and project design that are outlined in this solicitation.

3. *Ability to achieve project objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan. Proposals should demonstrate an understanding of educational issues in Armenia.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity are included in program design and implementation. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). The proposal should demonstrate an understanding of the specific diversity needs in Armenia and should address these needs in terms of the project themes and objectives.

5. *Institutional capacity and record:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the goals of the project. Proposals should demonstrate an institutional record of successful exchange activities, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the Bureau's grants staff. The Bureau will consider the past performance of prior grant recipients as well as the demonstrated potential of new applicants.

6. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other evaluation technique should be included together with the description of how project outcomes will be compared with project objectives.

7. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) that ensures that the project activities are not isolated events but are part of a coherent and on-going plan to improve education in Armenia.

8. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be reasonable and appropriate and should reflect a commitment to pursuing project objectives. The Bureau views cost sharing as a reflection of institutional commitment to the project. Contributions should not be limited to indirect costs.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1993 (FREEDOM Support Act). Programs and projects must conform to Bureau requirements and guidelines outlined in the Solicitation Package. Bureau

projects and programs are subject to the availability of funds.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: December 3, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 03–30615 Filed 12–10–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice No. (4553)]

Determination Under Presidential Proclamation

I hereby make the determination provided for in Section 5 of the Presidential Proclamation No. 7060, of December 12, 1997, that the suspension of entry into the United States as immigrants or nonimmigrants of senior officials of the National Union for the Total Independence of Angola (UNITA) and adult dependents of their immediate families is no longer necessary. Restrictions imposed in said proclamation pursuant to Section 212(f) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(f)), shall therefore lapse, and said proclamation shall terminate, effective immediately.

This determination shall be published in the **Federal Register**.

Dated: November 28, 2003.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 03–30614 Filed 12–10–03; 8:45 am]

BILLING CODE 4710–26–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determinations Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) has determined that Mali has adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents in connection with shipments of textile and apparel articles and has implemented and follows, or is making substantial progress toward implementing and following, the customs procedures required by the African Growth and Opportunity Act (AGOA). Therefore, imports of eligible products from Mali qualify for the textile and apparel benefits provided under the AGOA.

DATES: Effective December 11, 2003.

FOR FURTHER INFORMATION CONTACT: Patrick Coleman, Director for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA (Title I of the Trade and Development Act of 2000, Public Law 106–200) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. The textile and apparel trade benefits under the AGOA are available to imports of eligible products from countries that the President designates as ''beneficiary sub-Saharan African countries,'' provided that these countries: (1) Have adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents; and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist the Customs Service in verifying the origin of the products.

In Proclamation 7350 (Oct. 2, 2000), the President designated Mali as a ''beneficiary sub-Saharan African country.'' Proclamation 7350 delegated to the USTR the authority to determine whether designated countries have met the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications of the Harmonized Tariff Schedule of the United States (HTS). Based on actions that Mali has taken, I have determined that Mali has satisfied these two requirements.

Accordingly, pursuant to the authority vested in the USTR by Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS and U.S. note 1 to subchapter XIX of chapter 98 of the HTS are each modified by inserting ''Mali'' in alphabetical sequence in the list of countries. The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the effective date of this notice. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. *See Visa Requirements Under the African Growth and Opportunity Act,* 66 FR 7837 (2001).

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 03–30718 Filed 12–10–03; 8:45 am]

BILLING CODE 3190–W3–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Technical Corrections to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to authority delegated to the United States Trade Representative (''USTR'') in Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415), USTR is making technical corrections to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (''HTS'') as set forth in the annex to this notice. These modifications correct several inadvertent errors and omissions in subheadings 9903.72.30 through 9903.74.24 of the HTS so that the intended tariff treatment is provided. In addition, USTR is modifying other portions of the HTS so as to reflect the correct treatment of goods described in general note 10(c) of the HTS and subheading 2933.59.95 of the HTS.

EFFECTIVE DATE: The corrections made in this notice are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the annex to this notice.

FOR FURTHER INFORMATION CONTACT: Office of Industry, Office of the United States Trade Representative, 600 17th

Street, NW., Room 501, Washington, DC 20508. Telephone (202) 395–5656.

SUPPLEMENTARY INFORMATION: On March 5, 2002, pursuant to section 203 of the Trade Act of 1974, as amended (the ''Trade Act'') (19 U.S.C. 2253), the President issued Proclamation 7529 (67 FR 10553), which imposed tariffs and a tariff-rate quota on (a) certain flat steel, consisting of: slabs, plate, hot-rolled steel, cold-rolled steel, and coated steel; (b) hot-rolled bar; (c) cold-finished bar; (d) rebar; (e) certain tubular products; (f) carbon and alloy fittings; (g) stainless steel bar; (h) stainless steel rod; (i) tin mill products; and (j) stainless steel wire, as provided for in subheadings 9903.72.30 through 9903.74.24 of the Harmonized Tariff Schedule of the United States (''HTS'') (''safeguard measures'') for a period of three years plus 1 day. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., e.s.t., on March 20, 2002, Proclamation 7529 modified subchapter III of chapter 99 of the HTS so as to provide for such increased duties and a tariff-rate quota. Proclamation 7529 also delegated to the USTR the authority to consider requests for exclusion of a particular product submitted in accordance with the procedures set out in 66 FR 54321, 54322–54323 (October 26, 2001) and, upon publication in the **Federal Register** of a notice of his finding that a particular product should be excluded, to modify the HTS provision created by the annex to that proclamation to exclude such particular product from the pertinent safeguard measure. On April 5, 2002, USTR published a notice in the **Federal Register** excluding particular products from the safeguard measures, and modified the HTS accordingly. 67 FR 16484. On July 3, the President issued Proclamation 7576, which extended the period for granting exclusions until August 31, 2002. On July 12, 2002, August 30, 2002, and March 31, 2003, USTR published notices in the **Federal Register** excluding additional products from the safeguard measures, and modified the HTS accordingly. 67 FR 46221, 67 FR 56182, and 68 FR 15494.

On March 19, 2002, June 4, 2002, July 12, 2002, August 30, 2002, November 14, 2002, February 11, 2003, March 31, 2003 and June 9, 2003, USTR published **Federal Register** notices (67 FR 12635, 67 FR 38541, 67 FR 46221, 67 FR 56182, 67 FR 69065, 68 FR 6982, 68 FR 15494, 68 FR 34462 respectively) making technical corrections to subchapter III of chapter 99 of the HTS to remedy several technical errors introduced in the annex to Proclamation 7529. These corrections ensured that the intended tariff treatment was provided. Since the publication of these **Federal Register** notices, additional technical errors and omissions in subchapter III of chapter 99 have come to the attention of USTR. Annex I to this notice makes technical corrections to the HTS to remedy these errors and omissions. In particular, the annex to this notice corrects errors in the descriptions of the physical dimensions, chemical composition, or mechanical characteristics of certain products excluded from the application of the safeguard measures.

In addition, it has come to the attention of USTR that there are technical errors and omissions in other chapters of the HTS due to prior proclamations unrelated to Proclamation 7529. Annex II to this notice makes two corrections in the HTS so as to ensure that the intended tariff treatment is accorded. Such corrections are being made pursuant to authority delegated to the USTR in Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415). These modifications correct an inadvertent error in a provision of Presidential Proclamation 6763 of December 23, 1994 (60 FR 1007, 1196) and an inadvertent omission of a conforming change by Presidential Proclamation 7616 of October 31, 2002 (67 FR 67283, 67290) following enactment of section 3106 of the Trade Act of 2002. These changes would appear to have no impact on duty treatment.

Proclamation 6969 authorized the USTR to exercise the authority provided to the President under section 604 of the Trade Act of 1974 (19 U.S.C. 2483) to embody rectifications, technical or conforming changes, or similar modifications in the HTS. Under authority vested in the USTR by Proclamation 6969, the rectifications, technical and conforming changes, and similar modifications set forth in the annex to this notice shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the Annex to this notice.

Robert B. Zoellick,

United States Trade Representative.

Annex I

Section I. Effective March 31, 2003 the notice published at 68 FR 15494–15544 is modified by deleting part 1(C) of section I from the annex.

Section II. Unless otherwise specified in a subdivision herein, the following modifications of subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. EST, on or after the effective date of the individual HTS provision or text being corrected.

1. U.S. note 11 to such subchapter III is hereby modified as follows:

(A) In subdivision (b)(xvi)(A), ''1600 mm'' is deleted and ''1625 mm'' is inserted in lieu thereof; ''manganese of 2.0'' is deleted and ''manganese of 2.1'' is inserted in lieu thereof; and ''minimum'' is inserted immediately before ''elongation'';

(B) In subdivision (b)(xvi)(B), ''1600 mm'' is deleted and ''1625 mm'' is inserted in lieu thereof; ''minimum yield strength of 793 MPa'' is deleted and ''yield strength of 700 to 875 MPa'' is inserted in lieu thereof; ''minimum tensile strength of 931 MPa'' is deleted and ''tensile strength of 790 to 1100 MPa'' is inserted in lieu thereof; and ''minimum'' is inserted immediately before ''elongation'';

(C) In subdivision (b)(lii)(A), ''0.274 mm'' is deleted and ''0.273 mm'' is inserted in lieu thereof;

(D) In subdivision (c)(xxix)(A), ''A624–98'' is deleted and ''A625–98'' is inserted in lieu thereof, and ''black plate'' is inserted after ''reduced'';

(E) In subdivision (c)(xxix)(B), ''A624–98'' is deleted and ''A625–98'' is inserted in lieu thereof, and ''black plate'' is inserted after ''reduced'';

(F) In subdivision (c)(xxxix), ''during the 12-month period beginning on July 3, 2002, or July 3, 2003, or during the period July 3, 2004, through March 20, 2005, inclusive;'' is deleted and ''during the 12-month period beginning on July 12, 2002, or July 12, 2003, or during the period July 12, 2004, through March 20, 2005, inclusive;'' is inserted in lieu thereof;

(G) In subdivision (c)(l)(B), ''phosphorus 0.012 percent'' is deleted and ''phosphorus 0.12 percent'' is inserted in lieu thereof;

(H) In subdivision (c)(lxx)(B), ''carbon 0.13'' is deleted and ''carbon 0.125 to 0.18'' is inserted in lieu thereof; ''silicon 0.20'' is deleted and ''silicon 0.3 to 0.7'' is inserted in lieu thereof; ''manganese 1.5'' is deleted and ''manganese 1.3 to 1.75'' is inserted in lieu thereof; ''niobium (columbium) 0.015'' is deleted and ''niobium (columbium) 0.005 to 0.025'' is inserted in lieu thereof; and ''aluminum 0.04'' is deleted and ''aluminum 0.01 to 0.075'' is inserted in lieu thereof;

(I) In subdivision (c)(lxx)(E), ''carbon 0.14'' is deleted and ''carbon 0.1 to 0.155'' is inserted in lieu thereof; ''silicon 0.20'' is deleted and ''silicon 0.12 to 0.35'' is inserted in lieu thereof; ''manganese 1.7'' is deleted and ''manganese 1.45 to 2.0'' is inserted in lieu thereof; ''niobium (columbium) 0.015'' is deleted and ''niobium (columbium) 0.005 to 0.025'' is inserted in lieu thereof; and ''aluminum 0.04'' is deleted and ''aluminum 0.01 to 0.075'' is inserted in lieu thereof;

(J) In subdivision (c)(lxxii)(A), ''carbon 0.11'' is deleted and ''carbon 0.08 to 0.14'' is inserted in lieu thereof; ''silicon 0.20'' is deleted and ''silicon 0.05 to 0.45'' is inserted in lieu thereof; ''manganese 0.70'' is deleted and ''manganese 0.5 to 1.0'' is inserted in lieu thereof; and ''aluminum 0.04'' is deleted and ''aluminum 0.015 to 0.075'' is inserted in lieu thereof;

(K) In subdivision (c)(lxxii)(B), ''carbon 0.10'' is deleted and ''carbon 0.08 to 0.125'' is inserted in lieu thereof; ''silicon 0.40'' is deleted and ''silicon 0.3 to 0.55'' is inserted in lieu thereof; ''manganese 1.50'' is deleted and ''manganese 1.35 to 1.65'' is inserted in lieu thereof; and ''aluminum 0.04'' is deleted and ''aluminum 0.015 to 0.075'' is inserted in lieu thereof;

(L) In subdivision (c)(lxxii)(C), ''carbon 0.13'' is deleted and ''carbon 0.1 to 0.155'' is inserted in lieu thereof; ''silicon 0.20'' is deleted and ''silicon 0.12 to 0.35'' is inserted in lieu thereof; ''manganese 1.50'' is deleted and ''manganese 1.35 to 1.65'' is inserted in lieu thereof; ''niobium (columbium) 0.015'' is deleted and ''niobium (columbium) 0.005 to 0.025'' is inserted in lieu thereof; and ''aluminum 0.04'' is deleted and ''aluminum 0.01 to 0.075'' is inserted in lieu thereof;

(M) In subdivision (c)(lxxii)(D), ''carbon 0.15'' is deleted and ''carbon 0.13 to 0.18'' is inserted in lieu thereof; ''silicon 0.20'' is deleted and ''silicon 0.05 to 0.60'' is inserted in lieu thereof; ''manganese 1.50'' is deleted and ''manganese 1.3 to 1.75'' is inserted in lieu thereof; ''niobium (columbium) 0.015'' is deleted and ''niobium (columbium) 0.005 to 0.025'' is inserted in lieu thereof; and ''aluminum 0.04'' is deleted and ''aluminum 0.01 to 0.075'' is inserted in lieu thereof;

(N) In subdivision (c)(lxxii)(E), ''carbon 0.11'' is deleted and ''carbon 0.09 to 0.135'' is inserted in lieu thereof; ''silicon 0.20'' is deleted and ''silicon 0.12 to 0.35'' is inserted in lieu thereof; ''manganese 1.60'' is deleted and ''manganese 1.3 to 1.85'' is inserted in lieu thereof; and ''aluminum 0.04'' is deleted and ''aluminum 0.01 to 0.075'' is inserted in lieu thereof;

(O) In subdivision (c)(lxxii)(F), ''carbon 0.17'' is deleted and ''carbon 0.15 to 0.2'' is inserted in lieu thereof; ''silicon 0.50'' is deleted and ''silicon 0.3 to 0.7'' is inserted in lieu thereof; ''manganese 1.60 percent'' is deleted and ''manganese 1.4 to 1.9'' is inserted in lieu thereof; ''niobium (columbium) 0.015'' is deleted and ''niobium (columbium) 0.005 to 0.025'' is inserted in lieu thereof; and ''aluminum 0.04'' is deleted and ''aluminum 0.01 to 0.075'' is inserted in lieu thereof;

(P) In subdivision (c)(lxxii)(G), ''carbon 0.13'' is deleted and ''carbon 0.1 to 0.16'' is inserted in lieu thereof; ''silicon 0.50'' is deleted and ''silicon 0.3 to 0.75'' is inserted in lieu thereof; and ''manganese 1.20'' is deleted and ''manganese 1.0 to 1.45'' is inserted in lieu thereof;

(Q) In subdivision (c)(lxxii)(H), ''carbon 0.17'' is deleted and ''carbon 0.15 to 0.2'' is inserted in lieu thereof; ''silicon 0.50'' is deleted and ''silicon 0.3 to 0.7'' is inserted in lieu thereof; ''manganese 1.60'' is deleted and ''manganese 1.4 to 1.9'' is inserted in lieu thereof; ''niobium (columbium) 0.015'' is deleted and ''niobium (columbium) 0.005 to 0.025'' is inserted in lieu thereof; and ''aluminum 0.04'' is deleted and ''aluminum 0.01 to 0.075'' is inserted in lieu thereof;

(R) In subdivision (c)(cxxxvi), ''bars'' is deleted and ''steel'' is inserted in lieu thereof;

(S) Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after September 1, 2003, in subdivision (c) (clxvii), ''1830 mm'' is deleted and ''1855 mm'' is inserted in lieu thereof;

(T) In subdivision (c)(cxcix), ''A624–00'' is deleted and ''A625–98'' is inserted in lieu thereof;

(U) In subdivision (c)(ccxci), ''1830 mm'' is deleted and ''1855 mm'' is inserted in lieu thereof;

(V) In subdivision (c)(ccclxxx), ''150.38 mm'' is deleted and ''147.84 mm'' is inserted in lieu thereof;

(W) In subdivision (c)(cd), ''not'' is inserted after ''stainless steel bars';

(X) In subdivision (c)(cdv), ''6,071 mm to 6,135 mm in length'' is deleted and ''6,019 mm to 6,135 mm in length'' is inserted in lieu thereof; ''thickness of 0.02 mm to 0.05 mm'' is deleted and ''thickness of 0.02 mm to 0.09 mm'' is inserted in lieu thereof; ''elongation 45 to 50 percent;'' is deleted; ''hardness 58 to 72 Rockwell B'' is deleted and ''hardness 58 to 80 Rockwell B'' is inserted in lieu thereof;

(Y) In subdivision (c)(cdxxix), ''wall thickness of 0.84 mm to 0.92 mm; in any of the following six lengths: (1) 936 mm to 937 mm; (2) 1,033 mm to 1,034 mm; (3) 1,150 mm to 1,151 mm; (4) 3,929 mm to 3,930 mm; (5) 3,950 mm to 3,951 mm; and (6) 4,205 mm to 4,206 mm'' is deleted and ''with (A) wall thickness of 0.84 mm to 0.94 mm in any of the following four lengths: (1) 936 mm to 937 mm; (2) 1,033 mm to 1,034 mm; (3) 1,115 mm to 1,116 mm; (4) 3,929 mm to 3,930 mm, or, (B) wall thickness of 1.10 mm to 1.30 mm and length of 3,982 mm to 3983 mm'' is inserted in lieu thereof; ''carbon 0.045 to 0.094'' is deleted and ''carbon not over 0.1'' is inserted in lieu thereof; ''manganese 0.30 to 0.554'' is deleted and ''manganese not over 0.8'' is inserted in lieu thereof; ''sulfur not over 0.20'' is deleted and ''sulfur not over 0.025'' is inserted in lieu thereof; ''phosphorus not over 0.20'' is deleted and ''phosphorus not over 0.025'' is inserted in lieu thereof; ''silicon not over 0.30'' is deleted and ''silicon not over 0.50'' is inserted in lieu thereof; ''aluminum 0.25 to 0.74'' is deleted and ''aluminum not less than 0.015'' is inserted in lieu thereof; ''niobium 0.015 to 0.030'' is deleted and ''niobium not over 0.090'' is inserted in lieu thereof; and ''carbon equivalent content of 0.120 to 0.185;'' is deleted;

(Z) In subdivision (c)(cdxxx), ''0.84 mm to 0.92 mm'' is deleted and ''0.84 mm to 0.94 mm'' is inserted in lieu thereof; ''carbon 0.045 to 0.094'' is deleted and ''carbon not over 0.1'' is inserted in lieu thereof; ''manganese 0.30 to 0.554'' is deleted and ''manganese not over 0.8'' is inserted in lieu thereof; ''sulfur not over 0.20'' is deleted and ''sulfur not over 0.025'' is inserted in lieu thereof; ''phosphorus not over 0.20'' is deleted and ''phosphorus not over 0.025'' is inserted in lieu thereof; ''silicon not over 0.30'' is deleted and ''silicon not over 0.50'' is inserted in lieu thereof; ''aluminum 0.25 to 0.74'' is deleted and ''aluminum not less than 0.015'' is inserted in lieu thereof; ''niobium 0.015 to 0.030'' is deleted and ''niobium not over 0.090'' is inserted in lieu thereof; and ''carbon equivalent content of 0.120 to 0.185;'' is deleted.

2. The following subheadings of such subchapter III are each modified as follows:

(A) In subheading ''9903.72.85'' , ''note 11(b)(viii)'' is deleted and ''notes 11(b)(viii)(A) through 11(b)(viii)(N) and 11(b)(viii)(P) through 11(b)(viii)(T)'' is inserted in lieu thereof;

(B) Subheading ''9903.76.72'' is deleted;

(C) In subheading 9903.79.73, ''2.700'' is deleted and ''2,700'' is inserted in lieu thereof;

3. The following new subheadings are inserted in numerical sequence in subchapter III of chapter 99 of the HTS, with the new material being inserted in the columns entitled ''Heading/Subheading'', ''Article Description'', ''Rate of Duty 1 General'', ''Rates of Duty 1 Special'' and ''Rates of Duty 2'', respectively:

	[Goods...:]			
''9903.78.34	Enumerated in U.S. note 11(c)(li) to this subchapter	No change	No change	No change.
9903.78.35	Enumerated in U.S. note 11(c)(cxxxv) to this subchapter	No change	No change	No change.
9903.78.36	Enumerated in U.S. note 11(c)(cxxxvi) to this subchapter	No change	No change	No change.
9903.78.37	Enumerated in U.S. note 11(c)(cclvii) to this subchapter	No change	No change	No change.
9903.78.38	Enumerated in U.S. note 11(c)(cccxxxvii) to this subchapter	No change	No change	No change.
9903.79.81	Enumerated in U.S. note 11(b)(viii)(O) to this subchapter	No change	No change	No change.

Conforming Changes:

Subheading 9903.72.57 is modified by deleting ''9903.78.33'' and by inserting in lieu thereof ''9903.78.38''

Subheading 9903.73.18 is modified by deleting ''9903.79.80'' and by inserting in lieu thereof ''9903.79.81'',

Annex II

Technical Corrections to the Harmonized Tariff Schedule of the United States

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the dates indicated in each item below, the Harmonized Tariff Schedule of the United States (HTS) is hereby modified as followed:

1. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after August 6, 2002, general note10(c) is modified by deleting ''1604.14.20'' and by inserting in lieu thereof ''1604.14.22'.

2. Effective with respect to goods entered, or withdrawn from warehouse for

consumption, on or after January 1, 1995, subheading 2933.59.95 is modified by inserting the symbol ''L,'' in alphabetical sequence in the Rates of Duty 1-Special subcolumn in the parenthetical expression following the ''Free'' rate of duty.

[FR Doc. 03–30658 Filed 12–10–03; 8:45 am]

BILLING CODE 3190–W3–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–73]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Caren Centorelli, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–8199.

This notice is published pursuant to 14 CFR §§ 11.85 and 11.91.

Issued in Washington, DC, on December 5, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2003–15857.

Petitioner: Northeast Engineering & Development Ltd.

Section of 14 CFR Affected: 14 CFR 25.561, 25.562, and 25.785(b).

Description of Relief Sought/Disposition: To provide relief from the requirements of 14 CFR 25.562 and 25.785(b) for installation of medical stretchers on Airbus Model 330–200 airplanes.

Partial Grant, 11/24/2003, Exemption No.8183.

Docket No.: FAA–2003–16074.

Petitioner: Gulfstream Aerospace Corporation.

Section of 14 CFR Affected: 14 CFR 25.785(b).

Description of Relief Sought/Disposition: To amend Exemption No. 7296 to remove the limitations that restrict its applicability to seats manufactured by ERDA, Inc. and to airplanes manufactured before January 1, 2004. This exemption is applicable to Gulfstream 200 (Galaxy) model airplanes installed in accordance with Supplemental Type Certificate ST09848SC.

Grant, 11/24/2003, Exemption No.7296A.

[FR Doc. 03–30646 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–72]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 31, 2003.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–200X–XXXXX] by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams, (202) 267–8033, Sandy Buchanan-Sumter, (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on December 5, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–15510.

Petitioner: ATA Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 121.693(e) and 121.697(e)(2).

Description of Relief Sought: To relieve ATA Airlines, Inc., from the requirement to maintain a list of the passengers on the airplanes that ATA Airlines, Inc., operates for the U.S. military.

[FR Doc. 03–30647 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Cancellation Notice for RTCA Government/Industry Free Flight Steering Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of cancellation of RTCA/Industry Free Flight Steering Committee Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of the cancellation of the RTCA Government/Industry Free Flight Steering Committee.

CANCELLATION: The December 4, 2003 meeting announced in the **Federal Register** has been canceled. The revised date and location, if any, will be announced later.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

Issued in Washington, DC, on December 1, 2003.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 03–30648 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–15818]

Exemption To Allow Werner Enterprises, Inc. To Use Global Positioning System (GPS) Technology To Monitor and Record Drivers' Hours of Service

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of intent to grant exemption; request for comments.

SUMMARY: FMCSA proposes to grant an exemption to Werner Enterprises, Inc. (Werner) from the requirement that drivers of commercial motor vehicles (CMVs) operating in interstate commerce prepare handwritten records of duty status (RODS). Werner would instead document its drivers' hours of service through the use of GPS technology and complementary computer software programs. Werner has used GPS technology manufactured by Qualcomm, Inc. and computer software programs to manage and record its drivers' duty status since June 10, 1998, when it entered into a Memorandum of Understanding (MOU) with the agency. The MOU was based on the agency's April 6, 1998, notice of interpretation concerning the use of such technology. Werner and FMCSA revised the MOU in March 2002. The agency proposes that the terms and conditions for the exemption be the same as those contained in the revised MOU, with a few exceptions based on recent discussions between FMCSA and Werner. FMCSA has monitored closely Werner's use of the GPS technology since June 1998. Based on this experience, the agency believes that the terms and conditions of the exemption would achieve a level of safety equivalent to, or greater than, that provided by complying with the current RODS requirements.

DATES: Submit comments on or before January 12, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA–2003–15818 by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* and/or Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Chief of the Vehicle and Roadside Operations Division (MC–PSV), (202) 366–4009, FMCSA, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

On April 6, 1998, FMCSA published a notice of interpretation (63 FR 16697, Apr. 6, 1998) requesting motor carriers to participate in a ''pilot demonstration project'' (the Project). The Project was a voluntary program under which motor carriers with GPS technology and related safety management computer systems could enter into an agreement with the agency to use such systems to record and monitor drivers' hours of service in lieu of complying with the handwritten records of duty status (RODS) requirement of 49 CFR 395.8. The agency indicated that it believes GPS technology and many of the complementary safety management computer systems being used by the motor carrier industry provide at least the same degree of monitoring accuracy as automatic on-board recorders allowed by 49 CFR 395.15. The original deadline for submitting applications was October 5, 1998, with subsequent extensions to June 30, 1999 (63 FR 71791, Dec. 30, 1998), and December 31, 1999 (64 FR 37689, Jul. 13, 1999). The extensions were provided because numerous motor carriers contacted the agency to express an interest in participating in the Project. Although participation in the Project was open to all interested motor carriers, Werner was the only company to sign a memorandum of understanding (MOU) with the agency to allow the use of GPS technology.

Status of Werner's Participation in the Project

On June 10, 1998, Werner entered into an MOU with the agency to use GPS technology and related safety management computer systems as an alternative to handwritten driver RODS. A copy of the MOU is included in the docket referenced at the beginning of this notice. Over the course of the pilot demonstration project, FMCSA conducted onsite reviews and investigated a complaint. The reviews and complaint investigation identified potential improvements to Werner's system that would increase the accuracy of the electronic RODS and thereby raise the level of hours-of-service compliance.

In March 2002, Werner and FMCSA entered into a revised MOU to amend the terms of the June 1998 agreement. A copy of the revised MOU is in the docket referenced at the beginning of this notice. The revised MOU contains specific provisions related to system modifications and internal hours-of-service compliance monitoring reports agreed to by Werner and FMCSA. The March 2002 MOU states:

> At the end of the 18-month period of this agreement, an assessment will be made to consider making this pilot program permanent. The FMCSA will automatically extend the agreement period beyond 18

months if the assessment has not been completed, or if an agency decision regarding permanency has not been rendered. If determined not to be permanent, this agreement may be extended, by mutual agreement of both parties, beyond the 18 months specified until the FMCSA establishes a uniform standard for Electronic On-Board Recording.

The current MOU with Werner was to expire in September 2003 but has been extended to December 31, 2003, because the assessment was not complete by the scheduled expiration date. Werner has indicated that it would like to make its current program permanent rather than continue in a pilot demonstration status.

Proposed Terms and Conditions for the Exemption

FMCSA believes that it is appropriate to make a transition from a pilot demonstration project to an exemption, as authorized by 49 U.S.C. 31315(b) and the implementing regulations under 49 CFR part 381. Although Werner has expressed an interest in using GPS technology and complementary computer systems to monitor and record its drivers' duty status on a permanent basis, FMCSA cannot permit this without initiating a notice-and-comment rulemaking proceeding to amend 49 CFR 395.8. The agency does not believe that it is appropriate to amend the safety regulations based on a technology that is currently being used by only one motor carrier. Therefore, the agency proposes to exercise its authority under 49 U.S.C. 31315(b) to make a transition from the Project to an exemption that can be renewed every two years, through a notice-and-comment process. The agency proposes that the terms and conditions for the exemption be the same as those used for the Project, with a few exceptions based on recent discussions between FMCSA and Werner. FMCSA has made a preliminary determination that, used in lieu of the ''record of duty status'' required by 49 CFR 395.8, Werner's GPS technology and complementary safety management computer systems would achieve the requisite level of safety under 49 U.S.C. 31315(b), provided the following conditions are satisfied:

System Operation

(a) System defaults must record truck stationary time as ''on duty, not driving.''

(b) Movements of the vehicle greater than two miles must be recorded as driving time.

(c) Speed (which is determined by time and distance between truck location updates) that is calculated to be below 10 miles per hour (mph) may be considered invalid. In these instances, distance traveled may be divided by average driver mph or average State-to-State mph to derive a rough estimate of the driving time. Werner must discontinue the use of driving time modeling entirely if Qualcomm improves the satellite positioning frequency or incorporates other technology that makes the modeling unnecessary.

(d) With the exception of automatically recording the driver's status as ''on duty, not driving'' when drivers'' fuel cards are inserted into the card reader, no system defaults are authorized for routine stops (*i.e.*, deliveries, pickups, rest). Drivers must make the correct duty status entry into the electronic system.

(e) The system must not allow drivers to manipulate the system to conceal driving hours.

The automatic recording of movements of two miles or more as driving time differs from the MOU in that the memorandum uses a criterion of one mile. Werner has advised FMCSA that lowering the vehicle movement threshold to one mile has resulted in a substantial number of errors in documenting driver duty status that require correction by company management. Therefore, Werner has requested that it be allowed to continue using its two-mile criterion rather than risk a significant increase in errors.

In addition, the system operation provision concerning default duty status would differ from the current MOU in that fuel stops would be covered by an automatic default. Werner has informed FMCSA that its drivers generally are unable to enter duty status information during refueling because the canopy structures at most fuel stops interfere with the satellite communications equipment on their vehicles. FMCSA responded that it is permissible under the current MOU to automatically place drivers in an on-duty, not-driving status when drivers' fuel cards are inserted into a card reader. The proposed exemption would explicitly allow the default duty status for refueling. FMCSA requests comments on these proposed differences between the MOU and the terms and conditions of the exemption.

Documentation of System Failures

Werner must require each driver to note immediately any failure of the GPS technology or complementary safety management computer systems, and to immediately begin preparing hard-copy driver logs during the period that the technology is inoperative. Werner must maintain a centralized record of each separate failure, including the date, time periods, individual driver or operating division(s) impacted, and type of failure. Upon request by Federal or State enforcement officials, Werner must provide facsimile copies of its records of duty status for the current day and the previous seven days for the driver(s) affected by the failure. In the event that Werner is unable to produce these facsimile copies within two hours, the driver(s) must manually prepare a driver record of duty status for the current day and reconstruct his or her duty hours for the previous seven (7) days. When the system becomes operational, a fax of the missing records of duty status must be forwarded to the agreed-upon site as soon as possible. Failure to produce either of these two types of documents within two hours constitutes a violation of this exemption and 49 CFR 395.8(a).

Information Required on All CMVs Operated by Werner

Werner would be required to ensure that each commercial motor vehicle it operates has on board and available for review by Federal or State enforcement personnel an information packet containing the following three items:

(a) An instruction sheet describing in detail how hours-of-service data may be retrieved from the on-board GPS equipment;

(b) A supply of blank record of duty status graph-grids sufficient to record the driver's duty status and other related information for the duration of each trip; and

(c) A copy of the exemption issued by FMCSA authorizing Werner to use GPS technology and complementary computer software programs in lieu of the ''record of duty status'' required by 49 CFR 395.8.

Quarterly Reports

Werner would be required to prepare a compliance report every three months following the effective date of the exemption. The reports must be maintained for six months from the date of preparation and must be made available to FMCSA upon request. The reports must identify:

(a) Driver training and internal audit procedures employed by Werner to ensure the accuracy of the electronic hours-of-service records;

(b) The percent of driver logs in each Werner operating division found through internal auditing to be in violation of the maximum driving time limitations set forth in 49 CFR 395.3(a) and 395.3(b); and

(c) The number of drivers in each Werner operating division, the number of drivers by operating division audited for hours-of-service record accuracy,

and the percent of driver logs by operating division found to be in violation of 49 CFR 395.8(e).

Furthermore, the support systems must provide a complete audit trail of edits (changes) made to ''driving'' time shown on driver duty status records.

FMCSA Access to Safety Management Information System

Werner must allow FMCSA personnel reasonable access to its safety management information system(s). If FMCSA requests access to the system(s), agency personnel will determine the scope and nature of the assessment. At a minimum, access to records will include:

(a) Driver records of duty status created by Werner's GPS and related safety management computer systems;

(b) Driver-dispatch ''message histories'' and detailed position histories associated with driver records of duty status;

(c) Driver payroll records associated with the driver records of duty status;

(d) Driver shipping document records; and

(e) Miscellaneous trip expense records.

Reporting of Violations of Hours-of-Service Rules

Werner must furnish FMCSA, upon request, a driver-specific report of violations of the requirements related to maximum driving time rules (49 CFR 395.3). With regard to falsification of records of duty status, information must be provided on violations of 49 CFR 395.8(e) for each individual driver requested. Werner must also agree to furnish upon request information indicating what disciplinary and/or remedial action, if any, was taken as a result of a driver's violation of rules set forth in 49 CFR 395.3 and 49 CFR 395.8(e).

Reporting of Corrections or Amendments to Records

Werner must agree to furnish, upon request, information indicating the number of times the ''driving'' time on driver records of duty status was changed for each driver, and identifying who authorized each altered record.

Documenting Distance Traveled

Werner would be required to ensure that the system for monitoring and recording drivers' hours of service has a means of determining that the mileage each driver travels is based on data from the vehicle's electronic control module or other on-board vehicle system, rather than on less accurate methods such as GPS-based (point-to-point) calculations that may underestimate the distance traveled.

Enforcement of Hours of Service While the Exemption Is in Effect

Under the terms and conditions of this exemption, Werner may require its drivers to use the company's GPS technology and complementary safety management computer systems to record their hours of service in lieu of complying with the requirements of 49 CFR 395.8. FMCSA would, to the greatest extent practicable, communicate with State, Provincial, and local enforcement agencies regarding the terms and conditions of the exemption, if granted. FMCSA would continue its policy of not divulging to any third party proprietary information related to Werner's GPS technology or related safety management computer systems.

In the event that FMCSA conducts a compliance review or any other type of motor carrier safety management investigation of Werner, FMCSA would review, using its automated hours-of-service assessment system, 100 percent of the applicable operating division's hours-of-service records for compliance with the maximum driving time limitations set forth in 49 CFR 395.3. The 100 percent sampling would not extend to any other portion of the regulations reviewed. With respect to the investigation of the accuracy of hours-of-service records (49 CFR 395.8(e)), FMCSA would reserve the right to conduct a sampling of records in accordance with FMCSA policies applicable to all motor carriers, and Werner would retain the right to contest the validity of the sampling used.

Notwithstanding the additional recordkeeping requirements of the quarterly compliance reports that Werner must prepare (*see Quarterly Reports* above), the agency would not hold Werner to a higher standard of compliance than the rest of the industry, nor would it treat Werner differently in conducting investigations of complaints or other types of investigations. At any time during the exemption period, FMCSA may conduct compliance reviews of Werner, consistent with standard operating policies applicable to all motor carriers. These compliance reviews would result in the assignment of a safety rating, and the agency could initiate enforcement action against Werner for serious violations.

Werner's drivers and vehicles would continue to be subject to roadside inspections conducted by FMCSA or State enforcement personnel during the period of the exemption. Werner must ensure that its drivers cooperate with Federal and State enforcement personnel who request information, during roadside inspections, concerning its drivers' hours of service.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA is requesting public comment from all interested persons on the agency's intent to grant Werner an exemption to allow the use of GPS technology and related safety management computer systems to document its drivers' hours of service. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the address section of this notice. Comments received after the comment closing date will be filed in the public docket and considered to the extent practicable, but FMCSA may grant or deny the exemption at any time after the close of the comment period. In addition to late comments, FMCSA also will continue to file in the public docket any relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Authority: 49 U.S.C. 31136 and 31315; 49 CFR 1.73.

Issued on: December 5, 2003.

Annette M. Sandberg,

Administrator.

[FR Doc. 03–30692 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than February 9, 2004.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number ____.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or e-mail to Mr. Brogan at *robert.brogan@fra.dot.gov,* or to Ms. Steward at *debra.steward@fra.dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR. Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. § 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of the three currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Track Safety Standards (Gage Restraint Measurement Systems Amendment).

OMB Control Number: 2130–0010.

Abstract: Qualified persons inspect track and take action to allow safe passage of trains and ensure compliance with prescribed Track Safety Standards. FRA amended the Track Safety Standards to provide procedures for track owners to use Gage Restraint Measurement Systems (GRMS) to assess the ability of their track to maintain proper gage. Under the current Track Safety Standards, track owners must evaluate a track's gage restraint capability through visual inspections conducted at frequencies and intervals specified in the standards. With this amendment, track owners may monitor gage restraint on a designated track segment using GRMS procedures. Individuals employed by the track owner to inspect track must be permitted to exercise their discretion in judging whether the track segment should also be visually inspected by a qualified track inspector.

Form Number(s): None.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion.

Affected Public: Businesses.

Reporting Burden:

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
213.14—Excepted Track	160	25 orders	15 minutes	6	$228
—Notification to FRA—Removal of Track Segment From Excepted Statutes.	160	20 notifications	10 minutes	3	114
213.5—Responsibility of Track Owners—Assignment.	685	12 notifications	8 hours	96	3,648
213.7—Designation of Qualified Persons to Supervise Certain Renewals and Inspect Track.	685	1,500 names	10 minutes	250	9,500
—Designations (Partially Qualified under Paragraph c).	31	250 names	10 minutes	42	1,596
213.17—Exeptions	685	8 petitions	24 hours	192	7,296
213.57—Curves; Elevations & Speed Limits.	685	4 requests	40 hours	160	6,080
—Notification to FRA	685	2 notifications	45 minutes	2	76
—Requests for FRA Approval—Test Plans.	1	4 test plans	16 hours	64	2,432
213.110—Gage Restraint Meas. Syts.—Implementing.	685	40 notifications + 4 tech. rpts.	45 minutes/4 hrs	46	1,748 46,250

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
GRMS Output Reports	685	150 reports	5 minutes	13	494
—GRMS Exception Reports	685	150 reports	5 minutes	13	494
—Procedures For Maintaining GRMS Data.	685	10 doc. proc.	2 hours	20	760
—GRMS Training	685	10 training prog. + 25 tr. sessions.	16 hours	560	21,280
—GRMS Inspections—Two Most Recent Records.	685	200 records	2 hours	400	15,200
213.119—Continuous Weld Rail (CWR)—Records.	150	3,000 records	10 minutes	500	19,500
213.233—Track Inspections By Person/Vehicle—Rcds.	685	2,500 notations	1 minute	42	1,260
213.241—Inspection Records	685	20,000	5 minutes	1,763,941	52,918,230
213.303—Responsibility for Compliance—High Speed Track: Assignment of Responsibility.	2	1 petition	8 hours	8	304
213.305—Designation of Fully Qualified Individuals.	2	150 designations	10 minutes	25	950
—Designation of Partially Qualified Individuals.	2	15 designations	10 minutes	3	114
213.317—Exemption From Any/All Requirements.	2	1	24 hours	24	912
213.329—Curves, Elevation, and Higher Speed Limits.	2	3 notifications	40 hours	120	4,560
—Passenger/Commuter Service Over More Than 1 Trk..	2	3 notifications	45 minutes	2	76
213.333—Track Geometry Measurement Sys.—Rpts..	3	18 reports	20 hours	360	10,800
—Track/Vehicle Measurement Perf. Sys.—Procedures.	1	1 written proc	8 hours	8	304
—Exception Printouts	2	13 printouts	20 hours	260	7,800
213.341—Initial Inspection—New Rail/Welds Mill Insp.	2	2 reports	8 hours	16	608
—Welding Plant Inspection	2	2 reports	8 hours	16	608
—Inspection of Field Welds—Records.	2	200 records	20 minutes	67	2,546
213.343—Continuous Weld Rail—History—Records.	2	200 records	10 minutes	33	1,254
213.345—Vehicle Qualification Testing—Results/Rcds.	1	2 reports	16 hours	32	1,216
213.14—Excepted Track	160	25 orders	15 minutes	6	228
—Notification to FRA—Removal of Track Segment From Excepted Statues.	160	20 notifications	10 minutes	3	114
213.5—Responsibility of Track Owners—Assignment.	685	12 notifications	8 hours	96	3,648
213.7—Designation of Qualified Persons to Supervise Certain Renewals and Inspect Track.	685	1,500 names	10 minutes	250	9,500
—Designations (Partially Qualified under Paragraph c).	31	250 names	10 minutes	42	1,596
213.17—Exemptions	685	8 petitions	24 hours	192	7,296
213.57—Curves; Elevations & Speed Limits.	865	4 requests	40 hours	160	6,080
—Notification to FRA	685	2 notifications	45 minutes	2	76
—Requests for FRA Approval—Test Plans.	1	4 test plans	16 hours	64	2,432
213.110—Gage Restraint Meas. Sys.—Implementing.	685	40 notifications + 4 tech rpts.	45 minutes/4 hrs	46	1,748 46,250
—GRMS Output Reports	685	150 reports	5 minutes	13	494
—GRMS Exception Reports	685	150 reports	5 minutes	13	494
—Procedures For Maintaining GRMS Data.	685	10 doc. proc.	2 hours	20	760
—GRMS Training	685	10 training prog. + 25 tr. sessions.	16 hours	560	21,280
—GRMS Inspections—Two Most Recent Records.	685	200 records	2 hours	400	15,200
213.119—Continuous Weld Rail (CWR)—Records.	150	3,000 records	10 minutes	500	19,500
213.233—Track Inspections By Person/Vehicle—Rcds.	685	2,500 notifications	1 minute	42	1,260
213.241—Inspection Records	685	20,000 records	5 minutes	1,763,941	52,918,230

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
213.303—Responsibility for Compliance—High Speed Track; Assignment of Responsibility.	2	1 petition	8 hours	8	304
213.347—Automotive or RR Crossing at Grade—Plans.	1	2 plans	8 hours	16	608
213.353—Turnouts and Crossovers	1	1 guide book	40 hours	40	1,520
213.361—Right of Way—Class 8 & 9—Plan Approv..	1	1 plan	40 hous	40	1,520
213.369—Inspection Records	2	500 records	1 minute	8	240
213.369—Inspection Records	2	500 records	1	8	240
—Designation records	2	2 designations	15 minutes	1	38
—Inspection Records of Defects and Remedial Actions.	2	50 records	5 minutes	4	120

Total Responses: 1,635,052.

Total Estimated Total Annual Burden: 1,767,433 hours.

Type of Request: Extension of a Currently Approved Collection.

Title: Special Notice For Repairs.

OMB Control Number: 2130–0504.

Abstract: The Special Notice For Repairs is issued to notify the carrier in writing of an unsafe condition involving a locomotive, car, or track. The carrier must return the form after repairs have been made. The collection of information is used by State and Federal inspectors to remove freight car or locomotives until they can be restored to a serviceable condition. It is also used by State and Federal inspectors to reduce the maximum authorized speed on a section of track until repairs can be made.

Form Number(s): FRA F 6180.8; FRA F 6180.8a.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion.

Total Responses: 58.

Total Estimated Annual Burden: 7 hours.

Type of Request: Extension of a currently approved collection.

Title: Designation of Qualified Persons.

OMB Control Number: 2130–0511.

Abstract: The collection of information is used to prevent the unsafe movement of defective freight cars. Railroads are required to inspect freight cars for compliance and to determine restrictions on the movements of defective cars.

Form Number(s): None.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion.

Total Estimated Annual Burden: 40 hours.

Total Responses: 1,200.

Type of Request: Extension of a Currently Approved Collection.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on December 5, 2003.

Maryann Johnson,

Acting Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 03–30652 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Canadian Pacific Railway

[Waiver Petition Docket Number FRA–2003–16439]

The Canadian Pacific Railway Company (CPR) seeks a waiver of compliance from certain provisions of the Railroad Locomotive Safety Standards, 49 CFR Part 229, on behalf of themselves, their U.S. subsidiaries, the Delaware & Hudson and the Soo Line Railroads, and the New York Air Brake Corporation (NYAB). Specifically, CPR requests relief from the requirements of 49 CFR 229.27(a)(2) Annual Tests and 49 CFR 229.29(a) Biennial Tests, in order to evaluate extending the required periodic maintenance time intervals for NYAB generation II Computer Controlled Brake (CCB) equipment.

CPR currently owns and operates 213 GE AC4400 locomotives built between December 1998 and September 2003, that are equipped with CCB II brake equipment. In August 2003, CPR, Transport Canada, and NYAB jointly performed a 5-year COT&S with a detailed tear-down inspection of the CCB II brake equipment from two randomly selected locomotives. According to CPR, all of the parties agreed that continued testing of extended COT&S intervals on a year-to-year basis was warranted, based on the encouraging results of the tests and inspections.

CPR has proposed evaluating the extended COT&S intervals according to a test plan that NYAB developed for CPR and Transport Canada. The test plan has assigned locomotives into tests groups based on the scheduled periodic maintenance cycles. Candidate locomotives for test tear-downs would only include those units which have not had a prior COT&S and which have had the least amount of air brake maintenance activity since entering service.

Approval of this waiver will permit the continued operation of the test locomotives in the United States, as the COT&S time intervals are extended beyond the five-year requirement. Also, it will further add to the industry's knowledge of the reliability of the CCB technology, building on a similar waiver (FRA–1999–6252) which was granted to CSXT on in September 1, 2000. It is CPR's intention that FRA would join Transport Canada and NYAB in evaluating the extended COT&S intervals for their CCB equipped locomotives, if this waiver is approved.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2003–16429) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

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). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on December 5, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–30649 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company

[Waiver Petition Docket Number FRA–2003–16306]

The Union Pacific Railroad Company (UP) seeks a waiver of compliance from certain provisions of the Railroad Locomotive Safety Standards, 49 CFR part 229. Specifically, UP requests relief from the requirements of 49 CFR 229.27(a)(2) Annual Tests and 49 CFR 229.29(a) Biennial Tests, applicable to all existing and future installations of electronic air brake equipment furnished by Wabtec Corporation of Wilmerding, Pennsylvania on UP locomotives.

Part 229.27(a)(2) requires that, ''Brake cylinder relay valve portions, main reservoir safety valves, brake pipe vent valve portions, feed and reducing valve portions in the air brake system (including related dirt collectors and filters) shall be cleaned, repaired, and tested'' at intervals that do not exceed 368 calendar days. Part 229.29(a) requires in part that ''* * * all valves, valve portions, MU locomotive brake cylinders and electric-pneumatic master controllers in the air brake system (including related dirt collectors and filters) shall be cleaned, repaired, and tested at intervals that do not exceed 736 calendar days.'' UP requests these provisions be temporarily waived to allow them to conduct a long term test program designed to show that Wabtec's electronic air brake technology has sufficiently improved overall system reliability and safety to a point where it is now possible to move toward a ''component repair as required, performance based COT&S criterion'' similar in scope to that outlined a previous waiver granted September 1, 2000, to CSX Transportation in Docket FRA–1999–6252. This referenced waiver covers CSXT locomotives utilizing New York Air Brake Corporation's Computer Controlled Brake (CCB) equipment, with the intent of moving to a component repair as required, performance-based COT&S criterion.

In 1985, the time interval for the requirements of § 229.29(a) was extended to 1,104 calendar days for 26L Brake equipment based on proven service reliability with the evolution of improved components. The time interval for Wabtec's EPIC equipment was extended to five years in 1992, per FRA Test Waiver, H–92–3 (since renamed FRA–2002–13397.) Currently, UP has more than 1700 locomotives equipped with the Wabtec EPIC brake equipment and maintained under the conditions of waiver FRA–2002–13397.

UP believes the ''vigilance'' capability of Wabtec's electronic equipment is key to this waiver request. This feature employs the controlling computer to constantly monitor the proper functioning of the system as a whole and in real time. If any key operational parameters are found to fall outside of the allowable tolerance established for each, an appropriate action is automatically and immediately initiated to insure safe operation of the equipment. Less critical faults are logged for follow-up maintenance. UP concludes that the combination of real time vigilant monitoring and fault logging enables ''EPIC'' COT&S intervals to be similarly increased beyond the current five years with no impact on safety.

Therefore, UP proposes to initiate a test program to extend the Wabtec electronic air brake COT&S based on the following assertions: (1) A reduction of pneumatic devices by substitution of computer-based logic; (2) real time fault detection and control of critical faults to a known fail-safe condition made possible by constant ''vigilance'' of the controlling computer; (3) development of emergency brake cylinder pressure accomplished conventionally by a back-up pneumatic control valve, as well as electronically under all conditions; (4) demonstrated performance to date of Wabtec ''EPIC'' brake system under the current waiver FRA 2002–13397 (formally H–92–3); and (5) supporting test and inspection results documented over the past decade for the ''EPIC'' equipment as required by the current waiver.

As part of this waiver request, UP recommends that a detailed test plan, necessary for properly tracking and documenting the results, be jointly developed between UP, Wabtec Corporation, and FRA. At the completion of the test program, UP further requests that FRA conduct a formal review of the results relative to the objective of moving toward a ''performance-based COT&S'' criterion.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2003–16306) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

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). The statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on December 5, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–30650 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety regulations. The individual petition is described below including, the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company

[Waiver Petition Docket Number FRA–2003–14408]

On September 22, 2003, FRA denied a waiver request submitted by the Union Pacific Railroad Company (UP) seeking a waiver of compliance from certain provisions of the Railroad Operating Practices regulations, 49 CFR 218, regarding blue signal protection of workers. Specifically, UP wanted authority to have train and yard crew members, and utility employees to remove and replace batteries in the two-way end-of-train telemetry device (EOT) on the train the individual has been assigned to, without establishing any blue signal protection. UP requested the same relief that was earlier granted to the Burlington Northern and Santa Fe Railway (BNSF) in waiver request FRA–2001–10660. FRA denied the original request because it included utility employees from any working craft. UP is amending the original request, with regard to relief for utility employees. The new request is only for train and yard crew members and operating craft utility employees.

Both 218.25 and 218.27 requires blue signal protection when workers are on, under, or between rolling equipment on main track or other than main track. 218.5 defines worker as any railroad employee assigned to inspect, test, repair, or service railroad rolling equipment or their components, including brake systems. Members of train and yard crews are excluded, except when assigned such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate (or assigned to as ''utility employees''). Utility employees assigned to and functioning as temporary members of a specific train or yard crew (subject to the conditions set forth in 218.22 of this chapter), are excluded only when so assigned and functioning. 218.22(b) states in part: A utility employee may be assigned to serve as a member of a train or yard crew without the protection otherwise required by subpart D of part 218 of this chapter only under the following conditions * * * (5) The utility employee is performing one or more of the following functions: * * * inspect, test, install remove or replace a rear marking device or end of train device. Under all other circumstances a utility employee working on, under, or between railroad rolling equipment must be provided with blue signal protection in accordance with 218.23 through 218.30 of this part.

The FRA has maintained that removing or replacing a battery in an EOT, while the device is in place on the rear of a train, requires blue signal protection since this task is a service and repair to the device. Therefore, the only way a utility employee or a train and yard crew member can legally remove or replace the EOT battery without establishing blue signal protection, is to remove the EOT from the rear of the train and perform the battery work outside the area normally protected by the blue signal.

UP contends that safety would be improved by eliminating the need for employees to remove an EOT and place it on the ground to change the battery, then have to pick it up and re-mount it to the freight car coupler. Once again, UP requests that they be granted a waiver under conditions similar to those listed in BNSF waiver FRA–2001–10660.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2003–14408) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

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). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on December 5, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–30651 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA–03–16121]

Insurer Reporting Requirements; Reports Under 49 U.S.C. on Section 33112(c)

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of availability.

SUMMARY: This notice announces publication by NHTSA of the annual insurer report on motor vehicle theft for the 1997 reporting year. Section 33112(c) of title 49 of the U.S. Code, requires this information to be compiled periodically and published by the agency in a form that will be helpful to the public, the law enforcement community, and Congress. As required by section 33112(c), this report provides information on theft and recovery of vehicles; rating rules and plans used by motor vehicle insurers to reduce premiums due to a reduction in motor vehicle thefts; and actions taken by insurers to assist in deterring thefts.

ADDRESSES: Due to the voluminous content of this report, interested persons may obtain a copy of this report by contacting the U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 10 a.m. to 5 p.m.). Requests should refer to Docket No. 2003–16121. This report without appendices may also be viewed on-line at: *http://www.nhtsa.dot.gov/cars/rules/theft.*

FOR FURTHER INFORMATION: Ms. Rosalind Proctor, Office of Planning and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: The Motor Vehicle Theft Law Enforcement Act of 1984 (Theft Act) was implemented to enhance detection and prosecution of motor vehicle theft (Pub. L. 98–547). The Theft Act added a new Title VI to the Motor Vehicle Information and Cost Savings Act, which required the Secretary of Transportation to issue a theft prevention standard for identifying major parts of certain high-theft lines of passenger cars. The Act also addressed several other actions to reduce motor vehicle theft, such as increased criminal penalties for those who traffic in stolen vehicles and parts, curtailment of the exportation of stolen motor vehicles and off-highway mobile equipment, establishment of penalties for dismantling vehicles for the purpose of trafficking in stolen parts, and development of ways to encourage decreases in premiums charged to consumers for motor vehicle theft insurance.

Title VI (which has since been recodified as 49 U.S.C. Chapter 331), was designed to impede the theft of motor vehicles by creating a theft prevention standard which required manufacturers of designated high-theft car lines to inscribe or affix a vehicle identification number onto major components and replacement parts of all vehicle lines selected as high theft. The theft standard became effective in Model Year 1987 for designated high-theft car lines.

The Anti Car Theft Act of 1992 (Pub. L. 102–519) amended the law relating to the parts-marking of major component parts on designated high-theft vehicles. One amendment made by the Anti Car Theft Act was to 49 U.S.C. 33101(10), where the definition of ''passenger motor vehicle'' now includes a ''multipurpose passenger vehicle or light-duty truck when that vehicle or truck is rated at not more than 6,000 pounds gross vehicle weight.'' Since ''passenger motor vehicle'' was previously defined to include passenger cars only, the effect of the Anti Car Theft Act is that certain multipurpose passenger vehicle (MPV) and light-duty truck (LDT) lines may be determined to be high-theft vehicles subject to the Federal motor vehicle theft prevention standard (49 CFR part 541).

Section 33112 of title 49 requires subject insurers or designated agents to report annually to the agency on theft and recovery of vehicles, on rating rules and plans used by insurers to reduce premiums due to a reduction in motor vehicle thefts, and on actions taken by insurers to assist in deterring thefts. Rental and leasing companies also are required to provide annual theft reports to the agency. In accordance with 49 CFR 544.5, each insurer, rental and leasing company to which this regulation applies must submit a report annually not later than October 25, beginning with the calendar year for which they are required to report. The report would contain information for the calendar year three years previous to the year in which the report is filed. The report that was due by October 25, 2000, contains the required information for the 1997 calendar year. Interested persons may obtain a copy of individual insurer reports for CY 1997 by contacting the Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Requests should refer to Docket No. 00–001; Notice 04.

The annual insurer reports provided under section 33112 are intended to aid in implementing the Theft Act and fulfilling the Department's requirements to report to the public the results of the insurer reports. The first annual insurer report, referred to as the Section 612 Report on Motor Vehicle Theft, was prepared by the agency and issued in December 1987. The report included theft and recovery data by vehicle type, make, line, and model which were tabulated by insurance companies and, rental and leasing companies. Comprehensive premium information for each of the reporting insurance companies was also included. This report, the 13th, discloses the same subject information and follows the same reporting format.

Issued on: December 5, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–30693 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16612]

Notice of Receipt of Petition for Decision That Nonconforming 2002 Ferrari 360 Spider and Coupe Passenger Cars Manufactured From September 1, 2002 Through December 31, 2002 Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2002 Ferrari 360 Spider and Coupe passenger cars manufactured from September 1, 2002 through December 31, 2002 are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2002 Ferrari 360 Spider and Coupe passenger cars manufactured from September 1, 2002 through December 31, 2002 that were not originally manufactured to comply

with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 12, 2004.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.).

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151)

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA has previously decided that 2002 Ferrari 360 passenger cars manufactured before September 1, 2002 are eligible for importation, and assigned vehicle eligibility number VSP–402 to those vehicles. See notice announcing decision published on April 3, 2003 at 68 FR 16346. Automobile Concepts, Inc. of North Miami, Florida (''AMC'') (Registered Importer 01–278) has petitioned NHTSA to decide whether 2002 Ferrari 360 Spider and Coupe passenger cars manufactured from September 1, 2002 through December 31, 2002 are eligible for importation into the United States. The vehicles which AMC believes are substantially similar are 2002 Ferrari 360 Spider and Coupe passenger cars manufactured from September 1, 2002 through December 31, 2002 that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2002 Ferrari 360 Spider and Coupe passenger cars manufactured from September 1, 2002 through December 31, 2002 to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

AMC submitted information with its petition intended to demonstrate that non-U.S. certified 2002 Ferrari 360 Spider and Coupe passenger cars manufactured from September 1, 2002 through December 31, 2002, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2002 Ferrari 360 Spider and Coupe passenger cars manufactured from September 1, 2002 through December 31, 2002 are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 135 *Passenger Car Brake Systems,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Inscription of the word ''brake'' on the instrument cluster in place of the international ECE warning symbol; (b) modification of the speedometer to read in miles per hour. The petitioner states that these modifications will be accomplished by programming the instrument cluster with downloaded U.S. version information, which also results in the appropriate seat belt warning symbol being displayed.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model front and rear sidemarker assemblies; (b) modification of the tail lamp assembly wiring so that the tail lamps will operate in the same manner as those on U.S.-certified vehicles.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Inscription of the required warning statement on the face of the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* Programming the instrument cluster with downloaded U.S. version information.

Standard No. 118 *Power Window Systems:* Inspection of each vehicle and installation, on vehicles that are not already so equipped, of a relay so that the windows will not operate with the ignition switched off.

Standard No. 201 *Occupant Protection in Interior Impact:* Inspection of all vehicles and installation, on vehicles that are not already so equipped, of trim components that are necessary to comply with the standard's upper interior impact requirements. The petitioner states that it will install parts previously tested to the standard's requirements by another registered importer, J.K. Technologies LLC of Baltimore, Maryland. For the Spider version of the vehicle, the petitioner identified these parts as including the left and right pillar covers, the windscreen, and linings associated with those components. For the Coupe, the petitioner identified the left and right side rails, the right central pillar, the left pillar, and linings associated with those components.

Standard No. 208 *Occupant Crash Protection:* Inspection of all vehicles

and replacement of any seat belts, air bag control units, air bags, and knee bolsters with U.S.-model components on vehicles that are not already so equipped. Petitioner states that the vehicle should be equipped with an automatic restraint system consisting of driver's and passenger's air bags and knee bolsters, air bag crash sensors, and an air bag control unit. Petitioner also states that the vehicle should be equipped with combination lap and shoulder belts that are self-tensioning and that release by means of a single red pushbutton. Petitioner further states that the vehicle is equipped with a seat belt warning lamp.

Standard No. 209 *Seat Belt Assemblies:* Inspection of all vehicles and replacement of the seat belt assemblies with U.S.-model components on vehicles that are not already so equipped.

Standard No. 210 *Seat Belt Assembly Anchorages:* Inspection of all vehicles and replacement of the seat belt anchorages with U.S.-model components on vehicle that are not already so equipped.

Standard No. 214 *Side Impact Protection:* Inspection of all vehicles to ensure that they are equipped with door bars identical to those in U.S. certified models and installation of those components on vehicles that are not already so equipped.

Standard No. 225 *Child Restraint Anchorage Systems:* Installation of U.S.-model tether anchorages in all coupe model vehicles.

Standard No. 301 *Fuel System Integrity:* Replacement of the charcoal canister, air pump, fuel filler neck, and rollover valve with U.S.-model components.

Standard No. 401 *Interior Trunk Release:* Installation of additional cable and an actuator to permit the trunk lid to be released from inside the trunk.

The petitioner states that all vehicles must be inspected prior to importation to ensure that they are equipped with anti-theft devices identical to those found on the U.S.-certified model, which are necessary to meet the requirements of the Theft Prevention Standard found in 49 CFR part 541. The petitioner states that the U.S.-model component will be installed on any vehicles that are not already so equipped.

In addition, the petitioner states that front and rear bumper reinforcements must be added to the vehicles to comply with the Bumper Standard found in 49 CFR part 581. The petitioner states that it will use components that have already been tested to the requirements of the Bumper Standard by another registered importer, Webautoworld of Pompano Beach, Florida.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed to the edge of the driver's side door or to the latch post nearest the driver to meet the requirements of 49 CFR part 565. In addition, a certification label must be affixed to the driver's side doorjamb to meet the requirements of 49 CFR part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 3, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–30653 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; BMW

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition of BMW of North America, Inc., (BMW) for an exemption of a high-theft line, the BMW 6 vehicle line, from the parts-marking requirements of the vehicle theft prevention standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

DATES: The exemption granted by this notice is effective beginning with the 2004 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated July 21, 2003, BMW of North America, Inc. (BMW), requested exemption from the parts-marking requirements of the theft prevention standard (49 CFR Part 541) for the BMW 6 vehicle line, beginning with MY 2004. The petition has been filed pursuant to 49 CFR Part 543, Exemption from Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for an entire vehicle line. Based on the evidence submitted by BMW, the agency believes that the antitheft device for the BMW 6 vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR Part 541).

BMW's submittal is considered a complete petition, as required by 49 CFR Part 543.7, in that it meets the general requirements contained in 543.5 and the specific content requirements of 543.6.

In its petition, BMW provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new line. BMW will install its antitheft device as standard equipment on the MY 2004 BMW 6 vehicle line. The antitheft device is a passive, electronically-coded vehicle immobilizer (EWS) system. The device will prevent the vehicle from being driven away under its own engine power in the event the ignition lock and doors have been manipulated. The device is automatically activated when the engine is shut off and the vehicle key is removed from the ignition lock cylinder. In addition to the key, the antitheft device can be activated by the use of its radio frequency remote control. Locking the vehicle door and trunk by using the key cylinder or the radio frequency remote control will further secure the vehicle. BMW stated that the frequency codes for the remote control constantly change to prevent an unauthorized person from opening the

vehicle by intercepting the signals of its remote control.

The EWS system consists of a key with a transponder, a loop antenna (coil) around the steering lock cylinder, an EWS control unit and an engine control unit (DME/DDE) with encoded start release input.

BMW stated that integrated in the key is a transponder chip that consists of a transponder, a small antenna coil, and a memory which can be written to and read from. The memory contains its own unique key and customer service data. The transponder is a special transmitter/receiver that communicates with the EWS control through the transceiver module.

BMW states that the EWS control unit provides the interface to the loop antenna (coil), engine control unit and starter. The primary tasks of the EWS control unit will consist of querying key data from the transponder and providing the coded release of the engine management for a valid key. BMW also states that the engine control unit with coded start release input has been designed in such a manner that the ignition and the fuel supply are only released when a correct release signal has been sent by the EWS control unit. The EWS control unit inspects the key data for correctness and allows the ignition to operate and fuel supply to be released when a correct signal has been received.

The vehicle is also equipped with a central-locking system, which locks all doors, the hood, the trunk and fuel filler lid. To prevent locking the keys in the car upon exiting, the driver door can only be locked with a key or by the radio frequency remote control after it is closed. This also locks the other doors. If the doors are open at the time of locking, they are automatically locked when they are closed.

BMW mentioned the uniqueness of its locks and its ignition key. BMW stated that its vehicle's locks are almost impossible to pick, and its ignition key cannot be duplicated on the open market. BMW also stated that a special key blank, key-cutting machine and owner's individual code are needed to cut a new key and that its key blanks, machines and codes will be closely controlled and new keys will only be issued to authorized persons. Spare keys can only be obtained through the BMW dealer because they are not a copy of lost originals, but new keys with original electronic identifications. Additionally, spare keys can only be obtained when all necessary information (*i.e.,*VIN, registration data, customer data) has been provided by the customer or dealer. Every key request is also documented so that any inquiries by insurance companies and investigative authorities can be followed up.

The battery for BMW's 6 vehicle line will be inaccessibly located and covered as an additional security measure. Disconnecting the battery will not allow unlocking of the vehicle's doors. However, in the event of a crash, an inertia switch will automatically unlock all the doors.

BMW also stated that its antitheft device does not incorporate any audible or visual alarms. However, based on the declining theft rate experience of other vehicles equipped with devices that do not have an audio or visual alarm for which NHTSA has already exempted from the parts-marking requirements, the agency has concluded that the absence of a visual or audio alarm has not prevented these antitheft devices from being effective protection against theft.

BMW compared the device proposed for its new line with devices which NHTSA has previously determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements of Part 541, and has concluded that the antitheft device proposed for this new line is no less effective than those devices in the lines for which NHTSA has already granted exemptions from the parts-marking requirements. The antitheft system that BMW intends to install on its 6 vehicle line for the MY 2004 is exactly the same system that BMW installed on its Carline 5 for MY 1997, its Carline 3 for MY 1999, its Carline MINI for MY 2002 and its Z4 for MY 2003. The agency granted BMW's petitions for exemption of its Carline 5 beginning with the 1997 model year, its Carline 3 beginning with the 1999 model year, its Carline MINI beginning with the 2002 model year and its Carline Z4 beginning with the 2003 model year in full (see 61 FR 6292, February 16, 1996, 62 FR 62800, November 25, 1997, 66 FR 33604, June 22, 2001, and 67 FR 45180, July 8, 2002, respectively).

In order to ensure reliability and durability of the device, BMW conducted performance tests based on its own specified standards. BMW provided a detailed list of the following tests it conducted: climatic tests, high temperature endurance run, thermo-shock test in water, chemical resistance, vibrational load, electrical ranges, mechanical shock tests, and electromagnetic field compatibility.

Additionally, BMW stated that its immobilizer system fulfills the requirements of the European vehicle insurance companies which became standard as of January 1995. The requirements prescribe that the vehicle must be equipped with an electronic vehicle immobilizing device which works independently from the mechanical locking system and prevents the operation of the vehicle through the use of coded intervention in the engine management system. In addition, the device must be self-arming (passive), and must become effective upon leaving the vehicle, or not later than the point at which the vehicle is locked, and must deactivate the vehicle only by electronic means and not with the mechanical key.

Based on evidence submitted by BMW, the agency believes that the antitheft device for the 6 vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR Part 541).

The agency believes that the device will provide four of the five types of performance listed in 49 CFR 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device. The device lacks the ability to attract attention to the efforts of unauthorized persons to enter or operate a vehicle by a means other than a key (541.6(a)(3)(ii).

As required by 49 U.S.C. 33106 and 49 CFR 543.6(a)(4) and (5), the agency finds that BMW has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information BMW provided about its antitheft device.

For the foregoing reasons, the agency hereby grants in full BMW of North America's petition for an exemption for the MY 2004 6 vehicle line from the parts-marking requirements of 49 CFR Part 541.

If BMW decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if BMW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. § 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission

of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.'' The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself.

The agency did not intend Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: December 5, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–30689 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket Number: RSPA–98–4957]

Pipeline Safety: Renewal of information Collection: Comment Request

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice and request for public comments and OMB approval.

SUMMARY: This notice requests public participation in the Office of Management and Budget (OMB) approval process for the renewal of an existing RSPA information collection. This information collection concerns a pipeline safety regulation that requires hazardous liquid pipeline operators who operate more than 500 miles of pipeline to follow certain protocols in areas designated as high consequence areas (HCAs). RSPA is requesting OMB approval for renewal of this information collection under the Paperwork Reduction Act of 1995 and 5 CFR part 1320. On September 9, 2003, RSPA published in the **Federal Register** (68 FR 53216) a request for public comments on this information collection. None were received. The purpose of this notice is to allow the public an additional 30 days from the date of this notice to send in their comments.

Abstract: RSPA pipeline safety regulation 49 CFR 195.452 designates certain environmentally sensitive areas that are particularly vulnerable to the consequences of hazardous liquid pipeline accidents as high consequence areas (HCAs). The rule was promulgated on December 1, 2000 (65 FR 75378), to provide for thorough assessment and repair of pipeline segments that, in the event of a leak or failure, could affect populated areas, areas unusually sensitive to environmental damage, and commercially navigable waterways. RSPA now requires hazardous liquid pipeline operators with more than 500 miles of pipeline to develop and follow an integrity management program that provides for continually assessing the integrity of all pipeline segments that could affect these high consequence areas.

Copies of this information collection can be reviewed at the U.S. Department of Transportation, Dockets Facility, Plaza 401, 400 Seventh St., SW., Washington, DC 20590, Monday through Friday from 10 a.m. to 5 p.m., excluding public holidays, when the facility is closed. This information collection can also be viewed electronically on the Internet at *dms.dot.gov.*

DATES: Comments on this notice must be received within 30 days of the publication date of this notice to be assured of consideration.

ADDRESSES: Interested persons are invited to send comments directly to the Office Management and Budget, Office of Regulatory Affairs, Attn: Desk Officer for the Department of Transportation, 726 Jackson Place, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202) 366–6205, to ask questions about this notice; or write by e-mail to *marvin.fell@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION: *Abstract:* Certain areas are particularly environmentally sensitive from hazardous liquid pipeline failures. These areas are called high consequence areas (HCA's).

Respondents: Gas and hazardous liquid pipeline operators.

Estimated Number of Respondents: 66.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden Hours on Respondents: 54,780.

OMB Control Number: 2137–0604.

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC on December 4, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–30656 Filed 12–10–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 558 (Sub–No. 7)]

Railroad Cost of Capital—2003

AGENCY: Surface Transportation Board.

ACTION: Notice of decision instituting a proceeding to determine the railroads' 2003 cost of capital.

SUMMARY: The Board is instituting a proceeding to determine the railroad industry's cost of capital for 2003. The decision solicits comments on: (1) The railroads' 2003 current cost of debt capital; (2) the railroads' 2003 current cost of preferred stock equity capital; (3) the railroads' 2003 cost of common stock equity capital; and (4) the 2003 capital structure mix of the railroad industry on a market value basis.

DATES: Notices of intent to participate are due no later than January 12, 2004. Statements of the railroads are due by March 29, 2004. Statements of other interested persons are due by April 26, 2004. Rebuttal statements by the railroads are due by May 17, 2004.

ADDRESSES: Send an original and 10 copies of statements and a copy of the statement on a 3.5 inch disk in WordPerfect 9.0, and an original and 1 copy of the notice of intent to participate to: Surface Transportation Board, Case Control Branch, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 565–1529. (Federal Information Relay Service (FIRS) for the hearing impaired: 1 (800) 877–8339.)

SUPPLEMENTARY INFORMATION: The Board's decision is posted on the Board's Web site, *http://*

www.stb.dot.gov. In addition, copies of the decision may be purchased from ASAP Document Solutions by calling 202–293–7878 (assistance for the hearing impaired is available through FIRS at 1–800–877–8339), or by visiting Suite 405, 1925 K Street, NW., Washington, DC 20006, or by email at *asapdoc@verizon.net.*

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10704(a).

Decided: December 4, 2004.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

[FR Doc. 03–30620 Filed 12–10–03; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register

Vol. 68, No. 238

Thursday, December 11, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106030–98]

Proposed Collection; Comment Request for Regulation Project

Correction

In notice document 03–25917 beginning on page 59239 in the issue of Tuesday, October 14, 2003, make the following correction:

On page 59240, in the first column, under the heading **SUPPLEMENTARY INFORMATION**, in the fourth line, ''*OMB Number:* 154–1718'' should read ''*OMB Number:* 1545–1718''.

[FR Doc. C3–25917 Filed 12–10–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
December 11, 2003

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 37, et al.

Standards of Conduct for Transmission Providers; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 37, 161, 250, 284 and 358

[Docket No. RM01–10–000; Order No. 2004]

Standards of Conduct for Transmission Providers

November 25, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is adopting standards of conduct that apply uniformly to interstate natural gas pipelines and public utilities (jointly referred to as Transmission Providers). The standards of conduct will govern the relationships between regulated Transmission Providers and all of their Energy Affiliates. The new standards of conduct will eliminate the loophole in the current regulations that do not cover a Transmission Provider's relationship with Energy Affiliates that are not marketers or merchant affiliates. The Final Rule will ensure that Transmission Providers cannot extend their market power over transmission to wholesale energy markets by giving their Energy Affiliates unduly preferential treatment.

EFFECTIVE DATE: The rule will become effective February 9, 2004.

FOR FURTHER INFORMATION CONTACT: Demetra Anas, Office of Market Oversight and Investigation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, (202) 502–8178.

SUPPLEMENTARY INFORMATION:

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Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

1. The Federal Energy Regulatory Commission is adding Part 358 to its regulations and revising Parts 37 and 161 of its regulations in response to the changing structure of the energy industry.[1] In this rule, the Commission adopts standards of conduct that apply uniformly to interstate natural gas pipelines and public utilities (jointly referred to as Transmission Providers) that are currently subject to the gas standards of conduct in Part 161 of the Commission's regulations and the electric standards of conduct in Part 37 of the Commission's regulations.[2] In light of the changing structure of the energy industry, the standards of conduct will govern the relationships between regulated Transmission Providers and all of their Energy Affiliates. The new standards of conduct will eliminate the loophole in the current regulations that do not cover a Transmission Provider's relationship with Energy Affiliates that are not marketers or merchant affiliates. The Final Rule will ensure that Transmission Providers cannot extend their market power over transmission to wholesale energy markets by giving their Energy Affiliates unduly preferential treatment.

I. Background

2. On September 27, 2001, the Commission issued a Notice of Proposed Rulemaking (NOPR) in this proceeding.[3] One hundred and fifty-five interested persons submitted comments.[4] Several commenters requested an opportunity for an oral presentation on the matters raised in the NOPR. On April 25, 2002, the Commission published an ''Analysis of the Major Issues Raised in the Comments'' (Major Issues Analysis), suggesting some possible changes to the proposals in the NOPR. The Major Issues Analysis proposed changes in the definition of an Energy Affiliate, among other things, and provided draft regulatory text.

3. The Major Issues Analysis also gave notice that the Commission would host a full-day technical conference giving interested persons the opportunity to discuss issues raised in the NOPR and the Major Issues Analysis. Approximately 200 participants attended the conference on May 21, 2002. During and following the conference, participants were encouraged to submit drafting options for regulatory text. The Commission then posted all of the proposals on its Internet Website. Since the conference, the Commission has received more than 100 additional comments, many from interested persons who previously submitted comments.

4. This Final Rule is being issued after a review of all the comments filed in this proceeding and will become effective on February 9, 2004. By February 9, 2004, each Transmission Provider is required to file with the Commission and post on the OASIS or its Internet website a plan and schedule for implementing the standards of conduct. By June 1, 2004, all Transmission Providers must comply with the standards of conduct and post procedures on the Internet that will enable customers and the Commission to determine whether Transmission Providers are in compliance with the standards of conduct requirements contained herein.

II. Current Regulations

5. The current standards of conduct restrict the ability of interstate natural gas pipelines and public utilities (Transmission Providers) to give their marketing affiliates or wholesale merchant functions undue preferences over non-affiliated customers. The Commission's goal—to prevent unduly discriminatory behavior—reflects FERC's statutory responsibilities under the NGA and FPA.[5] Both gas[6] and electric[7] standards of conduct rely on

[1] The Commission is also making minor conforming changes in Parts 250 and 284.

[2] The gas standards of conduct are codified at part 161 of the Commission's regulations, 18 CFR part 161 (2003), and the electric standards of conduct are codified at 18 CFR 37.4 (2003).

[3] Standards of Conduct for Transmission Providers, 66 FR 50919 (Oct. 5, 2001), IV FERC Stats. & Regs. Regulation Preambles ¶ 32,555 (Sept. 27, 2001).

[4] *See* Appendix A for a list of commenters.

[5] Sections 4 and 5 of the Natural Gas Act (NGA), 15 U.S.C. 717c and 717e (2000), state that no natural gas company shall make or grant an undue preference or advantage with respect to any transportation or sale of natural gas subject to the Commission's jurisdiction. Similarly, under sections 205 and 206 of the Federal Power Act (FPA), 16 U.S.C. 824d and 824e (2000), no public utility shall make or grant an undue preference with respect to any transmission or sale subject to the Commission's jurisdiction.

[6] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,820 (June 1, 1988); Order No. 497–A, *order on reh'g*, 54 FR 52781 (Dec. 22, 1989), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,868 (Dec. 15, 1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (Dec. 28, 1990), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,908 (Dec. 13, 1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (Jan. 2, 1992), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,934 (Dec. 20, 1991), *reh'g denied*, 57 FR 5815 (Feb. 18, 1992), 58 FERC ¶ 61,139 (Feb. 10, 1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, 57 FR 58978 (Dec. 14, 1992), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,958 (Dec. 4, 1992); Order No. 497–E, *order on reh'g and extending sunset date*, 59 FR 243 (Jan. 4, 1994), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,987 (Dec. 23, 1993); Order No. 497–F, *order denying reh'g and granting clarification*, 59 FR 15336 (Apr. 1, 1994), 66 FERC ¶ 61,347 (Mar. 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,996 (June 17, 1994).

See also Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on reh'g*, 59 FR 52896 (Oct. 20, 1994), 69 FERC ¶ 61,044 (Oct. 14, 1994); Order No. 566–B, *order on reh'g*, 59 FR 65707 (Dec. 21, 1994), 69 FERC ¶ 61,334 (Dec. 14, 1994); and Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (Aug. 12, 1998), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,064 (July 30, 1998).

[7] Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 31,035 (Apr. 24, 1996); Order No. 889–A, *order on reh'g*, 62 FR 12484 (Mar. 14, 1997), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,049 (Mar. 4, 1997); Order No. 889–B, *reh'g denied*, 62 FR 64715 (Dec. 9, 1997), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,253 (Nov. 25, 1997).

See also Promoting Wholesale Competition Through Open Access Non-Discrimination Transmission Services by Public Utilities; Recovery

Continued

similar mechanisms to prevent transmission from being used in an unduly preferential or discriminatory manner by: (1) Separating employees [8] engaged in transmission services from those engaged in commodity marketing services, *i.e.*, marketing or sales for resale of natural gas or electric energy; and (2) ensuring that all transmission customers, affiliated and non-affiliated, are treated on a non-discriminatory basis. The Commission's goals have not changed. This rule is designed to prevent Transmission Providers from giving undue preferences to any of their Energy Affiliates to ensure that transmission is provided on a non-discriminatory basis.

III. Need for the Rule

6. As discussed in the NOPR, significant changes have occurred since the standards of conduct were first adopted. In Order No. 636, the Commission required all interstate natural gas pipelines to provide open-access transportation service and to unbundle their gas sales from transportation.[9] Since then, the market has expanded to include both physical and financial transactions by marketing and non-marketing gas pipeline affiliates.[10] In the gas industry, these changes include unbundling, capacity release, and e-commerce. Today, as a result of growth and consolidations, many interstate natural gas pipeline companies also have a much wider array of affiliates in all sectors of the energy business. The gas industry has experienced consolidations in every sector—pipelines, producers, marketers, LDC/utilities and industrials. Examples include the mergers of El Paso Energy Corporation, Sonat Inc. and the Coastal Corporation, and Columbia Energy Group and NiSource Inc. Marketing affiliates and non-marketing affiliates today offer a variety of new services, such as bundled sales, asset management, price hedging, risk management, and electronic commodity trading. Recently, some pipelines have reduced or eliminated some of these services, while others continue to have active merchant, management and trading functions.

7. Similarly, now that public utility Transmission Providers have been providing open-access service under Order No. 888 for several years, there has been a large increase in the number of power marketers with market-based rates,[11] an increased market for available transmission capacity, and an increased number of power transactions. Electric power is evolving into a more liquid, transparent commodity.

8. Not only are the affiliated entities changing in size and scope, so are the Transmission Providers. As a result of an increase in merger activities there has been a convergence of the gas and electric industries.[12] These industry changes mean that interstate natural gas pipelines and their affiliates not only deal in gas, but also in power, much of which is generated using natural gas. In one of its recent regulatory reviews, the Federal Trade Commission (FTC) found that the proposed acquisition of Panhandle and Trunkline by CMS was likely to adversely affect industrial plants in the CMS local natural gas franchise areas that rely on natural gas as a fuel to generate electric power onsite.[13]

9. The Commission is concerned that a Transmission Provider's market power could be transferred to its affiliated businesses because the existing rules do not cover all affiliate relationships. For example, an integrated entity could exercise market power in delivered natural gas service to raise costs of rival generators or inhibit entry of new generators into wholesale power markets.

10. Although the current standards of conduct limit Transmission Providers' ability to make or grant undue preferences to their wholesale merchant functions or to their marketing affiliates, they do not cover the transmission providers' other non-marketing affiliates, even though the NGA and FPA prohibit a natural gas pipeline company and a public utility from giving any entity an undue preference. Non-marketing affiliates of Transmission Providers compete against non-affiliates for transmission services, in capacity release transactions, in power sales, and in siting new generation. For example, in the gas industry, non-marketing affiliates of interstate natural gas pipelines control large amounts of capacity on their affiliated pipelines, yet they are not covered by the current standards of conduct because they do not actually hold pipeline capacity (functioning instead as asset managers) or they fit within one of the existing exceptions, *e.g.*, producers, gatherers and local distribution companies.[14] *See* 18 CFR 161.2 (2003). A comparison of the October 2003 Index of Customers data to the January 2001 Index of Customers data reveals that the amount of firm capacity held by marketing affiliates has decreased during that period, while the amount of firm capacity held by other affiliates has increased during that period.[15]

of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 31,036 (Apr. 24, 1996) at 31,692; *order on reh'g*, Order No. 888–A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs., Regulations Preambles 1991–1996 ¶ 31,048 (Mar. 4, 1997); *order on reh'g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997); *order on reh'g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom.*, Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), *cert. granted*, 69 U.S.L.W. 3574 (Nos. 00–568 (in part) and 00–809), *cert. denied* (No. 00–800) (U.S. Feb. 26, 2001).

[8] Each reference to employees includes contractors, consultants and agents.

[9] Order No. 636, Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, FERC Stats. & Regs. ¶ 30,939 (1992), *order on reh'g*, Order No. 636–A, FERC Stats. & Regs. ¶ 30,950 (1992), *order on reh'g*, Order No. 636–B, 61 FERC ¶ 61,272 (1992), *aff'd in part, rev'd in part, United Distribution Cos.* v. *FERC,* 88 F.3rd 1105 (D.C. Cir. 1996), *cert denied*, 137 L. Ed 2d 845, 117 S. Ct. 1723 (1997), *on remand*, Order No. 636–C, 78 FERC ¶ 61,186 (1997), *order on reh'g*, Order No. 636–D, 83 FERC ¶ 61,210 (1998).

[10] We also have seen the entry of many financial institutions into the trading arena, *e.g.*, Morgan Stanley Capital Group, Inc., Bank of America, N.A., and UBS AG.

[11] As of October 1, 2003, the Commission has granted approximately 1300 market-based rate authorizations; nearly 880 of these were approved within the last five years. Of the authorizations granted within the last five years, about 500 were granted to investor-owned utilities and their affiliates.

[12] Since 1995, the Commission has received 66 public utility merger applications, 60 of which have been approved, one has been set for hearing and five have been withdrawn or terminated. Several mergers joined gas and electric companies, such as NiSource Inc. with Columbia Energy Group and Dominion Resources, Inc. with Consolidated Natural Gas Company.

[13] In the matter of CMS Energy Company and Panhandle Eastern Pipeline Co. *et al.*, FTC File 991–0046, Analysis of Proposed Consent Order to Aid Public Comment.

[14] A review of data from the 85 interstate natural gas pipelines and certificated storage companies that submitted an Index of Customers for October 2003, shows that 63 of them transport or store gas for their affiliates. Thirty-six pipelines transport gas for their marketing affiliates, which hold an average of 16 percent of the affiliated pipelines' capacity. Similarly, 13 pipelines with storage services ''transport'' gas for their marketing affiliates, which hold an average of 43 percent of the affiliates storage companies' capacity.

In addition, 33 pipelines transport gas for other (non-marketing) affiliates that hold an average of 42 percent of the affiliated pipelines' capacity, and 16 storage companies ''transport'' gas for their other affiliates, which hold an average of 46 percent of the affiliated storage companies' capacity.

Staff's review, which looked at all interstate natural gas pipelines that filed Index of Customers is more complete than an INGAA-sponsored study of select pipelines that showed, during 2000, that marketing and non-marketing affiliates of natural gas pipelines contracted for 14.4 percent of the capacity on their affiliated pipeline.

[15] The January 2001 Index of Customers data shows that marketing affiliates held about 18 percent of affiliated interstate natural gas pipelines' firm capacity and non-marketing affiliates held an additional 19 percent of the affiliated pipelines' firm capacity. The October 2003 Index of Customers

11. The current standards of conduct do not address the sharing of confidential shipper information and transportation information with all Energy Affiliates. For example, if an interstate natural gas pipeline informs its affiliated asset manager about a proposed pipeline expansion or upcoming curtailment, the current standards of conduct do not require it to make that information available to non-affiliates, unless the asset manager is a Marketing Affiliate. Nor do the current standards address whether an electric Transmission Provider can share with its generator affiliates information about generation projects planned by competitors. Sharing of information between Transmission Providers and Energy Affiliates undermines and frustrates the efforts of ''independent'' businesses to buy, sell, build, grow, and provide competitive alternatives in markets where there are concerns about market power. Although Transmission Providers' unduly preferential behavior towards their Energy Affiliates may not violate the current standards of conduct, we believe it violates the general statutory prohibitions against undue discrimination and undue preferences in the provision of interstate transmission services.

12. Many commenters argue generally that the rule is unnecessary. They maintain that there have been relatively few cases of anti-competitive behavior. Some commenters urged the Commission to maintain the status quo. Many public utility Transmission Providers and interstate natural gas pipeline Transmission Providers argue that there is no need for a general rule, and individual instances of abuse can be considered and resolved by the Commission in case-by-case investigations or in individual Commission proceedings.

13. Some commenters supported the Commission's proposal to develop uniform standards of conduct. For example, the American Antitrust Institute said that Transmission Providers have the ability and incentive to adversely affect electricity or gas prices by frustrating or precluding a rival's access to electric transmission or gas transportation. In addition, those companies involved in the converging energy industry support the Commission's initiative because they currently operate under both the electric and gas standards of conduct. Some commenters urge the Commission to adopt stricter prohibitions, such as structural remedies or capacity limits. NASUCA says that the lack of complaints is a ''Catch–22.'' NASUCA states that the reason there have been very few complaints regarding other affiliates is that anti-competitive transactions involving these transactions do not violate the current standards of conduct.

14. Having carefully considered all the comments, the Commission is convinced of the need for a general rule to establish standards of conduct governing relationships between Transmission Providers and their Energy Affiliates. With the creation of the Office of Market Oversight and Investigations (OMOI), the Commission is seeing the results of a more active enforcement program investigating unduly discriminatory practices. Recently, the Enforcement Division of OMOI has uncovered affiliate abuse activity that reveals that some Transmission Providers are giving their affiliates undue preferences and violating the standards of conduct.[16] In addition, several audits of public utilities, conducted by the Division of Regulatory Audits, Office of the Executive Director, revealed violations of the standards of conduct. Specifically, Public Service Company of New Mexico (PNM) failed to comply with the independent functioning requirement.[17] In addition, wholesale merchant function employees had access to computer terminals that allowed them to access transmission system information on the EMS (Energy Management System). More recently, an audit of Ameren Corporation revealed, among other things, that Ameren's transmission employees had engaged in non-public, off-OASIS communications with wholesale merchant function employees and other customers.[18]

15. Transmission Providers continue to have economic incentives to show undue preferences toward their Energy Affiliates. The Commission is adopting new rules to close loopholes in existing rules and to give Transmission Providers specific guidance on how to eliminate undue discrimination and undue preferences in the provision of interstate transmission services, consistent with the directions of the NGA and FPA. The Commission believes that the revised standards of conduct will ensure that Transmission Providers function independently of all their Energy Affiliates. Such separation is vital if the Commission is to ensure that Transmission Providers do not use their access to information about transmission to unfairly benefit their own or their affiliates' sales to the detriment of competitive markets.

IV. Section-by-Section Analysis of Final Rule

A. Applicability—§ 358.1

16. The NOPR proposed that the standards of conduct would apply to all Transmission Providers, as discussed in the section below. The NOPR also stated that the standards of conduct would not apply to Commission-approved Regional Transmission Organizations (RTOs) that comply with the requirements of Order No. 2000.[19] However, RTOs would be subject to the posting requirements in §§ 37.5 and 37.6 of the Commission's regulations, 18 CFR 37.5 and 37.6 (2003). Finally, the NOPR provided that a public utility transmission owner that participates in a Commission-approved RTO and does not operate or control its transmission facilities may request an exemption from the standards of conduct. Following a review of the comments, and as discussed in more detail below, the Commission is adopting this section with modifications, as follows:

§ 358.1 Applicability.

(a) This part applies to any interstate natural gas pipeline that transports gas for others pursuant to subpart A of Part 157 or subparts B or G of Part 284 of this chapter.

(b) This part applies to any public utility that owns, operates, or controls transmission facilities used for the transmission of electric energy in interstate commerce.

(c) This part does not apply to a Transmission Provider that is a Commission-approved Regional Transmission Organization (RTO) or Independent System Operator (ISO). If a public utility transmission owner participates in a Commission-approved RTO or ISO and does

data shows that marketing affiliates hold about 16 percent of the affiliated pipelines' firm capacity and non-marketing affiliates hold an additional 42 percent of the affiliated pipelines' firm capacity.

[16] *See e.g.,* Transcontinental Gas Pipe Line Corp., 102 FERC ¶ 61,302 (2003) (*Transco*); National Fuel Gas Supply Corp., 103 FERC ¶ 61,192 (2003); Idaho Power Corp., 103 FERC ¶ 61,182 (2003) (*Idaho Power*); and Cleco Corp., 104 FERC ¶ 61,125 (2003) (*Cleco*).

[17] April 25, 2000 Letter from John Delaware, Deputy Director and Chief Accountant, to Public Service Company of New Mexico in Docket No. FA99–9–000.

[18] For example, merchant function employees called transmission function employees to request the most up-to-date, non-firm ATC information to save time in submitting requests for transmission service via OASIS. *See* September 27, 2002 Letter from John Delaware, Deputy Executive Director and Chief Accountant to Ameren Corporation in Docket Nos. FA01–5–000, FA01–6–000 and FA01–7–000.

[19] Regional Transmission Organizations, Order No. 2000, 65 FR 809 (Jan. 6, 2000), FERC Stats. & Regs., Regulation Preambles July 1999–December 2000 ¶ 31,089 (Dec. 20, 1999), *order on reh'g,* Order No. 2000–A, 65 FR 12088 (Mar. 8, 2000), FERC Stats. & Regs., Regulation Preambles 1996–2000 ¶ 31,092 (Feb. 25, 2000), *petitions for review pending sub nom.,* Public Utility District No. 1 of Snohomish County, *Washington* v. *FERC* (D.C. Cir., Apr. 24, 2000 (Nos. 00–1174, *et al.*)).

not operate or control its transmission facilities and has no access to transmission or market information covered by § 385.5(b), it may request an exemption from this part.

(d) A Transmission Provider may file a request for an exemption from all or some of the requirements of this part for good cause.

i. Regional Transmission Organizations/ Independent System Operators

17. The NOPR proposed to exempt Commission-approved RTOs from the standards of conduct, while Transmission Providers that are members of RTOs would not automatically be exempt from them. The NOPR stated that depending on how an RTO is structured, there may be a continuing need to apply the standards of conduct to public utility Transmission Providers that are members of RTOs. While an RTO may administer or manage the transmission facilities, there are instances in which a transmission owner continues to physically control or operate the transmission facilities or control centers.[20]

18. EEI urged the Commission to be flexible to accommodate the varying operational arrangements that may be worked out between RTOs or ISOs and participating utilities. EEI, the Kentucky Commission, LG&E and KU urged the Commission to permit utilities that have joined an RTO, but still ''technically'' operate transmission facilities, to be eligible for exemptions from the rule. They argued that because the RTO ''administratively'' controls the transmission facilities, concerns about improper transfer and use of transmission information are alleviated.

19. BPA stated that it is unclear whether a Transmission Provider would be eligible for an exemption if, despite turning over operation and control, the Transmission Provider retains preferential access to unposted transmission information and requested that the Commission exempt a Transmission Provider even if it possesses minimal transmission information.

20. BPA has highlighted one of the main concerns of the standards of conduct—information access. If a Transmission Provider operates transmission facilities, regardless of whether it belongs to an RTO/ISO, it has the ability to provide an undue preference to an affiliate and has access to valuable transmission information. Unless the ISO or RTO has a control center and field employees dedicated to the operation and maintenance of all transmission facilities under its operation, a Transmission Provider may be responsible for the operation of the transmission assets (under the direction of the ISO or RTO) and, more importantly, have direct access to transmission information.[21] Participation in an ISO or RTO does not necessarily prevent a Transmission Provider from sharing information with its affiliates preferentially or preferentially operating facilities for the benefit of its Energy Affiliates.

21. NYISO requested clarification that it would not be subject to the rule. The Commission clarifies that NYISO would not be subject to the rule.

22. LILCO urged the Commission to require RTOs to be subject to the requirement to implement tariffs in a non-discriminatory fashion under § 385.5(c) of the Commission's regulations. Similarly, MID and the Illinois Commission requested that the Commission require RTOs and comparable entities (ISOs) to comply with the standards of conduct. MID claimed that RTOs and ISOs often procure Ancillary Services and Energy to meet their customers' needs and such purchases can have a significant effect on the market.

23. The Commission will not require ISOs or RTOs to be subject to the requirements of the standards of conduct as these transmission organizations have been designed and approved by the Commission to eliminate unduly preferential practices. Indeed, one of the many reasons for their creation was to provide a remedy to undue discrimination rather than relying on the standards of conduct. If transmission customers observe that an ISO or RTO is not complying with its Commission-approved tariff or behaving in an unduly discriminatory fashion, it may file a complaint with the Commission, or contact the Commission's Enforcement Hotline or the ISO's or RTO's market monitoring unit (MMU).

ii. Non-Public Utilities

24. The Kentucky Commission, LPPC, Nebraska Public Power District and SMUD urged the Commission to clarify that the standards of conduct will apply to non-public utilities, by virtue of the reciprocity provisions of Order No. 888, in the same manner as the current standards of conduct apply to non-public utilities. Sempra urged the Commission to clarify that public power agencies or non-jurisdictional Transmission Providers that get access to the jurisdictional grid through reciprocity tariffs under Order No. 888 should be required to comply with the standards of conduct to eliminate the preferences they provide to their own merchant operations. The Commission agrees and is amending the proposed regulation to make it clearer which entities are subject to the requirements of the standards of conduct. If a non-public utility voluntarily files a reciprocity open access tariff under Order No. 888, it shall comply with the Final Rule.

iii. Cooperatives and Small Pipelines and Utilities

25. Several commenters, including Alabama Electric Coop., Arkansas Electric Coop., Connexus, Seminole Electric Coop., Old Dominion, Midwest Energy, National Rural Electric Coop. Assoc., Southwest Transmission Coop., East Texas Electric Coop., Wolverine Power Supply Coop., Energy East Companies, Empire Electric District, Wells Rural Electric Coop. and Rural Utilities Service of the Department of Agriculture, asked the Commission to clarify that small utilities or cooperatives (coops) that obtained waivers of the standards of conduct under Order No. 889 would automatically be exempt from the provisions of the Final Rule.[22] Along the same lines, B–R Pipeline, Distrigas of Massachusetts, Hampshire Storage, NiSource, SCG, USG, and U.S. Gypsum and Washington Gas Light urged the Commission to categorically exempt small pipelines or those that were built to serve one or several customers. NRECA requested that the Commission incorporate waiver provisions in the standards of conduct and continue the effectiveness of previously issued waivers.

26. The Industrials recommended that the regulatory text contain a specific exemption provision. Dynegy, on the other hand, urges the Commission not to create broad categorical exemptions from the rule but, rather, to evaluate specific claims of hardship on a case-by-case basis.

27. The Commission will continue the exemptions and partial waivers for the entities that have previously received

[20] *See* PJM Interconnection, L.L.C. and Allegheny Power, 96 FERC ¶ 61,060 (2001), where the Commission permitted PJM-West's transmission assets to be operated through PJM's central control center, while the physical control of these transmission assets remained with the transmission owners.

[21] RTOs and ISOs centrally monitor the transmission system, approve transmission service requests through OASIS, and direct member Transmission Providers in the operation of the transmission assets. RTOs, ISOs and member Transmission Providers share transmission information to facilitate safe and reliable operation of the transmission system.

[22] Black Creek Hydro, Inc. 77 FERC ¶ 61,232 (1996).

exemptions and partial waivers under Order No. 889 or Order No. 497. However, an exemption may be revoked if, after an investigation or audit, the Commission determines that the entity no longer qualifies for the exemption or the entity has abused the exemption.

28. In addition, Transmission Providers that did not previously obtain an exemption may request an exemption from all or some of the requirements of Part 358. RUS and NRECA requested clarification that generation and transmission cooperatives and their distribution cooperatives will not be subject to the Final Rule. The Commission clarifies that it will treat generation and transmission cooperatives consistent with the policies established under Order No. 888.[23]

iv. Delay of Applicability

29. Alliance urges the Commission to allow Transmission Providers to delay implementing the Final Rule while the Commission reviews a Transmission Provider's request for an exemption or waiver from the standards of conduct. This is inconsistent with Commission policy to implement rules after reasonable notice; however, apart from the information filing required in § 358.5(e)(1), the Commission is giving Transmission Providers until June 1, 2004 to implement the requirements of the Final Rule. This implementation date should afford Transmission Providers time to fashion requests for waivers or exemptions.

B. General Principles—§ 358.2

30. The NOPR proposed the following general principles for the standards of conduct: (1) A Transmission Providers' employees engaged in transmission system operations must function independently from the Transmission Providers' sales or marketing employees and from any employees of their Energy Affiliates,[24] and (2) a Transmission Provider must treat all transmission customers, affiliated and non-affiliated, on a non-discriminatory basis, and cannot operate its transmission system to benefit preferentially an Energy Affiliate or Marketing Affiliate.

31. No comments were received on this section. Therefore, the Commission is adopting these principles as proposed in the NOPR. These principles are based on Section 4 of the NGA and Section 205 of the FPA, which prohibit a natural gas company or a public utility, respectively, from making or granting an undue preference with respect to transportation/transmission or sale subject to the Commission's jurisdiction.

C. Definitions—§ 358.3

32. As proposed in the NOPR, § 358.3 combines and revises the definitions that were previously contained in §§ 37.3 and 161.2 of the Commission's regulations, and adds, as appropriate, definitions for new terms. The Commission is modifying and adopting the definitions proposed in the NOPR, as discussed below.

i. Definition of a Transmission Provider

33. The NOPR defined a Transmission Provider as:

> (1) any public utility that owns, operates or controls facilities used for transmission of electric energy in interstate commerce; or (2) any interstate natural gas pipeline that transports gas for others pursuant to subpart A or Part 157 or subparts B or G of Part 284.

34. The Major Issues Analysis did not address the definition of Transmission Provider. The Commission has reviewed the commenters' recommendations, but, as discussed in more detail below, is adopting the definition of Transmission Provider as proposed.

35. The American Forest and Paper Association (AFPA) urged the Commission to clarify that the definition of a Transmission Provider only includes ''any public utility that owns, operates or controls transmission facilities used for the transmission of electric energy in interstate commerce and is subject to the open access requirements of Order No. 888.'' It requested the Commission to clarify that Transmission Providers do not include industrials that own some discrete transmission facilities used solely for the purpose of interconnecting with the electrical grid. Along the same lines, the Industrials requested clarification that the definition of Transmission Provider will not apply to industrials with self-generation. The Industrials were concerned that the definition would include wholesale sellers such as power marketers and merchant generators with market-based-rate authority and qualifying facilities (QF) because these entities self provide ancillary services or that selling ancillary services would be considered providing ''transmission service.'' Industrials claimed that any generator directly interconnected with an investor-owned transmission system would be deemed a Transmission Provider under the proposed definition. Finally, the Industrials were concerned that owning an interconnect could be interpreted as ownership of a transmission facility. Similarly, Calpine argued that independent generators connected to jurisdictional transmission facilities that do not own transmission facilities, must be excluded from the definition of Transmission Provider.

36. The revision proposed by AFPA is unnecessary. Consistent with our implementation of Order No 888, Industrials that merely interconnect with the interstate transmission grid and sell power would not be a Transmission Provider as used in the Final Rule. Nor is self-generation considered transmission in interstate commerce.

ii. Definition of an Energy Affiliate

37. The NOPR's proposed definition of Energy Affiliate yielded the greatest volume of comments. The NOPR defined the term Energy Affiliate broadly, as:

> an affiliate of a Transmission Provider that (1) engages in or is involved in transmission transactions; or (2) manages or controls transmission capacity of a Transmission Provider; or (3) buys, sells, trades or administers natural gas or electric energy; or (4) engages in financial transactions relating to the sale or transmission of natural gas or electric energy.

38. Since the Standards of Conduct seek to prohibit undue preferences and thereby the transfer of market power from the Transmission Provider to its affiliates, the term Energy Affiliate must cover more than the marketers and merchants covered by the existing rules. A narrow definition of Energy Affiliates will not specifically prohibit the transmission function from sharing employees and information with some of its Energy Affiliates who could then receive an unfair advantage in the competitive marketplace. On the other hand, too broad a definition of Energy Affiliate will limit some of the efficiencies gained from certain corporate structures. This language is also intended to cover affiliates that are indirectly involved in transportation, such as asset managers or agents.

39. The definition in the NOPR proposed to govern the relationship between the Transmission Provider, and, among others, affiliated producers, gatherers, local distribution companies (LDCs) and processors. Virtually all of the industry groups argued that the definition of Energy Affiliates is overly broad, and suggested that some narrowing of the definition would be appropriate.

40. In response to numerous comments, the Major Issues Analysis recommended various changes to the definition of Energy Affiliate and provided draft regulatory text. Follow-up comments recommended further

[23] Order No. 888–A at 30,666.

[24] As noted earlier, when the Commission references employees, it includes contractors, consultants or agents.

changes, which are grouped into several categories. As discussed below, the Commission is revising the definition of Energy Affiliate as follows:

(1) Engages in or is involved in transmission transactions in U.S. energy or transmission markets; or

(2) Manages or controls transmission capacity of a Transmission Provider in U.S. energy or transmission markets; or

(3) Buys, sells, trades or administers natural gas or electric energy in U.S. energy or transmission markets; or

(4) Engages in financial transactions relating to the sale or transmission of natural gas or electric energy in U.S. energy or transmission markets.

(5) An energy affiliate does not include:

(i) A foreign affiliate that does not participate in U.S. energy markets;

(ii) An affiliated Transmission Provider; or

(iii) A holding, parent or service company that does not engage in energy or natural gas commodity transactions or is not involved in transmission transactions in U.S. energy markets; or

(iv) An affiliate that purchases natural gas or energy solely for its own consumption and does not use an affiliated Transmission Provider for transmission of natural gas or energy; or

(v) A state-regulated local distribution company that does not make any off-system sales.

1. LDCs

41. As proposed by the NOPR, Transmission Providers would be required to apply the standards of conduct to their relationships with their affiliated LDCs by eliminating the exemption of Order No. 497, which permitted natural gas pipelines to share employees and information between their transmission businesses and their affiliated LDCs that do not make off-system sales.[25]

42. Fourteen entities, including producers and unaffiliated gas marketers, NASUCA, AIA, the Industrials and the FTC supported the proposed definition of energy affiliate, focusing on LDCs. They asserted that: (1) Conditions have changed since Order No. 497 was promulgated, and LDCs compete more vigorously for access to transmission service; (2) the current exemption is a loophole that permits LDCs to get preferential access to information, which harms competition; and (3) the LDC exemption permits pipelines to circumvent the standards of conduct by using the LDC as a conduit for sharing information. The Connecticut Commission argued that giving LDCs an unfair competitive advantage can only hurt the long-term competitiveness of the market.

43. However, thirty-four commenters, primarily interstate natural gas pipelines and affiliated marketers, INGAA and AGA opposed applying the standards of conduct to a Transmission Provider's relationship with its affiliated LDCs. These commenters recommended that the Commission retain the current exception in Order No. 497 for LDCs that do not engage in off-system sales. They argued that: (1) Section 1 of the NGA makes distribution subject to regulation by the states and not FERC; (2) there is no evidence or market analysis to support eliminating the exemption granted under Order No. 497; (3) to require such separation would cause unnecessary duplication of employees and gas control facilities, resulting in additional costs to customers;[26] and (4) limits on communications with LDCs would impair reliability, and the ''emergency'' exception in the proposed rule is insufficient.

44. The Commission has decided to retain the existing exemption for LDCs that do not make off-system sales. Specifically, the definition of Energy Affiliates will exclude those LDCs that are regulated by the state, provide solely retail service and engage in no off-system sales. However, the Commission notes that an affiliated LDC that engages in any off-system sale is an Energy Affiliate, and subject to the standards of conduct. An off-system sale would include a situation in which the affiliated LDC had contractually committed for more gas than it needed to serve its on-system customers and sold that gas off its system, *e.g.,* at a hub or on the spot market. Moreover, affiliated LDCs are prohibited from being conduits for improperly sharing information covered by the Final Rule. We also remind Transmission Providers that they are required to comply with the undue discrimination and undue preferences provisions of the NGA vis-à-vis their behavior with their affiliated LDCs and will be subject to greater scrutiny prospectively.

2. Affiliates Not Engaged or Involved in Transmission Transactions, *e.g.*, Trading and Financial Affiliates

45. Thirteen entities, including Ad Hoc Marketers, INGAA and interstate natural gas pipelines, opposed the proposed definition of Energy Affiliates because it does not require the Energy Affiliate to be engaged or involved in transmission transactions on the Transmission Provider's system. These commenters urged the Commission to narrow the definition of Energy Affiliates to apply only to affiliates that are involved in transportation on affiliated Transmission Providers' systems. Similarly, several commenters, including Ad Hoc Marketers, INGAA, Gulf South, and four public utility Transmission Providers requested that the Commission exclude from the definition of Energy Affiliates entities that trade power or are engaged in financial transactions. Gulf South argued that gas futures contracts are traded only for delivery in the future and are unrelated to the current spot market price of gas.

46. The Commission disagrees with the commenters. Although an affiliate may not be directly involved in transmission transactions, the transmission markets and energy-related financial markets are so interconnected that a Transmission Provider does have the ability to operate its transmission system in a manner that gives a trading affiliate an undue preference or provides the trading affiliate with unduly preferential information. For example, a transmission constraint directly impacts the value of the commodity being transported. Preferential access to information about such a constraint could provide a significant benefit to an affiliate engaged in speculative trading of the commodity and cause the price of the commodity to rise to the detriment of the market, even if the trader is not using the affiliated Transmission Provider.

47. Entities involved in the trading of power or gas or in financial transactions related to the sale, purchase or transmission of power or gas are an integral part of the financial and transmission markets. The monthly volume of futures contracts on the NYMEX has grown from approximately 170,000 per month in January 1982 to 7,000,000 per month in January 2000.[27] As seen in the chart below, the financial natural gas (futures) markets and the physical (or spot) markets are closely linked. For example, NYMEX futures prices strongly correlate with transactions to buy and sell natural gas at Henry Hub, the physical delivery point specified in the NYMEX futures contracts.[28]

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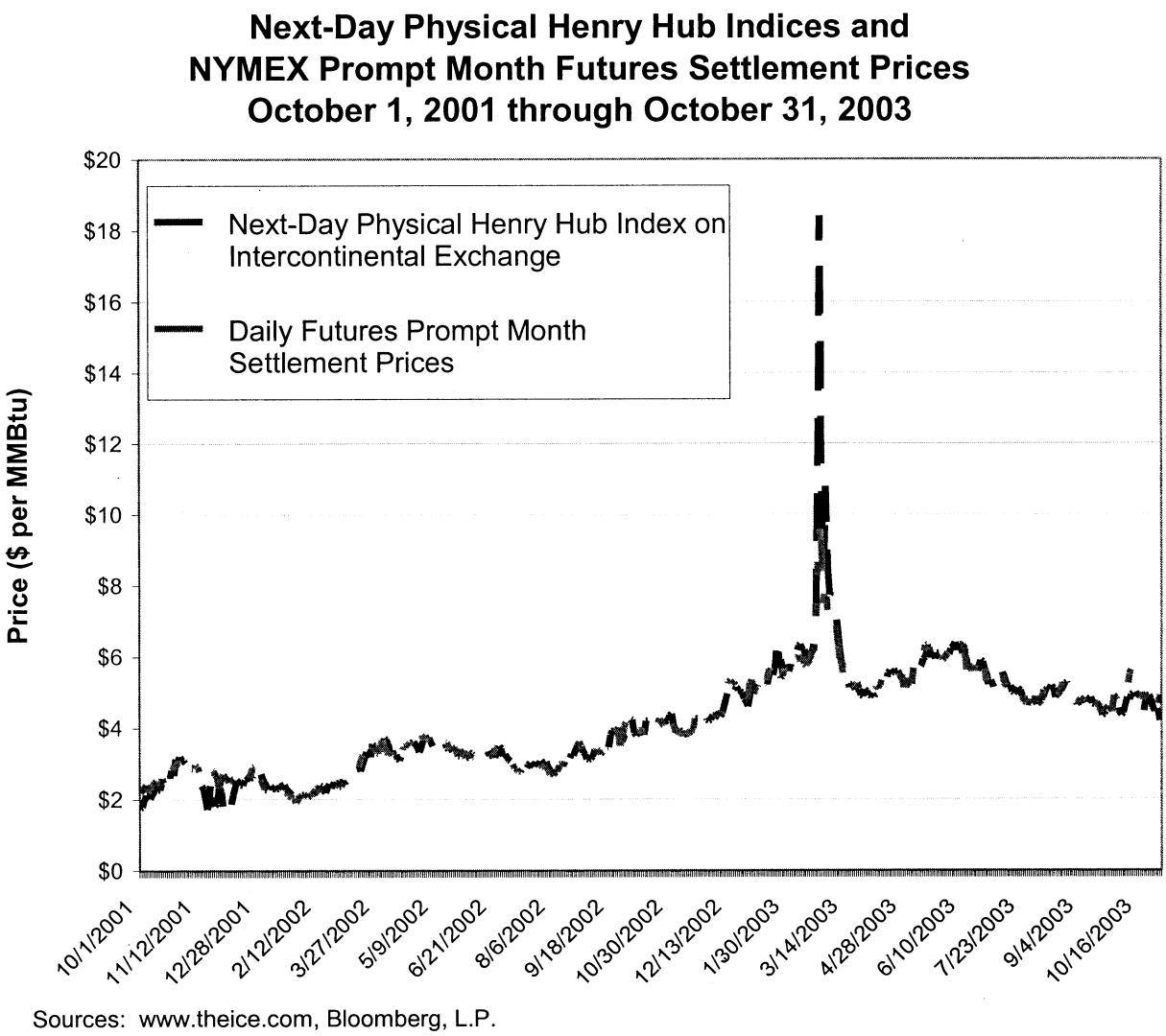
[25] 18 CFR 161.2(c) (2003).

[26] A discussion of the commenters' concerns regarding additional costs is included in the Independent Functioning discussion, below.

[27] ''Derivatives and Risk Management in the Petroleum, Natural Gas and Electricity Industries,'' *www.eia.doe.gov/oiaf/sesrviceerpt/derivative/index* (Oct. 24, 2003).

[28] *See, e.g.*, Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, Docket No. PA02–2–000, Final Report on Price Manipulation in Western Market, March 2003 (Chapter IX at pp. IX–2 to IX–9).



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48. The financial natural gas markets are so interconnected with the natural gas physical markets and the transmission market, that a Transmission Provider has the ability to operate its transmission system in a manner so as to give a trading affiliate an undue preference or to provide the trading affiliate with unduly preferential information. Therefore, the definition of Energy Affiliates in the Final Rule incorporates trading and financial affiliates to the extent they are engaged in transactions in the U.S. energy or gas commodity or transmission markets.

3. Affiliated Transmission Providers

49. Twenty-seven entities, the majority of which are in the interstate natural gas pipeline industry, pointed out that the definition of Energy Affiliate would appear to require Transmission Providers to treat affiliated Transmission Providers as Energy Affiliates. Many argued that such a broad definition of Energy Affiliate would restrict the joint operations of jurisdictional transmission facilities and would mandate unnecessary duplication of jointly operated facilities. INGAA and others pointed out that putting limitations on the relationship between affiliated Transmission Providers would be inconsistent with recent Commission policy. They cited the Commission's orders that required Dominion Transmission, Inc. to apply the gas standards of conduct to its Energy Affiliates as a merger condition.[29] There, the Commission specifically excluded affiliated Transmission Providers from the definition of Energy Affiliates because they are already subject to the non-discrimination provisions of the standards of conduct.

50. The Major Issues Analysis proposed an exemption that would exclude FERC-jurisdictional Transmission Providers from the definition of Energy Affiliate and provided draft regulatory text for comment. Numerous follow-up comments supported this proposed revision, including those filed Cinergy, Entergy, First Energy, NiSource, INGAA, and KM Interstate.

51. The Commission agrees; FERC-jurisdictional interstate natural gas pipelines coordinating transactions with affiliated FERC-jurisdictional interstate natural gas pipelines should be permitted to share transmission function employees and information, since both are bound by the standards of conduct requirements and are prohibited from sharing transmission, customer or market information with their Energy Affiliates. Similarly, a public utility Transmission Provider

[29] Dominion Resources, Inc. and Consolidated Natural Gas Co., 89 FERC ¶ 61,162 (1999), *order on compliance filing,* 91 FERC ¶ 61,140 (2000), *order denying reh'g,* 93 FERC ¶ 61,214 (2000), *vacated and remanded,* (D.C. Cir. No. 01–1169 Slip. Op. issued on April 19, 2002), *order on remand pending.*

may share transmission function employees and information with other public utility Transmission Providers. Nor does it appear that communications between FERC-regulated gas Transmission Providers and FERC-regulated public utility Transmission Providers is a problem for the same reason. Moreover, the focus of the standards of conduct is to prevent transmission market power from extending to other products or services, so Transmission Provider to Transmission Provider communications should not violate the purpose of the rule. The definition of energy affiliates, therefore, is clarified to exclude affiliated Transmission Providers. Many commenters expressed support for the language proposed in the Major Issues Analysis, and we will adopt it.

4. Holding or Service Companies

52. Several commenters, including INGAA, Dominion, EEI, NiSource, and Williams, argued that the definition of Energy Affiliates could be construed to include service or holding companies because the definition includes affiliates that engage in financial transactions related to the transmission of natural gas or electricity. The commenters argued that this could limit the ability of senior officers and directors of the holding or service companies to exercise their fiduciary duties for their subsidiaries.

53. As discussed in the Major Issues Analysis, holding and service companies typically do not participate in the energy or transmission markets, and if they do not participate in those markets, they would not be considered Energy Affiliates. As discussed above, affiliates engaged in financial transactions that concern energy or natural gas commodity or transmission markets will be considered Energy Affiliates. Therefore, the Major Issues Analysis recommended that the Commission adopt a definition of Energy Affiliate that excludes holding or service companies that do not engage in and are not involved in energy or natural gas commodity or transmission transactions. The Major Issues Analysis also recommended that the Commission prohibit *any* affiliate, including holding companies or others exempt from the standards of conduct, from acting as a conduit for improperly sharing information.

54. Supplemental comments in response to the language proposed by the Major Issues Analysis were generally supportive of the holding company exception, including those filed by DTE, Gulf South, National Grid, and PacifiCorp and PSE&G. However, several commenters expressed concern that the revision recommended in the Major Issues Analysis was insufficient. They claimed that, even with the narrowing proposed in the Major Issues Analysis, they could not comply with the standards of conduct and the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act), which requires senior corporate executives to be fully informed about the financial conditions of their corporations and their subsidiaries.[30] As noted by various commenters, including EEI and Duke, a parent company with an electric utility or gas distribution system as an operating division would not qualify for the exception proposed by the Major Issues Analysis. They claimed that separating the management or forming a holding company would require corporate reorganization, could be costly, and might trigger the restrictive requirements of the Public Utility Holding Company Act (PUHCA).[31]

55. For example, Duke argued that complying with the Final Rule and the Sarbanes-Oxley Act would be difficult because the Duke Power Division of Duke Energy, which engages in transmission and wholesale and bundled electric sales, would be considered an Energy Affiliate of its interstate natural gas pipeline subsidiaries, and the pipeline subsidiaries would be prohibited from sharing information with the senior management of its Energy Affiliate/parent company, Duke Energy.

56. The Major Issues Analysis specifically excluded holding and service companies, but did not mention ''parent companies.'' Duke encouraged the Commission to extend the holding company exemption to apply to parent companies that may not fall within the legal definition of ''holding company,'' as set forth by PUHCA. NGSA, APGA and IPAA all support Duke's proposal to the extent that the parent companies are not involved in energy transactions. The Commission is adopting this recommendation and will include ''parent'' companies that are not involved in energy or transmission transactions in the ''holding company'' exception from the definition of Energy Affiliate.

57. Several commenters were also concerned about Transmission Providers with service corporation subsidiaries that employ virtually all corporate employees, including those who do work for Transmission Providers and Energy Affiliates. The Commission clarifies that if a Transmission Provider utilizes a service corporation or other subsidiary as the mechanism for employment, all the employees assigned, dedicated or working on behalf of a particular entity, *e.g.,* a Transmission Provider or Energy Affiliate, are subject to the standards of conduct requirements as if they were directly employed by the Transmission Provider or Energy Affiliate.

58. In addition, in follow-up comments, National Grid encouraged the Commission to clarify that the holding company exclusion extends to companies engaged or involved in markets not related to energy, power or transmission. The Commission so clarifies.

5. Foreign Affiliates

59. Thirteen commenters, including INGAA, six interstate natural gas pipelines, EEI, five public utility Transmission Providers and Shell objected to the proposed definition of Energy Affiliates to the extent that it included foreign affiliates. They are concerned that Transmission Providers will be required to treat affiliates in Europe, South America and the Caribbean as Energy Affiliates. The Major Issues Analysis urged the Commission to exclude foreign affiliates and revised the draft regulatory text accordingly. Virtually all follow-up comments supported the staff's proposal.

60. The Commission sees no reason to be concerned about the possibility that a Transmission Provider will extend its market power by giving foreign affiliates undue preferences where the foreign affiliates do not participate in energy markets in the United States. The Final Rule clarifies that the definition of Energy Affiliates excludes foreign affiliates that do not participate in the United States (U.S.) energy or transmission markets.

61. In addition, where a foreign affiliate has an ownership interest in a jurisdictional Transmission Provider, that affiliate is, by virtue of its ownership interest, participating in the U.S. energy or transmission markets. For example, a joint venture U.S.-Canadian pipeline would have to treat as Energy Affiliates its Canadian affiliates that buy, sell or trade natural gas or electric energy or engage in or are involved in transmission transactions in U.S. energy markets.

62. On a slightly different note, several pipelines including Alliance, Maritimes and Northeast Pipeline, as well as Duke Energy, Canadian Association of Petroleum Producers and the Alberta Department of Energy,

[30] *See* Section 302 of the Sarbanes-Oxley Act, Pub. L. 107–204, Sec. 9, 116 Stat. 745, 777 (2002).

[31] Public Utility Holding Company Act of 1935, 15 U.S.C. 79a *et seq.* (2000).

expressed concerned about affiliated pipelines that cross the U.S. and Canadian borders. These companies argued that under the exception proposed by the Major Issues Analysis, affiliated pipelines that cross or interconnect at the U.S. and Canadian borders would fall within the definition of Energy Affiliate. The commenters argued that they should be treated as affiliated pipelines because their operations are closely coordinated and transmission services are shared even though they cross the international border. The Commission agrees and will permit these companies to share their transmission function activities and coordinate along both sides of the border as long as neither of the Transmission Providers shares employees or information with any of its Marketing or Energy Affiliates.

6. Affiliates Buying Power for Themselves

63. Several commenters, including Dominion, Calpine and KM, argued that the Commission needs to clarify the definition of Energy Affiliates because including the terms ''buy,'' ''sell,'' or ''administer'' could be construed to include an affiliated entity that is purchasing power for its own consumption, such as a communications affiliate that is purchasing power to heat its office building. They argued that under the NOPR, if an affiliate is simply ''buying'' power for its own energy consumption and not using the affiliated Transmission Provider for transmission, the Transmission Provider would be required to post the organizational charts and job descriptions for the Energy Affiliates, which the commenters argue would be burdensome.

64. In response to these comments, the Major Issues Analysis recommended that the Commission exclude an affiliate of a Transmission Provider that is purchasing electricity or natural gas for its own consumption and is not using an affiliated Transmission Provider for transmission.

65. Although these purchases can have an impact on the energy markets, nonetheless, there is little potential for competitive harm if the definition of Energy Affiliates is clarified to exclude any affiliate of the Transmission Provider that is solely purchasing power or natural gas for its own consumption and is not using an affiliated Transmission Provider for transmission. Therefore, the Commission will adopt this recommendation in the Final Rule. However, this exception is not intended to create a loophole that circumvents the intent of rule, and does not apply to Energy Affiliates that use natural gas or power to produce another source of energy, *e.g.,* generation affiliates.

7. Producers, Gatherers, and Processors

66. The NOPR defined Energy Affiliate to include producers, gatherers and processors. The NOPR states that whether a producer or gatherer is making an on-system sale or an off-system sale, it is still competing for access to the interstate transmission system. NGSA stated that upstream services and transportation services are frequently offered as a single package by pipelines or their affiliates, which allows a pipeline to leverage its market power in the transportation market to gain an advantage in the upstream market. The comments regarding affiliated producers, gatherers, and processors were mostly included in the comments about affiliated LDCs. Commenters, including El Paso Energy Partners, Shell Offshore and Shell Gas, argued that: (1) The Commission does not have jurisdiction over producers, gatherers or intrastate pipelines; (2) there is no evidence to support eliminating the exemption granted under Order No. 497; (3) to require separation would cause unnecessary duplication of employees and gas control facilities, resulting in additional costs to customers; [32] and (4) restrictions on communication would impair reliability.

67. The Commission is adopting the proposed regulation. The Commission is not asserting jurisdiction over the producers, gatherers or processors. The Commission has ample authority to ensure that the interstate pipeline treats all customers, affiliated and unaffiliated, on a non-discriminatory basis by regulating the behavior of the Transmission Provider. Staff's review of the October 2003 Index of Customers indicates that 14 interstate natural gas pipelines transport gas for their production and gathering affiliates, which hold an average of 46% of the affiliated pipelines' capacity. But, unlike LDCs, producers, gatherers and processors are not generally subject to state regulation.

68. Several commenters argue that Section 1 of the NGA makes production and gathering subject to regulation by the states and not the Commission. The Commission is not asserting jurisdiction over producers, gatherers or processors. The Commission has ample authority to ensure that the Transmission Provider treats all customers, affiliated and non-affiliated, on a non-discriminatory basis by regulating the conduct of the transmission provider's interactions with affiliated producers, gatherers or processors.

69. The commenters voiced practical concerns about how the proposed standards of conduct would impact communications between a Transmission Provider and affiliated producers, gatherers, and processors. During the May 21 Conference there was much discussion about the possibility that expanding the standards of conduct would harm deepwater operations and future off-shore development efforts. Several participants stated that competing producers had worked cooperatively on affiliated pipelines to develop deepwater gas reserves. On the other hand, BP argued that Transmission Providers should not be permitted to share any information regarding a shipper's use of the pipeline or information regarding the operations or customers of non-affiliated gatherers that compete with the affiliate. BP argued that the definition of Energy Affiliate should not include affiliate gas processing plants. However, as discussed in more detail below, the Commission is permitting transmission providers to share crucial operational information with certain of its Energy Affiliates.

70. Commenters also argued that there was no evidence that pipelines had unduly favored their producers, gatherers or processing affiliates. However, in a recent example, Transcontinental Gas Pipe Line Corporation and its gathering affiliate, Williams Field Services Company, acted as one entity for purposes of gathering and transporting natural gas in interstate commerce in a monopolistic fashion and abused their market power.[33]

71. The Commission's focus is to ensure comparability of service. To retain a loophole that permits the transmission provider to share employees or give its affiliated producers, gatherers or processors preferential information is inconsistent with the Commission's goal of non-discriminatory interstate transmission service. Producers that are selling energy are competing with other non-affiliated shippers for access to the pipelines' transmission systems. Whether a producer is selling gas from its own production or from the production of another, it is competing

[32] A discussion of the commenters' concerns regarding additional costs is included in the Independent Functioning discussion, below.

[33] *Shell Offshore Inc.* v. *Transcontinental Gas Pipe Line Corp., et al.,* 100 FERC ¶ 61,254 (2002), *order on reh'g,* 103 FERC ¶ 61,177 (2003), *appeal filed* June 27, 2003 (D.C. Cir. No. 03–1179).

with non-affiliates for access to the pipeline's transportation system. We conclude that providing a producer, gatherer or processor with preferential access to the pipeline's transmission system or information concerning the pipeline's system is inconsistent with NGA Section 4's prohibition against undue preferences or discrimination in the provision of interstate transportation services; accordingly, this Final Rule will prevent such conduct.

8. Intrastate and Hinshaw Pipelines

72. Although the NOPR did not specifically address intrastate or Hinshaw pipelines,[34] the definition of Energy Affiliate proposed in the NOPR would include intrastate and Hinshaw pipelines. Several commenters, including the Association of Texas Intrastate Natural Gas Pipelines, SCE&G and CMS, opposed including intrastate and Hinshaw pipelines in the definition of Energy Affiliate and urged the Commission to retain the current exemption at § 161.2(c)(3) of the Commission's regulations, 18 CFR 161.2(c)(3) (2003), that permits intrastate pipelines to make on-system sales without triggering the standards of conduct. The arguments raised mirror those raised with respect to producers, gatherers or processors, which currently enjoy the same exemption. The Commission's definition of Energy Affiliate in the Final Rule will include intrastate and Hinshaw pipelines. Providing an intrastate pipeline or Hinshaw pipeline preferential access to a transmission system or information concerning a transmission system would be inconsistent with NGA Section 4's prohibitions against undue preferences or discrimination in the provision of interstate transportation service.

iii. Definition of Marketing, Sales or Brokering

73. The NOPR proposed to define marketing, sales or brokering as:

> A sale for resale of natural gas or electric energy in interstate commerce. Sales and marketing employee or unit includes: (1) Any pipeline's sales operating unit, to the extent provided in § 284.286 of this chapter, and (2) an electric transmission provider's sales unit, including those employees that engage in wholesale merchant sales or bundled retail sales.[35]

74. The NOPR proposed that ''marketing'' would include a public utility Transmission Provider's sales unit, including all employees that engage in wholesale merchant sales or bundled retail sales functions.[36] This would eliminate the exemption of Order No. 889, which permitted a public utility Transmission Provider to use the same employees for its interstate transmission business and its bundled retail sales business.

75. Fourteen commenters, including the FTC, Cooperatives, Calpine, ELCON, EPSA, NEMA, Transmission Access Policy Group, Transmission Group, several state commissions, and AAI supported the NOPR's proposal to treat retail function employees as marketing affiliate employees. They argued that the Commission can assert jurisdiction over the organizational structure of the jurisdictional public utility and the dissemination of information acquired through the operation of jurisdictional assets. In addition, they argued that: (1) The Commission must ensure that transmission service is not unduly discriminatory; (2) the bundled retail sales represent a large percentage of utilities' sales, and the utilities have little incentive to promote comparability, to improve OASIS or to provide equal quality service; and (3) the distinction between wholesale and retail is artificial and the conditions in the retail market impact the wholesale market.

76. However, thirty-six commenters, including EEI, NASUCA, NARUC, many public utility Transmission Providers, several cooperatives and ten state commissions, opposed treating retail function employees as Marketing Affiliate employees. Many commenters questioned the need to change the standards of conduct for public utility Transmission Providers when the current rules appear to be adequate.[37] For the most part, they contend that: (1) The Commission is exceeding its statutory authority under Section 201 of the FPA, which gives states regulatory authority over facilities used in local distribution, intrastate commerce or retail consumption; (2) there are no competitive concerns because retail service is state regulated; (3) the Transmission Provider may not be able to maintain reliability and would have difficulty in coordinating generation dispatch; (4) some Transmission Providers could not fulfill their state-mandated obligations to be providers of last resort; (5) the Transmission Provider would not be able to engage in integrated resource planning; and (6) separating employees engaged in the bundled sales function for retail load from interstate transmission employees would cause expensive duplication of staff and facilities, without any countervailing competitive benefit.[38]

77. The Major Issues Analysis recommended retaining the proposal in the NOPR. Many commenters submitted follow-up comments opposing the Staff's recommendation. In contrast with some commenters' statements, there have been several recent examples of affiliate abuse in the electric industry. In 2002, Idaho Power favored its wholesale merchant function and marketing affiliate by accepting their representations that certain non-firm transmission requests were necessary to serve native load, when in fact they were not.[39] More recently, the Commission approved a settlement with Cleco Corp. for its 1999–2002 violations of the standards of conduct, including, among other things, sharing of a trading floor by employees engaged in wholesale merchant functions and in retail sales functions.[40]

78. The Commission has ample authority to regulate the behavior of the public utility that owns, operates or controls transmission in interstate commerce and its relationship with any Energy Affiliates. Nevertheless, the Final Rule will retain the exemption of Order No. 889, which permits a public utility Transmission Provider to use the same employees for its interstate transmission business and its bundled retail sales business. However, as stated in Order No. 888–A, ''if unbundled retail transmission in interstate commerce occurs voluntarily by a public utility or as a result of a state retail access program, the Commission has exclusive jurisdiction over the rates, terms and conditions of such transmission.[41] The standards of conduct will apply to merchant employees who are engaged in sales or purchase of power that will be resold at retail pursuant to state retail wheeling

[34] Hinshaw pipelines are exempt from Commission regulation under the NGA, but they may have limited jurisdiction certificates to provide interstate transportation services like an intrastate pipeline under the Natural Gas Policy Act.

[35] The term bundled retail sales employees, means those employees of the public utility Transmission Provider or its affiliates who market or sell the bundled electric energy product (including generation, transmission, and distribution) delivered to the transmission provider's firm and non-firm retail customers.

[36] Section 284.286 of the Commission's regulations currently requires an interstate natural gas pipeline to separate its interstate transmission function from its unbundled sales service, essentially treating the pipeline's sales business as the equivalent of an affiliated marketing company. *See* 18 CFR 284.286 (2003).

[37] The Commission does not have detailed data on the amount of transmission used for retail electric service.

[38] A discussion of the commenters' concerns regarding additional costs is included in the Independent Functioning discussion, below.

[39] 103 FERC ¶ 61,182 (2003).

[40] 104 FERC ¶ 61,125 (2003).

[41] FERC Stats. & Regs., Regulation Preambles January 1991-June 1996 ¶ 31,036 at 51,781.

programs.[42] The Commission is also clarifying, however, that if a retail sales function employee engages in any wholesale sales, such as selling excess generation to a non-retail customer, the retail function will be treated as a wholesale merchant function. It is not appropriate for an entity that participates in the wholesale market to obtain an undue preference when competing with non-affiliates for transmission capacity.

79. Under the Final Rule, the definition of Marketing, Sales and Brokering includes: A sale for resale of natural gas or electric energy in interstate commerce. Sales and marketing employee or unit includes: (1) any interstate natural gas pipeline's sales operating unit, to the extent provided in § 284.286 of this chapter, and (2) a public utility Transmission Provider's energy sales unit, unless such unit engages solely in bundled retail sales. If a retail sales unit engages in any wholesale sales, the separation of functions requirement will apply.

iv. Definition of a Transmission Function Employee

80. Although the NOPR did not provide a definition for the term ''Transmission Function employee,'' many commenters, including Duke, urged the Commission to adopt a definition to provide additional clarity to the regulations. Following the May 21 Conference, several commenters provided draft regulatory text. In response to the comments, the Commission will add a definition for the term ''Transmission Function'' to the Final Rule, as follows:

Transmission Function employee means an employee, contractor, consultant or agent of a Transmission Provider who conducts transmission system operations or reliability functions, including, but not limited to, those who are engaged in day-to-day duties and responsibilities for planning, directing, organizing or carrying out transmission-related operations.

v. Definition of a Reseller

81. The NOPR defined a ''reseller'' as any transmission customer who offers to sell transmission capacity it has purchased. As noted by Duke, Carolina Power and Light, FPA and several other commenters, the definition of ''reseller'' was used in the NOPR, but was not used in the rest of the regulatory text. They request that the term be deleted. The Commission agrees and is deleting the term from the Final Rule.

[42] American Electric Power Service Corporation, 81 FERC ¶ 61,332 (1997).

D. Independent Functioning—§ 358.4

82. The NOPR proposed § 358.4, as follows:

(a) *Separation of functions.*

(1) Except in emergency circumstances affecting system reliability, the transmission function employees of the Transmission Provider must function independently of the Transmission Provider's marketing or sales employees and its energy affiliates' employees.

(2) Notwithstanding any other provisions in this section, in emergency circumstances affecting system reliability, Transmission Providers may take whatever steps are necessary to keep the system in operation. Transmission Providers must report to the Commission and post on the OASIS or Internet website, as applicable, each emergency that resulted in any deviation from the standards of conduct, within 24 hours of such deviation.

(3) The Transmission Provider is prohibited from permitting its sales and marketing employees or employees of its energy affiliates from: (i) conducting transmission system operations or reliability functions; and (ii) having access to the system control center or similar facilities used for transmission operations or reliability functions that differs in any way from the access available to other transmission customers.

83. Several commenters proposed an alternative ''functional approach,'' while others focused on implementation of the proposed independent functioning requirement, including: (1) Sharing of senior management between Transmission Providers and their Marketing and Energy Affiliates (corporate governance); (2) sharing of non-transmission support employees between Transmission Providers and Marketing and Energy Affiliates; (3) sharing of field and maintenance employees between Transmission Providers and Marketing and Energy Affiliates; (4) allowing Transmission Provider employees to engage in operational or cash-out sales.

84. In response to the NOPR, commenters focused on whether certain types of non-transmission function employees could be shared between Transmission Providers and their Energy and Marketing Affiliates. The Major Issues Analysis recommended that the Commission adopt the language proposed in the NOPR, with some clarifications to permit the sharing of ''support-type'' employees. During the May 21 Conference and in follow-up comments, several entities made recommendations regarding an alternative approach.

85. As discussed in more detail below, the Commission is adopting the independent functioning requirement with the modifications discussed below. The independent functioning requirement in the Final Rule is as follows:

(a) Separation of functions.

(1) Except in emergency circumstances affecting system reliability, the transmission function employees of the Transmission Provider must function independently of the Transmission Provider's Marketing or Energy Affiliates' employees.

(2) Notwithstanding any other provisions in this section, in emergency circumstances affecting system reliability, a Transmission Provider may take whatever steps are necessary to keep the system in operation. Transmission Providers must report to the Commission and post on the OASIS or Internet website, as applicable, each emergency that resulted in any deviation from the standards of conduct, within 24 hours of such deviation.

(3) The Transmission Provider is prohibited from permitting Marketing or Energy Affiliates' employees from: (i) conducting transmission system operations or reliability functions; and (ii) having access to the system control center or similar facilities used for transmission operations or reliability functions that differs in any way from the access available to other transmission customers.

(4) Transmission Providers are permitted to share support employees and field and maintenance employees with their Marketing and Energy Affiliates.

i. Background and History of Independent Functioning Requirement

86. The principle underlying proposed § 358.4 is that when employees engaged in transmission services function independently, there are significantly fewer opportunities to give unduly preferential treatment to affiliates engaged or involved in commodity transactions or other business activities that compete with non-affiliated customers of the Transmission Providers. Section 358.4(a) combines the separation of functions requirements of current §§ 161.3(g)[43] and 37.4(a)(1) and (2), ensures that the transmission function employees of the Transmission Provider function independently of the Transmission Provider's sales and marketing employees and employees of the Energy Affiliates. Like the separation of functions requirement in current § 37.4(a)(1) and (2), employees engaged in transmission functions would be required to function

[43] 43 Under Standard G, 18 CFR 161.3(g) (2003), to the maximum extent practicable, a pipeline's operating employees and the operating employees of its marketing affiliate must function independently of each other. In Order No. 497–E, the Commission defined operating employees as, in part, those who are engaged in day-to-day duties and responsibilities for planning, directing, organizing or carrying out gas-related operations, including gas transportation, gas sales or gas marketing activities. Order No. 497–E at 30,996.

independently; but, in the event of emergencies affecting system reliability, may take whatever steps are necessary to keep the transmission systems in operation, including, if needed, using affiliates' employees.

87. Currently, under § 37.4(a)(2), if the transmission function of a public utility Transmission Provider utilizes the services of a wholesale merchant function employee during an emergency circumstance affecting system reliability, the public utility Transmission Provider posts each such event on its OASIS and reports it to the Commission in an ''EY'' docket within 24 hours of a deviation. The Final Rule holds interstate natural gas pipeline Transmission Providers to the same requirement under proposed § 358.4(a). Since 1998, the Commission has received as few as eight and as many as 18 reports of emergency circumstances necessitating deviations from the separation of functions requirement per year.

ii. Energy Affiliate Function or Commercial Function

88. The NOPR proposed to govern the relationship between the Transmission Provider and all of its Energy Affiliates. This approach recognizes that the Commission has jurisdiction over the Transmission Provider and is exercising that jurisdiction by governing the behavior of the Transmission Provider to ensure that it does not provide any Energy Affiliate with any undue preferences. Thus, this approach, which focuses on the corporate entities (*e.g.*, the Transmission Provider) and its employees, restricts the behavior and communications between the regulated Transmission Provider and its Energy Affiliates (Energy Affiliate Approach). The Commission uses this approach in the existing standards of conduct, *i.e.*, the standards of conduct govern the relationship between the interstate natural gas pipeline and its Marketing Affiliates and the public utility Transmission Provider and its wholesale merchant function and affiliated power marketer(s).

89. The majority of commenters supported the Energy Affiliate approach.[44] The Energy Affiliate approach recognizes some of the efficiencies of vertical integration by permitting sharing of certain ''support'' type functions and service.

90. As an alternative, several commenters proposed the ''functional approach.'' Under a functional approach, the standards of conduct would govern the relationship between the ''transmission functions'' of a Transmission Provider and its Energy Affiliates and the ''commercial functions''[45] or the ''energy functions''[46] of the Transmission Provider and its Energy Affiliates (Commercial Function Approach). In a Commercial Function approach, the transmission function of a pipeline and the transmission function(s) of its affiliated LDCs, affiliated intrastate pipelines and other affiliates with transmission services would be able to share employees and communications with each other, and the sales function of a pipeline and the sales functions of any of its affiliates would be able to share employees and communications with each other. But the sales and transmission functions would be prohibited from sharing employees and information with each other. The functional approach prohibits the Transmission Provider's ''transmission function'' from sharing employees or information with the ''commercial'' or ''energy'' function of the energy affiliates, but permits the sharing of employees and information with other ''non-commercial'' functions of the Energy Affiliates.

91. The functional approach was the subject of much discussion at the May 21 Conference, and 13 commenters supported the functional approach in their supplemental comments.[47] NASUCA opposed the commercial function approach. Many of the trade associations that submitted comments on specific aspects of the NOPR were silent on the type of approach that should be used. Some of the proponents of the functional approach, including Portland, argue that the Commission's approach in the NOPR represents a departure from the requirements of Order No. 889.

92. The Commission has carefully considered the comments and alternative proposals for structuring the Final Rule and is adopting the Energy Affiliate approach. With respect to the Energy Affiliate approach, the regulated Transmission Provider is responsible for ensuring separation of functions and compliance with information disclosure prohibitions between itself and its Energy Affiliates. Under the Commercial Function approach, the responsibility for ensuring compliance would be shared by the transmission function of the Transmission Provider and the non-jurisdictional transmission functions of the unregulated Energy Affiliates. The Commission does not believe that such shared responsibility is workable. The Commission is concerned that it would not be able to enforce compliance with the standards of conduct based on a commercial function approach.

93. The advocates of the Commercial Function approach argued that Transmission Providers would be permitted to share more ''support-type'' employees than they would under the Energy Affiliate approach. While it may be less costly for some companies to implement the Commercial Function approach, particularly for those companies that are already structured on a functional basis, such as Dominion and Cinergy, the Commission is concerned that it does not have the jurisdiction to direct unregulated Energy Affiliates on how to structure their functions, operations and communications.

94. The Energy Affiliate approach has worked successfully in the past and avoids concerns whether FERC has jurisdiction to direct an unregulated Energy Affiliate on how to structure its functions, operations and communications.

iii. Sharing of Non-Transmission Functions

95. Forty-six commenters, including interstate natural gas pipelines, public utility Transmission Providers, AGA, Cleco Power, EEI, First Energy, INGAA, NGSA and Industrials, were very concerned because the NOPR was silent on whether the Commission would implement the independent functioning requirement consistent with the case law that has developed under the current standards of conduct. Several commenters, including INGAA, asked that the Commission specify which ''support employees'' and ''field personnel'' can be shared between the Transmission Provider and its Energy Affiliates. Several commenters, including Cinergy and LG&E, requested that the Commission codify the proposed exception that allows the sharing of field and maintenance employees or identify the types of employees who would qualify as non-operating, *e.g.*, legal, accounting, human resources, and information technology.

[44] However, not all commenters supported the breadth of the definition of Energy Affiliates, *i.e.*, expanding it beyond marketing affiliates.

[45] Dominion proposed defining commercial function employees as those who engage in certain day-to-day activities such as transmission transactions, buy, sell or trade gas or energy or manage or control transmission capacity.

[46] Entergy proposed defining energy function employees as those who engage in purchases for resale, sale, or trade of natural gas or electric energy, but does not capture those that ''control'' capacity, but do not ''hold'' it (asset managers).

[47] AEP, Cinergy, Duke (partially), Dominion, Entergy, EEI (partially), FPL, Keyspan, National Grid, PG&E, Portland General Electric, Ohio Commission and Xcel.

96. Historically, the Commission has recognized that different Transmission Providers are faced with different practical circumstances in reviewing the appropriate degree of separation between the Transmission Provider's transmission function and the marketing affiliate or wholesale merchant function. Under the current standards of conduct, the Commission has permitted the transmission function to share with its marketing affiliate or wholesale merchant function non-operating officers or directors and personnel performing various non-operating functions such as legal, accounting, human resources, travel and information technology.[48]

97. By permitting such sharing of non-operating employees, the Commission has allowed the Transmission Provider to realize the benefits of cost savings through integration where the shared employees do not have duties or responsibilities relating to transmission, and generally, would not be in a position to give a marketing affiliate undue preferences. In these circumstances, the sharing of transmission business employees with marketing affiliate employees was not considered to be likely to be harmful to shippers, consumers or competition. The Commission has also recognized that under normal circumstances, highly placed employees, such as officers or directors, are not involved in day-to-day duties and responsibilities and can be shared between a Transmission Provider and its marketing affiliate so long as these individuals comply with the information disclosure prohibitions.[49]

98. When the Commission reviewed public utilities standards of conduct filings, it used a similar approach. The Commission stated that Transmission Providers may allow senior managers, officers or directors to have ultimate responsibility for both transmission system operations and wholesale merchant functions, as long as the persons with shared responsibilities do not participate in directing, organizing or executing transmission system operations or reliability functions or wholesale merchant functions. Further, the Commission stated that Transmission Providers may share ''support'' staff, such as legal counsel, accounting services and data processing who do not participate in operating activities.[50]

99. The Commission has previously allowed the sharing of billing, accounting and legal employees. The rationale was that accountants and lawyers were obliged by professional responsibility to maintain the confidentiality of transmission or customer information. For those employees involved in ''billing,'' the rationale was that the employees produced the bills after the transmission took place, and those involved in billing would have little opportunity to give marketing affiliates undue preferences. However, the recent investigations indicate that staff has been improper conduits of transmission information.

100. With respect to accountants, at most Transmission Providers, there are accountants who are responsible for day-to-day accounting functions, which may include billing, gas accounting and invoicing. There are also accountants or a ''finance department'' responsible for pulling together information for the corporation as a whole. The level of sharing of the accounting employees varies among Transmission Providers. In the *Transco* investigation, the Commission learned that marketing affiliate employees involved in billing and accounting had access to significant amounts of transmission information and confidential shipper information through shared databases and provided non-affiliate customer information to marketing affiliate employees.[51] In an investigation of *Cleco,* the Commission learned that accounting and billing employees improperly re-designated certain power sales transactions between the utility's the wholesale merchant function and its affiliated power marketer.[52]

101. Accountants and personnel involved in billing have the ability to provide preferential information, or, as in the case of *Cleco,* alter the books after transactions, to benefit an affiliate. While the Commission recognizes the efficiencies in allowing Transmission Providers to share accountants and employees involved in billing with their Energy Affiliates, we are concerned about their behavior and ability to provide preferential treatment. Therefore, the Commission will require that Transmission Providers train all shared support employees regarding the standards of conduct and that shared employees sign affidavits that they will not be a conduit for sharing transmission, market or customer information with a Marketing or Energy Affiliate.

iv. Sharing of Senior Officers and Directors

102. Many commenters urge the Commission to permit Transmission Providers to share senior officers and directors with their Marketing and Energy Affiliates consistent with current Commission practices.[53]

103. The Major Issues Analysis recommended that the Commission retain this exception. In follow-up comments, this proposal received support from virtually all the commenters. This exception, which impacts the ability of the senior officers and directors to engage in corporate governance functions is important and merits retention. Therefore, the Commission will codify this exception in the regulatory text.

104. In the Final Rule, the Commission will continue to allow senior officers and directors who do not engage in transmission functions, including day-to-day duties and responsibilities for planning, directing, organizing or carrying out transmission-related operations to share such positions with the Transmission Provider and its Marketing or Energy affiliates. These shared executives may not serve as a conduit for sharing transmission, customer or market information with a Marketing or Energy Affiliate.

v. Sharing of Field and Maintenance Personnel

105. Numerous commenters urged the Commission to permit Transmission Providers to share field and maintenance personnel with their Marketing and Energy Affiliates, consistent with the Commission's current practices. In Order No. 497–F and in reviewing Tennessee's standards of conduct, the Commission found that ''field employees,'' such as those who perform manual work (dig trenches) or purely technical duties (operate and

[48] Under Standard G, a pipeline's operating employees and the operating employees of its marketing affiliate must function independently of each other to the maximum extent practicable. See 18 CFR 161.3(g) (2003). In Order No. 497–E, the Commission defined operating employees as, in part, those that are engaged in the day-to-day duties and responsibility for planning, directing, organizing or carrying out gas-related operations, including gas transportation, gas sales or gas marketing activities. *See* Order No. 497–E, FERC Stats. & Regs., Regulations Preambles 1991–1996, at 30,996.

[49] *Id.* at 30,996.

[50] *AEP,* 81 FERC at 62,515.

[51] *Transco,* 102 FERC ¶ 61,302 (2003).

[52] *Cleco,* 104 FERC ¶ 61,125 (2003).

[53] On several occasions, the Commission has specifically addressed the sharing of employees. For example, in reviewing ANR Pipeline Company's standards of conduct, the Commission stated that the potential for abuse when there are shared officers or directors is minimized because the shared officers or directors normally should not receive confidential information from nonaffiliated shippers or potential nonaffiliated shippers nor would they be likely to receive transportation information.

maintain the pipeline's equipment),[54] are supportive in nature and would not have direct operational responsibilities. Similarly, field technicians or mechanics and their immediate supervisors would not be considered operating employees. The Commission added, however, that if supervisory field personnel can control a gas pipeline's operations, they are operating employees. The Commission also stated that if a supervisor has the ability to restrict or shut down the operation of a particular section of the pipeline, that supervisor is considered an operating employee.[55]

106. The Major Issues Analysis recommended that the Commission retain this exception. In follow-up comments, this proposal received support from all the commenters. This exception merits retention. Therefore, the Final Rule will codify this exception in the regulatory text. In the Final Rule, the Commission will continue to allow the sharing of field and maintenance personnel.

vi. Transmission Employees That Engage in Operational Purchases

107. Several interstate natural gas pipelines, as well as INGAA, noted that the NOPR does not appear to retain the historical exclusion that permits transportation function employees to buy and sell gas for operational reasons, including to balance fuel usage, for storage operations, to effectuate cashouts and deplete or replenish line pack.[56]

108. The Major Issues Analysis recommended that the Commission retain this exception. In follow-up comments, this proposal received support from many commenters, including AdHoc Marketers. This exception, which impacts practical operations of the transmission system is important and merits retention. Therefore, the Commission will codify this exception in the regulatory text.

vii. Risk Management Employees

109. Many commenters, including Ad Hoc Marketers, Basin Electric Coop, Florida Power Corp., Gulf South, Carolina Power & Light, Cinergy, PGE, EEI, INGAA, NEMA, NiSource, Pinnacle West, BPA, Atlantic City and Delmarva, urged the Commission to permit the sharing of risk-management employees or functions. Discussions during the May 21 Conference revealed that there are many different definitions, uses and applications of the term risk management and credit management. For example, risk management functions can include: (1) Managing corporate-wide business risk exposure of the corporation and/or its affiliates; (2) business risk exposure for third parties; (3) managing overall corporate investment for the entire corporation; (4) assessing credit risk for counter-parties; (5) approving expansion projects; and (6) establishing spending, trading and capital authorities for each business unit. EEI claims that corporate-wide risk management employees must understand the exposure of the entire corporation, including the Transmission Provider, the wholesale merchant function and Energy Affiliates, so that the corporation may fulfill its fiduciary duties to shareholders and corporate lending covenants. NiSource claims that risk management mitigates the corporation's overall risk and does not profit from transmission or energy commodity markets.

110. There are two issues that relate to risk management: (1) Whether it may be a shared function; and (2) if so, how to handle the transmission, customer and market information received by the risk management employees. According to Carolina Power & Light, Florida Power Corp. and EEI, risk information from business units filters up to senior management or a risk management committee, but then the risk management function does not provide any operational unit with information derived from any other business units and will not be a conduit for sharing information.

111. Several commenters, including FirstEnergy, state that risk management has become a core concern of the ratings organizations and urge the Commission to permit shared risk management. Portland General Electric states that risk management employees cannot use their access to transmission information to the detriment of third parties.

112. Risk management employees are in a position to use transmission, customer and market information to give Energy Affiliates an undue advantage where the members of the risk management committee are made up of employees from the transmission function and the Energy Affiliates. Therefore, any shared risk management employees may not be operating employees of either the Transmission Providers or the Marketing or Energy Affiliates nor can they be a conduit for improperly sharing information.

viii. Costs of Compliance

113. In determining the extent of independent functioning between the Transmission Providers and Energy Affiliates, the Commission has to balance the associated costs of separating shared functions against the benefit to competition and the elimination of discriminatory behavior.

114. As noted by many of the commenters, there will be costs, and for some transmission companies that have fully integrated production, gathering, generation, transmission and distribution functions, those costs could be considerable. In their comments, gas Transmission Providers provided one-time cost estimates to function independently of their affiliated LDCs that ranged from $8,000,000 (Pauite) to $210,000,000 (Questar),[57] while annual cost estimates ranged from $5,000,000 (Paiute) to $16,000,000 (National Fuel). Similarly, public utility Transmission Providers provided one-time cost estimates to function independently of their retail function that ranged from $750,000 (Colorado Springs) to $1,000,000 (DTE), while annual cost estimates ranged from $1,500,000 (Conectiv) to $95,000,000 (Cinergy).[58]

115. Commenters provided estimates of costs in varying levels of detail, but the majority of the commenters' projected costs the independent functioning requirement reflect the ''worst-case'' scenario, that assumed the Commission would require a complete separation of affiliated Transmission Providers, holding companies and other Energy Affiliates as well as prohibit the sharing of support services and field personnel.[59] As Duke recognized, however, the magnitude of these increased costs depends on whether an LDC or load serving entity is defined as an Energy Affiliate, how the separation is implemented and whether specific functions, like administrative or support functions, and certain information, like specific transaction or reliability information, can be shared between the

[54] Additional examples of field or maintenance employees include: those who read meters, locate lines, do snow removal and maintain the roadways.

[55] Order No. 497–F, 66 FERC ¶ 61,347 at 62,165; Tennessee Gas Pipeline Company, 55 FERC ¶ 61,285 (1990).

[56] *See, e.g.*, East Tennessee Natural Gas Co., 63 FERC ¶ 61,578, *order on reh'g,* 64 FERC ¶ 61,159 (1993).

[57] Questar's estimate includes capital investments, transmission investments, investment in additional systems, legal fees, design engineers, state regulatory efforts, duplicate SCADA and duplicate field operations.

[58] Few public utility transmission providers provided one-time cost estimates; several, like Cinergy and Southern provided estimates over a multi-year basis, $180,000,000 over two years and $350,000,000 over five years, respectively.

[59] Generally, the projected costs included: duplication of system control or control center facilities; duplication of field, maintenance, human resources, information technology, travel and other support-type personnel, duplication of customer service, load forecasting and scheduling employees, duplication of office facilities, computers, software, SCADA, as well as administrative and leasing costs.

transmission function and the retail sales function.

116. The Final Rule will not be as costly as anticipated by the commenters because the Final Rule excludes certain categories of affiliates, such as LDCs making only on-system sales, from the definition of Energy Affiliate, does not include solely bundled retail sales employees in the definition of Marketing Affiliate, allows the sharing of certain support and field personnel, and adopts the no-conduit rule as well as other exceptions to the informational disclosure prohibitions. The level of separation of functions required by the Final Rule is needed to ensure that Transmission Providers do not use their access to information about transmission to the detriment of customers or competitors. EPSA states that the long-term benefits could amount to several billion dollars.

117. The Commission disagrees with commenters' arguments that there is no harm to the market under the current level of sharing between Transmission Providers and their Energy Affiliates. There is harm to the market. For example, unduly preferential behavior in favor of a marketing affiliate harmed the retail customers of Idaho in the amount of $5.8 million until the Commission required a refund as a condition of a settlement.[60] Similarly, the retail customers of Louisiana were harmed approximately $2.1 million until the Commission required a refund as a condition of settlement.[61] Although there was no specific quantification of harm caused by the unduly preferential behavior described in the *Transco* settlement, it was of sufficient magnitude that the Commission required the marketing affiliate to exit the market, and Transco paid a record civil penalty of $20 million.

ix. Conclusion

118. The independent functioning requirement is a central component of the standards of conduct which limits the ability of the Transmission Provider to use its market power to preferentially benefit an Energy Affiliate. Nonetheless, it is necessary to recognize the practicalities of operating a transmission system, and, therefore, the Commission will continue to permit the sharing of certain non-transmission function employees between the Transmission Provider and its Marketing and Energy Affiliates in the Final Rule.

119. However, in an investigation of Transco, the Commission learned that there are instances in which a shared information technology function provided a marketing affiliate an undue preference.[62] Specifically, a shared IT employee designed a software program for the marketing affiliate that gave the marketing affiliate access to the pipeline's mainframe databases and used the pipeline's modeling information to optimize the marketing affiliate's nominations on the pipeline's transmission system. In these circumstances, the IT employees were no longer ''support'' employees, and gave the marketing affiliate unduly preferential access to valuable transmission information.

120. Similarly, if lawyers are participating in directing, organizing or executing transmission system operations or reliability functions or direct the policy of the Transmission Provider, they are not ''support staff,'' rather they are transmission function operating employees who are subject to the standards of conduct. The exemption of ''support employees'' is not a mechanism to circumvent the prohibition on providing a Marketing or Energy Affiliate an undue preference relating to transmission or preferential access to transmission information.

121. Although the majority of ''support employees'' are genuinely performing supporting functions, some have or receive access to transmission or customer information. Therefore, the Final Rule will require Transmission Providers to train all of the ''support'' employees in the standards of conduct and prohibit them from acting as conduits for sharing information with marketing or Energy Affiliates. In addition, Transmission Providers with shared support employees will be subject to greater audit scrutiny.

E. Identification of Affiliates on Internet

122. Section 358.4(b) requires all Transmission Providers to post information with respect to their marketing and sales employees and energy affiliates on their OASIS or Internet Web sites, as applicable. Gas pipelines already post this information with respect to their marketing affiliates under § 161.3(l). Although the current regulations do not require public utility Transmission Providers to post the names and addresses of their marketing affiliates on the OASIS, the Commission did require the posting of organizational charts and job descriptions when it reviewed the electric Transmission Providers' implementation of the standards of conduct.[63] The Major Issues Analysis recommended that the Commission revise some of the posting requirements consistent with some of the commenters' suggestions. Commenters have submitted follow-up comments, which make additional arguments and suggestions. The Final rule requires:

(1) A Transmission Provider must post the names and addresses of its sales and marketing units and Energy Affiliates on its OASIS or Internet Web site.

(2) A Transmission Provider must post on its OASIS or Internet Web site, as applicable, a complete list of the facilities shared by the Transmission Provider and its marketing or sales units or any Energy Affiliates, including the types of facilities shared and their addresses.

(3) A Transmission Provider must post comprehensive organizational charts showing:

(i) The organizational structure of the parent corporation with the relative position in the corporate structure of the Transmission Provider, marketing and sales units and any Energy Affiliates;

(ii) For the Transmission Provider, the business units, job titles and descriptions, and chain of command for all positions, including officers and directors, with the exception of clerical, maintenance, and field positions. The job titles and descriptions must include the employee's title, the employee's duties, whether the employee is involved in transmission or sales, and the name of the supervisory employees who manage non-clerical employees involved in transmission or sales.

(iii) For all employees who are engaged in transmission functions for the Transmission Provider and marketing or sales functions or who are engaged in transmission functions for the Transmission Provider and are employed by any of the Energy Affiliates, the Transmission Provider must post the name of the business unit within the marketing or sales unit or the energy affiliate, the organizational structure in which the employee is located, the employee's name, job title and job description in the marketing or sales unit or energy affiliate, and the employee's position within the chain of command of the marketing or sales unit or energy affiliate.

(iv) The Transmission Provider must update the information on its OASIS or Internet website, as applicable, required by §§ 358.4(1), (2) and (3) within seven business days of any change, posting the date on which the information was updated.

(v) The Transmission Provider must post information concerning potential merger partners as affiliates within seven days after the merger is announced.

(vi) All OASIS or Internet website postings required by Part 358 must comply, as applicable, with the requirements of § 37.3 or §§ 284.12(a) and (c)(3)(v) of this chapter.

[60] Idaho Power Co., IDACORP Energy, L.P., and IDACORP, Inc., 103 FERC ¶ 61,182 (2003).

[61] *Cleco,* 104 FERC ¶ 61,125 (2003).

[62] *Transco,* 102 FERC ¶ 61,302 (2003).

[63] American Electric Power Service Corporation, 81 FERC ¶ 61,332 (1997), *order on reh'g,* 82 FERC ¶ 61,131 (1998); *order on reh'g,* 83 FERC ¶ 61,357 (1998).

i. Posting Organizational Charts

123. The NOPR proposed that organizational charts and job descriptions be updated within three days of a change. Under the current gas standards of conduct, interstate natural gas pipelines are required to make changes to the postings within three days of a change. The Commission has never addressed the frequency of changes to be madder under the electric standards of conduct. Commenters asked the Commission to reconsider this proposal. They argued that there would be significantly more information to post if the Commission adopts a broad definition of the term Energy Affiliate. Williston Basin, Sempra and others urged that the organizational charts be updated every seven days. EEI, AEP, Basin Electric, Carolina Power & Light, Florida Power Corp. and PacifiCorp, urged that organizational charts be updated on a quarterly basis. Several commenters, including Carolina Power & Light and Florida Power Corp., argued that the posting of organizational charts is too broad and burdensome and others argued that it may be difficult to post all changes within three days given the complexity of some mergers or buy-outs. While some companies link their employee or human resource databases to the posted organizational charts and job descriptions, so that automatic downloads or updates take place each day, not all Transmission Providers have that capability. In balancing the burden associated with updating information with the efforts that would be needed to post organizational charts, the Commission has decided it would be reasonable to require the information to be posted within seven business days of a change.

124. Currently, the gas standards of conduct and the posting requirements at § 284.12, required gas Transmission Providers to retain information concerning organizational charts and job descriptions for three years. While § 37.6 of the Commission's regulations, 18 CFR 37.6 (2003), requires public utility Transmission Providers to retain OASIS postings for three years, this section did not specifically refer to the posting of organizational chart and job descriptions. Basin Electric recommended that all Transmission Providers be required to retain, for three years, all posted organizational charts and job descriptions to facilitate the Commission's monitoring and enforcement efforts. To avoid any confusion, the Commission will adopt this suggestion in the Final Rule.

125. Several commenters also argued that Transmission Providers that share support employees that are of no interest to the Commission, such as legal, accounting, human resources, information technology, and customer service should not be required to post detailed information and job descriptions for each of these employees. With respect to posting organizational information where a Transmission Provider shares support, field or maintenance employees with its Marketing or Energy Affiliates, the Transmission Provider must clearly identify the business units for the shared employees and provide a description of the shared services functions or responsibilities, but is not required to provide names or job descriptions for the support or field or maintenance employees.

ii. Posting of Merger Information

126. The Commission's current policy with respect to announced mergers is to treat the potential merger partners as affiliates.[64] The NOPR solicited comments on whether the Standards of Conduct should require the posting of the potential merger partners on the OASIS or Internet Website. In response to the NOPR, several commenters, including APGA, Michigan Commission, New Power, Oklahoma Commission, Ohio Commission, Reliant and the CPUC, supported this proposal as being consistent with the Commission's current policy. Pan Canadian Energy urged that the Commission adopt the same posting requirements as the SEC. In contrast, Niagara Mohawk, Williston Basin, Calpine, Carolina Power and Light, Florida Power Corp., National Grid and Questar opposed posting merger information. EEI urged the posting of mergers after they are announced.

127. Following a review of the comments, the Commission will require the posting of merger information within seven days after a potential merger is announced as it is consistent with the Commission's policy on potential merger partners. The Transmission Provider shall post the name(s) and address(es) of potential merger partner(s) and Energy Affiliates on the OASIS or Internet website with the information in § 358.4(b), which requires a Transmission Provider to post the names and addresses of its sales and marketing units and Energy Affiliates on the OASIS or Internet website.

iii. Transfer of Employees

128. Proposed § 358.4(c) parallels the current requirements of § 37.4(b)(2) of the electric standards of conduct, which permits Transmission Provider employees, marketing and sales employees and Energy Affiliate employees to transfer between such functions, as long as such transfers are not used as a means to circumvent the standards of conduct. Notices of employee transfers would be posted on the OASIS or Internet website. Several commenters sought clarification that the Commission did not intend to capture the transfer of all employees between the Energy and Marketing Affiliates. The Commission is granting the clarification. The Commission did not intend to require the posting of employees that transfer between the Energy and Marketing Affiliates.

129. Some commenters, such as Avista and PSE&G opposed the requirement to post the transfers between a Transmission Provider and its Energy Affiliates. While the Industrials urged the Commission to enhance and enforce posting requirements regarding employee transfers, Exelon, National Grid, and AEP asked for clarification that the posting of employees is for those employees that transfer between the Transmission Provider and the Marketing or Energy Affiliate, and not the transfer of employees among all the Marketing and Energy Affiliates.

130. The Commission is adopting § 358.4(c) as proposed. The transfer of employees between transmission and marketing or sales functions or between a Transmission Provider and its Energy Affiliates presents opportunities for the inappropriate sharing of information in circumvention of the standards of conduct. While a one-time transfer of an employee from the Transmission Provider to the marketing or sales function or energy affiliate (or vice versa) may not be a problem, transferring an employee multiple times (*i.e.*, cycling) is inconsistent with the independent functioning requirement. In *KN* Interstate Gas Transmission Company *(KN),* the Commission prohibited the cycling of employees and held that transferred employees may not use, in their new jobs, transportation information that is not publicly available.[65]

[64] Revised Filing Requirements Under Part 33 of the Commission's Regulations, Order No. 642, 65 FR 70983 (Nov. 28, 2000), FERC Stats. & Regs., Regulations Preambles 1996–2000 ¶ 31,111 at 31,887 (Nov. 15, 2000), *reh'g denied,* Order No. 642–A, 94 FERC ¶ 61,289 (Mar. 15, 2001).

[65] 80 FERC ¶ 61,212 (1997). For example, in *KN,* the Commission suggested that a transferred employee could be restricted to assignments or responsibilities that would not use information obtained from non-affiliated or potential non-affiliated shippers or by showing that the transportation information has lost its commercial

131. The cycling of employees between the Transmission Provider, the Marketing or Energy Affiliates facilitates the sharing of preferential information between these functions. The posting of transfer information provides a technique to detect possible improper cycling of employees.[66] This enables the Commission and the public to monitor all transfers and to ensure that employees are not cycling between functions.

F. Books and Records

132. Proposed § 358.4(d) parallels current §§ 161.3(j) and 37.4(b)(6). Under this requirement, Transmission Providers must keep separate books and records from those of their Energy Affiliates. This ensures that the companies operate independently. It also helps to ensure that the regulated companies are not used to subsidize or support the unregulated companies. There were no comments regarding proposed § 358.4(d), and the Commission adopts it as proposed in the NOPR.

G. Written Procedures

133. The NOPR proposed that § 358.4(e) would replace the requirements of §§ 161.3(i) and 37.4(c), by requiring Transmission Providers to file with the Commission written procedures implementing the standards of conduct as follows:

The Transmission Provider must file with the Commission and post on the OASIS or Internet website, current written procedures implementing the standards of conduct as will enable customers and the Commission to determine that the Transmission Provider is in compliance with the requirements of this section.

134. The NOPR solicited comments on whether it is sufficient to file this information with the Commission or whether it should also be posted on the OASIS and Internet websites. As discussed in more detail below, several commenters suggested that it would be sufficient to post the procedures, rather than file them with the Commission, and made several other recommendations that the Commission is adopting in the Final Rule, as follows:

(e) Written procedures.

(1) By February 9, 2004, each Transmission Provider is required to file with the Commission and post on the OASIS or Internet website a plan and schedule for implementing the standards of conduct.

(2) Each Transmission Provider must be in full compliance with the standards of conduct by June 1, 2004.

(3) Each Transmission Provider must post on the OASIS or Internet website, current written procedures implementing the standards of conduct in such detail as will enable customers and the Commission to determine that the Transmission Provider is in compliance with the requirements of this section by June 1, 2004 or within 30 days of becoming subject to the requirements of this part.

(4) Transmission Providers will distribute the written procedures to all Transmission Provider employees and employees of the Marketing and Energy Affiliates.

(5) Transmission Providers shall require all of their employees to attend training and sign an affidavit certifying that they have been trained regarding the standards of conduct requirements.

(6) Transmission Providers are required to designate a Chief Compliance Officer who will be responsible for standards of conduct compliance.

i. Posting Standards of Conduct Procedures.

135. Several commenters recommended that the Commission require the posting of the Transmission Provider's written procedures implementing the Standards of Conduct on the OASIS or Internet website in lieu of filing them with the Commission. The Commission is adopting this suggestion and will modify § 358.4(e) to include a posting requirement instead of a filing requirement. Posting the written procedures on the OASIS or Internet website gives users immediate access to the information and does not create additional administrative burdens for the Commission. Filing the written procedures is not required because the Commission has sufficient mechanisms to address problems through the Enforcement Hotline and complaints under the FPA or the NGA. Moreover, Commission staff will aggressively monitor standards of conduct compliance. Each Transmission Provider is required to post on its OASIS or Internet website written procedures implementing the Standards of Conduct no later than June 1, 2004 or within 30 days of becoming subject to the requirements of Part 358.

136. With respect to the standards of conduct procedures that Transmission Providers will post on their OASIS or Internet Website merely restating the regulations or incorporating them by reference will not show acceptable compliance. The Transmission Providers must explain the measures they use to implement the standards of conduct, *e.g.*, how transmission information and confidential customer information is kept secure, whether the standards of conduct have been distributed to employees, whether employees have been offered training on the standards of conduct, and whether employees are required to read and sign acknowledgment forms.

137. In addition, within 60 days of publication of the Final Rule in the **Federal Register**, each Transmission Provider is required to file with the Commission and post on the OASIS or Internet website an informational filing that includes a plan and schedule for implementing the standards of conduct by June 1, 2004, and the Transmission Provider's projected costs of complying with the standards of conduct.

ii. Training

138. Standards of Conduct training for employees was not discussed in the NOPR, although it is one of the factors the Commission historically looks at when determining if a Transmission Provider has complied with She standards of Conduct. In response to the NOPR, Cinergy, Ohio Commission, PGE and other commenters urged the Commission to require training and evaluation or to formalize the training requirement.

139. The Commission likes this suggestion, and will revise § 358.4(e) to adopt it.

iii. Chief Compliance Officer

140. The Ohio Commission recommended that the Commission should require the creation of a corporate ethics officer for each Transmission Provider, who would investigate and certify, on a periodic basis, whether the Transmission Provider is complying with the standards of conduct requirements. In several recent settlements, the Commission has required the hiring or designation of a Chief Compliance Officer. These individuals have a working knowledge of the company, its structure and operations and have been invaluable in post-settlement compliance activities.

141. It is appropriate to designate an individual to be responsible for standards of conduct compliance. Therefore, in the Final Rule, the Commission is requiring that each Transmission Provider hire or designate a Chief Compliance Officer. This individual will be responsible for employee training, answering employee questions and coordinating audits and investigations with Commission Staff, as well as duties to ensure that the Transmission Provider complies with the standards of conduct.

value, *i.e.*, a ''cooling off'' period before or after the transfer.

[66] *See e.g.*, Kinder Morgan Interstate Gas Transmission, L.L.C., *et al.*, 90 FERC ¶ 61,310 (2000).

H. Non-Discrimination Requirements—§ 358.5

142. The principle underlying these requirements is that the Transmission Provider is prohibited from giving the employees of its Marketing or Energy Affiliates any undue preferential treatment. The proposed standards specify the ways in which a Transmission Provider must ensure equal treatment and equal access to information.

i. Information Access and Disclosure Prohibitions

143. The NOPR proposed information access and disclosure prohibitions that tracked the requirements of §§ 161.3(e) and (f) and 37.4(b)(3) and (4) from the gas and electric standards of conduct. The proposed prohibitions prevent a Transmission Provider from giving its Marketing or Energy Affiliates undue preferences over their unaffiliated customers through the exchange of ''insider'' information. The existing gas and electric standards of conduct concerning the permissible flow of information between affiliates are not consistent with each other, so as a result, the positions of the commenters varied. As discussed below, proposed § 358.5(a) and (b) generated a large volume of comments. Few commenters identified substantive concerns with the specific language of the proposed regulations; rather, they focused on what was not discussed in the NOPR, implementation of the information disclosure prohibitions. The Major Issues Analysis made a variety of recommendations and provided draft regulatory text. Virtually all of the follow-up comments addressed the information requirements. As discussed in more detail below, the Commission is revising the information requirements and, as recommended by commenters, codifying several exceptions. The Final Rule requires:

(a) Information access.

(1) The Transmission Provider must ensure that any employee of the Transmission Provider engaged in marketing or sales or any employee of any Energy Affiliate may only have access to that information available to the Transmission Provider's transmission customers (*i.e.,* the information posted on the OASIS or Internet website, as applicable), and must not have access to any information about the Transmission Provider's transmission system that is not available to all users of an OASIS or Internet website, as applicable.

(2) The Transmission Provider must ensure that any employee of the Transmission Provider engaged in marketing or sales or any employee of any Energy Affiliate is prohibited from obtaining information about the Transmission Provider's transmission system (including, but not limited to, information about available transmission capability, price, curtailments, storage, ancillary services, balancing, maintenance activity, capacity expansion plans or similar information) through access to information not posted on the OASIS or Internet website or that is not otherwise also available to the general public without restriction.

(b) Prohibited disclosure.

(1) An employee of the Transmission Provider may not disclose to its marketing or sales employees, or to employees of the Transmission Provider's Energy Affiliates any information concerning the transmission system of the Transmission Provider or the transmission system of another (including, but not limited to, information received from non-affiliates or information about available transmission capability, price, curtailments, storage, ancillary services, balancing, maintenance activity, capacity expansion plans, or similar information) through non-public communications conducted off the OASIS or Internet website, through access to information not posted on the OASIS or Internet Website that is not contemporaneously available to the public, or through information on the OASIS or Internet website that is not at the same time publicly available.

(2) A Transmission Provider may not share any information, acquired from nonaffiliated transmission customers or potential nonaffiliated transmission customers, or developed in the course of responding to requests for transmission or ancillary service on the OASIS or Internet website, with employees of its Marketing or Energy Affiliates, except to the limited extent information is required to be posted on the OASIS or Internet website in response to a request for transmission service or ancillary services.

(3) If an employee of the Transmission Provider discloses information in a manner contrary to the requirements § 358.5(b)(1) and (2), the Transmission Provider must immediately post such information on the OASIS or Internet website.

(4) A non-affiliated transmission customer may voluntarily consent, in writing, to allow the Transmission Provider to share the non-affiliated customer's information with a Marketing or Energy Affiliate.

(5) A Transmission Provider is not required to contemporaneously disclose to all transmission customers or potential transmission customers information covered by § 358.5(b)(1) if it relates solely to a Marketing or Energy Affiliate's specific request for transmission service.

(6) A Transmission Provider may share generation information necessary to perform generation dispatch with its Marketing and Energy Affiliate that does not include specific information about individual third party transmission transactions or potential transmission arrangements.

(7) Neither a Transmission Provider nor an employee of a Transmission Provider is permitted to use anyone as a conduit for sharing information covered by the prohibitions of § 358.5(b)(1) and (2) with a Marketing or Energy Affiliate.

(8) A Transmission Provider is permitted to share crucial operating information with its Energy Affiliates to maintain the reliability of the transmission system.

A. ''No Conduit'' or ''Automatic Imputation''

144. *Current Policies:* Under the current gas standards of conduct, when an interstate natural gas pipeline company shares transportation information with its marketing affiliate, the pipeline must contemporaneously share that information with non-affiliates.[67] This requirement is designed to prevent a Transmission Provider from giving its marketing affiliate undue preferences over its unaffiliated customers through the exchange of transmission information. In addition, the current gas standards of conduct prohibit a pipeline from sharing with its marketing affiliate any information the pipeline receives from a nonaffiliated shipper or potential nonaffiliated shipper (this is considered confidential customer information).[68] The gas industry commonly refers to this as the ''automatic imputation rule'' because the Commission's policy is that when an employee who performs functions for the pipeline and its marketing affiliate receives confidential shipper information, the information is automatically divulged or imputed to the marketing affiliate. In *Tenneco*, the Court of Appeals endorsed this approach when it found that the relevant question is not whether a shared employee who receives critical information will disclose it to the affiliate, but whether that shared employee will in fact receive such information in the first place, or alternatively, how the pipeline intends to keep information supplied by nonaffiliated shippers from reaching a shared employee.[69]

145. Over the past 15 years, several interstate natural gas pipelines have urged the Commission to adopt different approaches; (1) apply the ''automatic imputation rule'' only to shared operating employees; and (2) adopt a ''no-conduit rule.'' [70] Up until now,

[67] Standard F states that to the extent a pipeline provides to a marketing affiliate information related to transportation of natural gas, it must provide that information contemporaneously to all potential shippers, affiliated and non-affiliated on its system. *See* 18 CFR 161.3(f) (2003).

[68] Standard E states that a pipeline may not disclose to its marketing affiliate any information the pipeline receives from a nonaffiliated shipper or potential nonaffiliated shipper. *See* 18 CFR 161.3(e) (2003).

[69] *Tenneco Gas* v. *FERC*, 969 F.2d 1187 (D.C. Cir. 1992) (*affirmed in part and remanded in part*).

[70] Under a ''no-conduit rule,'' a shared non-operating employee could receive confidential information as long as the shared employee did not act as a conduit for actively sharing the information

Commission has rejected the ''no-conduit rule'' for the gas industry.[71]

146. In contrast, under the current electric standards of conduct, which contain broader information disclosure prohibitions, the Commission has permitted shared non-operating employees to receive confidential shipper information as long as the shared employee did not act as a conduit for sharing the information with wholesale merchant function employees.[72] In implementing Order No. 889, the Commission justified the different rule because the electric standards of conduct provide a stricter separation of functions requirement than the pipeline standards.[73] When the Commission reviewed the standards of conduct for public utility Transmission Providers, the Commission adopted the ''no-conduit'' rule, rather than applying the ''automatic imputation rule.''[74]

147. The NOPR was silent on how the information prohibitions would be applied to shared employees, that is, whether the Commission would adopt the ''automatic imputation rule'' from the gas standards of conduct or the ''no-conduit rule'' from the electric standards of conduct. In their Initial Comments, many commenters from both the gas and electric industries, requested, without much explanation, that the Commission codify the ''no-conduit rule'' and apply to it all Transmission Providers. The Major Issues Analysis proposed to apply the automatic imputation rule. After much discussion at the May 21st Conference, the Commission received more than 100 supplemental comments on this issue. Almost every segment of the industry and all major industry trade associations that opposed the automatic imputation rule argued that it could force the break-up of service companies and that the limitations on the sharing of information would restrict a director, officer or senior manager's ability to engage in corporate governance functions. Of the states that commented, Connecticut favored the automatic imputation rule, while Alabama, Indiana, Nebraska, and Ohio favored the no-conduit rule.

148. A few commenters supported the ''automatic-imputation'' proposal. NASUCA stated that the no-conduit rule fails to recognize the reality that a person who gains access to important information is likely to act upon that information. Rather than advocate a particular position with respect to these options, the Industrials merely stated that officers and directors should be allowed to discharge their duties. Sempra raised a valid point—the potential for harm is great when the Commission permits the sharing of operating employees, but the danger is low when the shared employees are engaged in ''support-type'' services, while the potential for cost savings by permitting the sharing of ''support-type'' services is significant.

149. One significant event that occurred after the NOPR was the passage of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act), which requires corporate officers to engage in informed oversight and requires CEOs to personally vouch for the veracity, timeliness and fairness of their companies' public disclosures.[75] In addition, there is significant industry-wide concern that the automatic imputation rule would limit the information a director, officer or senior manager could receive, effectively restricting his or her ability to engage in the corporate governance function under the Sarbanes-Oxley Act.[76]

150. After carefully considering the comments, the Final Rule will adopt the ''no-conduit rule.'' As a result, interstate natural gas Transmission Providers, which have been operating under the stricter ''automatic imputation rule'' since 1987, will now be covered by the more flexible ''no conduit rule.'' This rule will prohibit employees of a Transmission Provider from using any affiliate or employee of an affiliate as a conduit for sharing information that is prohibited by § 358.5(b)(1) and (2).

B. Sharing of Operational Information

151. Many commenters from virtually all segments of the gas industry argued that the separation of functions and the information disclosure prohibitions required by the NOPR will prohibit a Transmission Provider from communicating crucial operational information with its affiliated producers, gatherers or LDCs. They argued that prohibiting certain of these communications will endanger the reliability of the gas transmission systems. NGSA proposed that employees who are responsible solely for the physical operations of their structure (infrastructure operators) be permitted to share operational information because those infrastructure operators are not involved in other functions. Several commenters argued that the Commission should adopt the approach taken when implementing Order No. 889, where the Commission permitted Transmission Providers to share certain types of operational information with its generation function and wholesale merchant function. The Major Issues Analysis recommended that Transmission Providers and their Energy Affiliates be permitted to share crucial operational information necessary to maintain the reliability of the transmission system.

152. In supplemental comments, many commenters, including Alliance, BP America, EEI, Duke, First Energy, INGAA, National Grid, and Williston Basin supported the Staff's proposal. NiSource expressed concern that the exception may be too narrow because certain day-to-day information is needed on both sides of the meter to ensure that a gas pipeline meets its service obligations, regardless of whether the interconnected party is an affiliate. Several commenters encouraged the Commission to create a list of permissible communications. However, the AdHoc Marketers, Cinergy and Shell Offshore discouraged the Commission from creating a ''laundry list'' of permissible communications because it would be inadequate and incomplete and create regulatory uncertainty.

153. The Commission is declining to create a list of permissible communications. However,

with the marketing affiliate or wholesale merchant function.

[71] *See* Order Nos. 497–E and F; *Amoco Production Co. and Amoco Energy Trading Co.* v. *Natural Gas Pipeline Company of America,* 83 FERC ¶ 61,197 at 61,849 (1998).

[72] Under the gas standards of conduct, the contemporaneous disclosure requirement only applies to transportation information, while under the electric standards of conduct, the contemporaneous disclosure requirement applies to transmission and market information and prohibits off-OASIS communications. *See* 18 CFR 37.4(4) and 161.3(f) (2003).

[73] Under the gas standards of conduct, to the maximum extent practicable, a pipeline's operating employees and the operating employees must function independent of each other. *See* 18 CFR 161.3(g) (2003). In contrast, the employees of the electric Transmission Provider engaged in transmission system operations must function independently of the employees engaged in wholesale merchant functions, except for emergency circumstances affecting system reliability. *See* 18 CFR 37.4(a)(1) (2003). The key difference is the flexibility under the term ''maximum extent practicable,'' which permits, in certain situations, the sharing of operating employees.

[74] Allegheny Power Service Corp., *et al.,* 84 FERC ¶ 61,316 at 62,425 (1998).

[75] Effective August 29, 2002, the Securities and Exchange Commission adopted a Final Rule that requires the principal executive and financial officers each to certify the financial and other information submitted in quarterly and annual reports to the SEC. *See* Ownership Reports and Trading by Officers, Directors and Principal Security Holders, Final Rule and Request for Comments, 67 FR 56461 (Sept. 3, 2002).

[76] In July 2003, Commission staff met with representatives of the Securities and Exchange Commission (SEC) to get a better understanding how the SEC implements the Sarbanes-Oxley Act, and how the Commission's proposed information disclosure prohibitions would affect compliance with the Sarbanes-Oxley Act.

Transmission Providers are encouraged to contact the Hotline for guidance regarding permissible communications. Although the Commission will permit Transmission Providers and their Energy Affiliates to share crucial operational information necessary to maintain the reliability of the transmission system, we caution that this is not to be a mechanism to circumvent the rules.

C. Generation Dispatch

154. Many commenters argued that the separation of functions and the information disclosure prohibitions suggested by the NOPR would prohibit a Transmission Provider from communicating crucial operational information with its affiliated retail sales function. They argue that prohibiting certain of these communications will endanger the reliability of the electric transmission systems. Several commenters argue that the Commission should adopt the approach taken when implementing Order No. 889, where the Commission permitted Transmission Providers to share certain types of operational information with its generation function and wholesale merchant function.[77] Cinergy and PGE urge the Commission to codify the case-specific exemption that permits Transmission Providers to share with generation dispatch employees information necessary to perform such dispatch, provided that such information does not include specific information about individual third-party transmission arrangements.[78] Although the Commission is not providing a list of types of communications, we will codify the exception that permits the sharing of generation-related information. For example, the Marketing and Energy Affiliates may have access to information such as area control error, regulation rates, but not the specific load of third party transmission customers. Likewise, wholesale merchant function employees or employees of the Energy Affiliates may not have access to information that would enable them to determine, directly or indirectly, the interchange schedules of third party customers, consistent with Commission precedent.[79]

155. Exelon notes that nuclear plant operators belonging to an Energy Affiliate of a Transmission Provider would be prohibited from receiving information they need to satisfy certain requirements of the Nuclear Regulatory Commission's regulations. For example, station blackout rules require that nuclear stations have real-time information on grid disturbances and the duration of power unavailability under 10 CFR 50.63 (2003). The Transmission Provider would be permitted to share this type of information with its Energy Affiliate under this exception.

D. Voluntary Consent

156. Although the NOPR did not discuss whether a non-affiliate could voluntarily consent, in writing, to allow a Transmission Provider to share the non-affiliate's information with the marketing affiliate, numerous commenters suggested that the Commission codify this exception.[80] The Major Issues Analysis concurred with the commenters' suggestions and provided draft regulatory text to codify this policy. Carolina Power & Light, Duke Energy, EEI and Florida Power Corp., among others, supported the Staff's recommendation. However, in follow-up comments, several commenters, including Indicated Shippers, BP America, BP Energy, Exxon-Mobil, and Occidental Energy Marketing urged the Commission not to adopt the voluntary consent provision. They argue that it is anti-competitive because even if a shipper agreed to disclose the information, the consent may not truly be voluntary because the Transmission Provider could be exercising market power.

157. The Commission is adopting this voluntary consent exception, which impacts practical operations of the transmission system, and is incorporated into the regulatory text of the Final Rule. Any shipper may file a formal complaint or approach the Enforcement Hotline on a confidential basis if a Transmission Provider is abusing this exception. Transmission Providers are required to preserve all written consents, and any amendments, transfers or withdrawals of them.

E. Transaction Specific Exemption

158. Under current policy regarding the gas standards of conduct, an interstate natural gas pipeline is not required to contemporaneously disclose to all shippers information relating to a marketing affiliate's specific request for transportation service.

159. In contrast, current § 37.4(b)(3) and (4) of the Commission's regulations, 18 CFR 37.4(b)(3) and (4) (2003), prohibit the disclosure of any transmission information to wholesale merchant employees by off-OASIS communications. Order No. 889 did clarify that this does not foreclose customers, including wholesale merchant employees, from obtaining information about the status of particular transactions.[81] However, the Transmission Provider must provide the same types of information with the same level of detail to all customers presenting similar requests.

160. The NOPR did not specifically address this issue.

161. Virtually every segment of the gas industry requested clarification whether the Commission would continue the ''specific-transaction exception.'' The Major Issues Analysis recommended that the Commission codify this policy and provided draft regulatory text for comment. All the follow-up comments from the gas industry, as well as Cinergy, EEI and Exelon supported the Major Issues Analysis and draft regulatory text. This exception, which impacts practical operations of the transmission system merits retention, and the regulatory text has been revised accordingly.

ii. Implementing Tariffs

162. Proposed § 358.5(c) combines §§ 161.3(a), (b), (c), (d) and (k) and § 37.4(b)(5), under which Transmission Providers are required to treat all customers in a fair and impartial manner. For example, Transmission Providers must apply tariff provisions in a manner that treats all transmission customers in a non-discriminatory manner. Transmission Providers would be prohibited from giving their marketing and sales employees and Energy Affiliates' employees preferential treatment, such as more flexible service. There were no comments on this proposed section in response to the NOPR, and the Final Rule adopts the language as originally proposed.

I. Discounts

163. The NOPR proposed that § 358.5(d) would combine the requirements of §§ 161.3(h) and 37.6(c)(3). The NOPR stated that proposed § 358.5(d) is consistent with the way electric Transmission Providers currently treat discounts—any offer of a

[77] *See, e.g.,* American Electric Power Service Corp., *et al.,* 81 FERC ¶ 61,332 (1997); Allegheny Power Service Corporation, *et al.,* 81 FERC ¶ 61,339 (1997); Allegheny Power Service Corporation, *et al.,* 84 FERC ¶ 61,131 (1998).

[78] *See, e.g.,* Indianapolis Power and Light Co., 90 FERC ¶ 61,174 (2000).

[79] *APS,* 84 FERC ¶ 61,131 (1998).

[80] *See, e.g.,* Southern Natural Gas Company, 70 FERC ¶ 61,348 (1995).

[81] FERC Stats. & Regs., Regulation Preambles 1991–1996 ¶ 31,035 at 31,597.

discount for any transmission service made by the Transmission Provider must be announced to all potential customers solely by posting on the OASIS. The NOPR did not propose to change the OASIS requirements currently codified at § 37.6(c)(3).

164. Proposed § 358.5(d) would change current discounting requirements for natural gas pipelines, however. Currently, § 161.3(h)(1), states that if a pipeline offers a discount to its marketing affiliate, the pipeline must make a comparable discount contemporaneously available to all similarly situated non-affiliated shippers. However, under current § 161.3(h)(2), the pipeline is required to post relevant information (name of affiliate, maximum rate, discounted rate, delivery points, quantity of gas and conditions) on its Internet website within 24 hours of the time at which gas first flows under a discounted transaction. The NOPR also solicited comments on whether it would be necessary to continue posting discount information for gas transactions under proposed § 358.5(d) when rate information is required to be posted under §§ 284.13(b)(1) and (2) of the Commission's regulations.[82]

165. Commenters from the electric industry were largely silent on this issue.

166. A few commenters, APGA, Amoco/BP, CPUC and Reliant, offered unqualified support for the requirement to offer all discounts by posting on OASIS or Internet websites. In addition, the Ohio Commission, Michigan Commission, and Oklahoma Commission stated that advance knowledge of discounts enables affiliates to profit from ''insider trading.'' Twenty-six commenters, primarily from the natural gas industry, INGAA, Ad Hoc Marketers, NGSA, EPSA, and Industrials, strongly opposed posting discounts at the time of the offer. The commenters point out that discounting is fundamentally different between the gas and electric industries. In the gas industry, pipelines face pipeline-to-pipeline competition and competition from alternative fuel sources. They argue that the posting requirement is inconsistent with selective discounting for the gas industry and that this proposal would discourage discounting. Many expressed concern about the vagueness of the word ''offer'' and offered various definitions or proposals for when the information should be posted. Several commenters, AGA, Dominion, Industrials and NiSource, recommended that discounts be posted after they are executed.

167. The Major Issues Analysis recommended that the Final Rule require the transmission provider to post a discount at the conclusion of negotiations, ''when the discount offer is contractually binding.'' The majority of follow-up comments supported the Major Issues Analysis recommendation. However, the Transmission Group is concerned that the discount posting requirements will discourage shippers from making early commitments to pipeline projects, *e.g.*, precedent agreements.

168. The Final Rule adopts Commission staff's recommendation. This result balances the importance of equal and timely access to discount information with clarity. The term ''offer'' could have been interpreted in a variety of ways and the text proposed by staff provided additional clarification on the timing of the posting. However, the current requirement, under § 161.3(h)(2), to post information within 24 hours of gas flow is too late to afford an unaffiliated competitor the opportunity to negotiate a comparable deal in today's fast-paced markets.

169. The Transmission Group has not provided any reason for claiming that the posting of a discount ''when the discount offer is contractually binding'' would discourage a potential shipper from entering into a precedent agreement. The Commission disagrees with the Transmission Group's suggestion that the posting of discounts will discourage precedent agreements.

V. Conforming Changes

170. The Commission proposes to make conforming changes to the regulations to delete references to Parts 37 and 161, as necessary, and add references to Part 358.

VI. Additional Policy Changes Not Adopted

171. The NOPR also solicited comments on specific additional policy suggestions, such as structural remedies, capacity limits, revising capacity allocation methods, disgorgement of opportunity costs and prohibiting profit sharing mechanisms. For the most part, the commenters, which were predominantly from the gas industry on these policy suggestions, argued that there was no evidence that justified the need for implementing, on a generic basis, the additional policy suggestions discussed in the NOPR. Very few commenters supported any of the measures. At this time, the Commission is not adopting any of these additional measures. However, we note that these are the some of the types of remedies that may be imposed if a Transmission Provider violates the standards of conduct.

172. The NOPR also solicited comments on whether the Commission should, in this proceeding or in a separate proceeding, codify the electric market-based rate power sales codes of conduct to govern the relationship between public utilities and their power marketing affiliates. The Commission has decided not to codify the codes of conduct at this time, but may do so in a separate proceeding.

VII. Regulatory Flexibility Act Certification

173. The Regulatory Flexibility Act[83] requires rulemakings to contain either a description and analysis of the effect that a rule will have on small entities or to certify that the rule will not have a significant economic effect on a substantial number of small entities. Because most Transmission Providers do not fall within the definition of ''small entity,''[84] the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VIII. Information Collection Statement

174. The Office of Management and Budget's (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[85] Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

175. The Final Rule replaces existing rules under Parts 161 and 37 with comparable rules at Part 358. Under the current requirements at Parts 161 and 37, Transmission Providers are posting certain information with respect to their marketing affiliates or wholesale merchant functions on their respective OASIS nodes or Internet websites. The final rule also requires the Transmission Providers to post the same information on their OASIS or Internet websites with respect to the Transmission

[82] Under 18 CFR 284.13(b)(1) and (2), a pipeline must post on its Internet Web site, no later than the time of the first nomination under a transaction, firm contract information and interruptible agreement information, including the charged rate, the quantity of gas scheduled, receipt and delivery points, the identity of the shipper, and whether the shipper is affiliated.

[83] 5 U.S.C. 601–612 (2000).

[84] *See* 5 U.S.C. 601(3) (2000).

[85] 5 CFR 1320.11 (2003).

Providers' Energy Affiliates. This information helps potential customers and the Commission determine whether or not there has been discrimination in pipeline/affiliate/nonaffiliated transactions.

176. The Commission is submitting these posting requirements to OMB for its review and approval under Section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d) (2000). Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, 202–502–8415) or from the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: 202–395–7285, e-mail *pamelabeverly.oirasubmission @omb.eop.gov.*).

Public Reporting Burden

177. The Commission did not receive specific comments concerning its burden estimates and uses the same estimates here in the Final Rule. Comments on the substantive issues raised in the NOPR are addressed elsewhere in the Final Rule.

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
	257	1	65	16,705

Total Annual Hours for Collection: (Reporting + Recordkeeping, (if appropriate)) = 16,705.

Information Collection Costs:

178. The Commission sought comments on the costs to comply with these requirements. No comments were received. The Commission is projecting the average annualized cost per respondent to be the following: total hours divided by 2,080 (total work hours in a year) times $117,041 = $939,985.53.

Annual Capital/Startup costs	$0
Annualized Costs (Operations & Maintenance)	939,985
Total Annualized Costs	939,985

Title: FERC–592 and 717.

Action: Revision of Currently Approved Collection of Information.

OMB Control No: 1902–0157 and 1902–173.

Respondents: Business or other for profit.

Frequency of Responses: On occasion.

Necessity of the Information:

179. The information is necessary to ensure that all regulated transmission providers treat all transmission customers in a non-discriminatory basis. By requiring the posting of information regarding transmission, all non-affiliated customers have the ability to acquire information simultaneously with affiliated customers in a pro-competitive environment. The information also permits the market participants and the Commission to monitor the transmission market in a timely and efficient manner.

Internal Review

180. The Commission has reviewed the requirements pertaining to natural gas pipelines and transmitting electric utilities and determined the revisions in the final rule are necessary because of the evolving energy market. The Commission is consolidating the standards of conduct to govern the relationships between regulated transmission providers and their affiliates that engage in or are involved in transmission transactions or manage or control transmission capacity. Although the current standards of conduct limit a Transmission Provider's ability to make or grant undue preferences to the wholesale merchant function of their businesses (in the electric area) or to their marketing affiliates, they do not cover the Transmission Providers' other non-marketing affiliates.

181. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the gas and electric industries. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

182. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202) 208–2425, e-mail: *Michael.Miller@ferc.gov.*

183. Comments on the requirements of the Final Rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

IX. Environmental Statement

184. Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[86] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[87] This final rule falls within the categorical exclusions provided in the Commission's regulations.[88] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

X. Document Availability

185. In addition to publishing the full text of this document in the **Federal Register,** the Commission also provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's home page *http://www.ferc.gov* and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

186. From the Commission's home page on the Internet, this information is available in the eLibrary. The full text of this document is available on eLibrary in PDF and Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

187. User assistance is available for eLibrary and the Commission's web site during normal business hours from FERC Online Support (by phone at (866) 208–3676 (toll free) or for TTY, contact (202) 502–6652, or by e-mail at *FERCOnlineSupport@ferc.gov,* for TTY (202) 502–8659.

[86] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. ¶30,783 (1987).

[87] 18 CFR 380.4 (2003).

[88] 18 CFR 380.4(a)(2)(ii) and 380.4(a)(5) (2003).

XI. Effective Date and Congressional Notification

188. This final rule will take effect on February 9, 2004. The Commission has determined with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget that this rule is a ''non-major rule'' within the meaning of Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[89] The Commission will submit the final rule to both houses of Congress and the General Accounting Office.[90]

List of Subjects

18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 161

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental Shelf, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 358

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

By the Commission. Commissioner Brownell dissenting in part with a separate statement attached.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends Chapter I, Title 18 of the Code of Federal Regulations, as follows:

PART 37—OPEN ACCESS SAME-TIME INFORMATION SYSTEMS

■ 1. The authority citation for part 37 continues to read as follows:

Authority: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. In part 37, the heading is revised to read as set forth above.

§ 37.4 [Removed and Reserved]

■ 3. Section 37.4 is removed and reserved.

§ 37.6 [Amended]

■ 4. In § 37.6(g)(3), the word ''§ 37.4(b)(2)'' is removed and the word ''§ 358.4(c)'' is added in its place and in § 37.6(g)(4), the word ''§ 37.4(b)(5)(iii)'' is removed and the word ''§ 358.5(c)(4)'' is added in its place.

PART 161—[REMOVED]

■ 5. Part 161 is removed in its entirety.

PART 250—FORMS

■ 6. The authority citation for part 250 continues to read as follows:

Authority: 16 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

§ 250.16 [Amended]

■ 7. In § 250.16(a), the word ''§ 161.2'' is removed and the word ''§ 358.3'' is added in its place and in § 250.16(e), the word ''§ 161.3'' is removed and the words ''§§ 358.4 and 358.5'' are added in its place.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

§ 284.13 [Amended]

■ 8. In § 284.13(a), the word ''Part 161'' is removed and the word ''part 358'' is added in its place.

§ 284.286 [Amended]

■ 9. In § 284.286(c), the words ''§ 161.3(a), (b), (d), and (k) of this chapter and comply with § 161.3(c), (e), (f), (g), (h), and (l) of this chapter'' are removed and the word ''part 358'' is added in their place.

■ 10. Subchapter S, consisting of part 358, is added to read as follows:

SUBCHAPTER S—STANDARDS OF CONDUCT FOR TRANSMISSION PROVIDERS

PART 358—STANDARDS OF CONDUCT

Sec.

358.1 Applicability.
358.2 General principles.
358.3 Definitions.
358.4 Independent functioning.
358.5 Non-discrimination requirements.

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

§ 358.1 Applicability.

(a) This part applies to any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter.

(b) This part applies to any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce.

(c) This part does not apply to a public utility Transmission Provider that is a Commission-approved Independent System Operator (ISO) or Regional Transmission Organization (RTO). If a public utility transmission owner participates in a Commission-approved ISO or RTO and does not operate or control its transmission facilities and has no access to transmission, customer or market information covered by § 385.5(b), it may request an exemption from this part.

(d) A Transmission Provider may file a request for an exemption from all or some of the requirements of this part for good cause.

§ 358.2 General principles.

(a) A Transmission Provider's employees engaged in transmission system operations must function independently from the Transmission Provider's marketing and sales employees, and from any employees of its Energy Affiliates.

(b) A Transmission Provider must treat all transmission customers, affiliated and non-affiliated, on a non-discriminatory basis, and must not operate its transmission system to preferentially benefit an Energy Affiliate.

§ 358.3 Definitions.

(a) *Transmission Provider* means:

(1) Any public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce; or

(2) Any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter.

(b) *Affiliate* means:

(1) Another person which controls, is controlled by or is under common control with, such person, and

(2) For any exempt wholesale generator, as defined under Section 32(a) of the Public Utility Holding Company Act of 1935, as amended, the same as provided in Section 214 of the Federal Power Act.

(c) *Control* (including the terms ''controlling,'' ''controlled by,'' and ''under common control with'') as used in this part and § 250.16 of this chapter, includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting

[89] 5 U.S.C. 804(2) (2000).

[90] 5 U.S.C. 801(a)(1)(A) (2000).

interest of 10 percent or more creates a rebuttable presumption of control.

(d) *Energy Affiliate* means an affiliate of a Transmission Provider that:

(1) Engages in or is involved in transmission transactions in U.S. energy or transmission markets; or

(2) Manages or controls transmission capacity of a Transmission Provider in U.S. energy or transmission markets; or

(3) Buys, sells, trades or administers natural gas or electric energy in U.S. energy or transmission markets; or

(4) Engages in financial transactions relating to the sale or transmission of natural gas or electric energy in U.S. energy or transmission markets.

(5) An Energy Affiliate does not include:

(i) A foreign affiliate that does not participate in U.S. energy markets;

(ii) An affiliated Transmission Provider;

(iii) A holding, parent or service company that does not engage in energy or natural gas commodity markets or is not involved in transmission transactions in U.S. energy markets;

(iv) An affiliate that purchases natural gas or energy solely for its own consumption and does not use an affiliated Transmission Provider for transmission of that natural gas or energy.

(v) A state-regulated local distribution company that does not make any off-system sales.

(e) *Marketing, sales or brokering* means a sale for resale of natural gas or electric energy in interstate commerce. Sales and marketing employee or unit includes:

(1) An interstate natural gas pipeline's sales operating unit, to the extent provided in § 284.286 of this chapter, and

(2) A public utility Transmission Provider's energy sales unit, unless such unit engages solely in bundled retail sales.

(3) Marketing or sales does not include incidental purchases or sales of natural gas to operate interstate natural gas pipeline transmission facilities.

(f) *Transmission* means natural gas transportation, storage, exchange, backhaul, or displacement service provided pursuant to subpart A of part 157 or subparts B or G of part 284 of this chapter; and electric transmission, network or point-to-point service, reliability service, ancillary services or other methods of transportation or the interconnection with jurisdictional transmission facilities.

(g) *Transmission Customer* means any eligible customer, shipper or designated agent that can or does execute a transmission service agreement or can or does receive transmission service, including all persons who have pending requests for transmission service or for information regarding transmission.

(h) *Open Access Same-time Information System or OASIS* refers to the Internet location where a public utility posts the information, by electronic means, required by part 37 of this chapter.

(i) *Internet Web site* refers to the Internet location where an interstate natural gas pipeline posts the information, by electronic means, required by §§ 284.12 and 284.13 of this chapter.

(j) *Transmission Function employee* means an employee, contractor, consultant or agent of a Transmission Provider who conducts transmission system operations or reliability functions, including, but not limited to, those who are engaged in day-to-day duties and responsibilities for planning, directing, organizing or carrying out transmission-related operations.

§ 358.4 Independent functioning.

(a) Separation of functions.

(1) Except in emergency circumstances affecting system reliability, the transmission function employees of the Transmission Provider must function independently of the Transmission Provider's Marketing or Energy Affiliates' employees.

(2) Notwithstanding any other provisions in this section, in emergency circumstances affecting system reliability, a Transmission Provider may take whatever steps are necessary to keep the system in operation. Transmission Providers must report to the Commission and post on the OASIS or Internet website, as applicable, each emergency that resulted in any deviation from the standards of conduct, within 24 hours of such deviation.

(3) The Transmission Provider is prohibited from permitting the employees of its Marketing or Energy Affiliates from:

(i) Conducting transmission system operations or reliability functions; and

(ii) Having access to the system control center or similar facilities used for transmission operations or reliability functions that differs in any way from the access available to other transmission customers.

(4) Transmission Providers are permitted to share support employees and field and maintenance employees with their Marketing and Energy Affiliates.

(b) Identifying affiliates on the public Internet.

(1) A Transmission Provider must post the names and addresses of its sales and marketing units and Energy Affiliates on its OASIS or Internet Web site.

(2) A Transmission Provider must post on its OASIS or Internet Web site, as applicable, a complete list of the facilities shared by the Transmission Provider and its marketing or sales units or any Energy Affiliates, including the types of facilities shared and their addresses.

(3) A Transmission Provider must post comprehensive organizational charts showing:

(i) The organizational structure of the parent corporation with the relative position in the corporate structure of the Transmission Provider, marketing and sales units and any Energy Affiliates;

(ii) For the Transmission Provider, the business units, job titles and descriptions, and chain of command for all positions, including officers and directors, with the exception of clerical, maintenance, and field positions. The job titles and descriptions must include the employee's title, the employee's duties, whether the employee is involved in transmission or sales, and the name of the supervisory employees who manage non-clerical employees involved in transmission or sales.

(iii) For all employees who are engaged in transmission functions for the Transmission Provider and marketing or sales functions or who are engaged in transmission functions for the Transmission Provider and are employed by any of the Energy Affiliates, the Transmission Provider must post the name of the business unit within the marketing or sales unit or the Energy Affiliate, the organizational structure in which the employee is located, the employee's name, job title and job description in the marketing or sales unit or Energy Affiliate, and the employee's position within the chain of command of the marketing or sales unit or Energy Affiliate.

(iv) The Transmission Provider must update the information on its OASIS or Internet website, as applicable, required by §§ 358.4(1), (2) and (3) within seven business days of any change, and post the date on which the information was updated.

(v) The Transmission Provider must post information concerning potential merger partners as affiliates within seven days after the merger is announced.

(vi) All OASIS or Internet website postings required by part 358 must comply, as applicable, with the requirements of § 37.3 or §§ 284.12(a) and (c)(3)(v) of this chapter.

(c) *Transfers.* Employees of the Transmission Provider, marketing or

sales unit or Energy Affiliates are not precluded from transferring among such functions as long as such transfer is not used as a means to circumvent the standards of conduct. Notices of any employee transfers must be posted on the OASIS or Internet website, as applicable. The information to be posted must include: the name of the transferring employee, the respective titles held while performing each function (*i.e.*, on behalf of the Transmission Provider, Marketing Function or Energy Affiliate), and the effective date of the transfer. The information posted under this section must remain on the OASIS or Internet website, as applicable, for 90 days.

(d) *Books and records.* A Transmission Provider must maintain its books of account and records (as prescribed under parts 101, 125, 201 and 225 of this chapter) separately from those of its Energy Affiliates and these must be available for Commission inspections.

(e) *Written procedures.*

(1) By February 9, 2004, each Transmission Provider is required to file with the Commission and post on the OASIS or Internet website a plan and schedule for implementing the standards of conduct.

(2) Each Transmission Provider must be in full compliance with the standards of conduct by June 1, 2004.

(3) The Transmission Provider must post on the OASIS or Internet website, current written procedures implementing the standards of conduct in such detail as will enable customers and the Commission to determine that the Transmission Provider is in compliance with the requirements of this section by June 1, 2004 or within 30 days of becoming subject to the requirements of part 358.

(4) Transmission Providers will distribute the written procedures to all Transmission Provider employees and employees of the Marketing and Energy Affiliates.

(5) Transmission Providers shall require all of their employees to attend training and sign an affidavit certifying that they have been trained regarding the standards of conduct requirements.

(6) Transmission Providers are required to designate a Chief Compliance Officer who will be responsible for standards of conduct compliance.

§ 358.5 Non-discrimination requirements.

(a) Information access.

(1) The Transmission Provider must ensure that any employee of the Transmission Provider engaged in marketing or sales or any employee of any Energy Affiliate may only have access to that information available to the Transmission Provider's transmission customers (*i.e.*, the information posted on the OASIS or Internet website, as applicable), and must not have access to any information about the Transmission Provider's transmission system that is not available to all users of an OASIS or Internet website, as applicable.

(2) The Transmission Provider must ensure that any employee of the Transmission Provider engaged in marketing or sales or any employee of any Energy Affiliate is prohibited from obtaining information about the Transmission Provider's transmission system (including, but not limited to, information about available transmission capability, price, curtailments, storage, ancillary services, balancing, maintenance activity, capacity expansion plans or similar information) through access to information not posted on the OASIS or Internet website or that is not otherwise also available to the general public without restriction.

(b) Prohibited disclosure.

(1) An employee of the Transmission Provider may not disclose to its marketing or sales employees, or to employees of the Transmission Provider's Energy Affiliates any information concerning the transmission system of the Transmission Provider or the transmission system of another (including, but not limited to, information received from non-affiliates or information about available transmission capability, price, curtailments, storage, ancillary services, balancing, maintenance activity, capacity expansion plans, or similar information) through non-public communications conducted off the OASIS or Internet Web site, through access to information not posted on the OASIS or Internet Web site that is not contemporaneously available to the public, or through information on the OASIS or Internet Web site that is not at the same time publicly available.

(2) A Transmission Provider may not share any information, acquired from nonaffiliated transmission customers or potential nonaffiliated transmission customers, or developed in the course of responding to requests for transmission or ancillary service on the OASIS or Internet website, with employees of its marketing or Energy Affiliates, except to the limited extent information is required to be posted on the OASIS or Internet website in response to a request for transmission service or ancillary services.

(3) If an employee of the Transmission Provider discloses information in a manner contrary to the requirements of § 358.5(b)(1) and (2), the Transmission Provider must immediately post such information on the OASIS or Internet Web site.

(4) A non-affiliated transmission customer may voluntarily consent, in writing, to allow the Transmission Provider to share the non-affiliated customer's information with a marketing or Energy Affiliate.

(5) A Transmission Provider is not required to contemporaneously disclose to all transmission customers or potential transmission customers information covered by § 358.5(b)(1) if it relates solely to a Marketing or Energy Affiliate's specific request for transmission service.

(6) A Transmission Provider may share generation information necessary to perform generation dispatch with its Marketing and Energy Affiliate that does not include specific information about individual third party transmission transactions or potential transmission arrangements.

(7) Neither a Transmission Provider nor an employee of a Transmission Provider is permitted to use anyone as a conduit for sharing information covered by the prohibitions of § 358.5(b)(1) and (2) with a marketing or Energy Affiliate.

(8) A Transmission Provider is permitted to share crucial operating information with its Energy Affiliate to maintain the reliability of the transmission system.

(c) Implementing tariffs.

(1) A Transmission Provider must strictly enforce all tariff provisions relating to the sale or purchase of open access transmission service, if these tariff provisions do not permit the use of discretion.

(2) A Transmission Provider must apply all tariff provisions relating to the sale or purchase of open access transmission service in a fair and impartial manner that treats all transmission customers in a non-discriminatory manner, if these tariff provisions permit the use of discretion.

(3) A Transmission Provider must process all similar requests for transmission in the same manner and within the same period of time.

(4) The Transmission Provider must maintain a written log, available for Commission audit, detailing the circumstances and manner in which it exercised its discretion under any terms of the tariff. The information contained in this log is to be posted on the OASIS or Internet Web site within 24 hours of when a Transmission Provider exercises

its discretion under any terms of the tariff.

(5) The Transmission Provider may not, through its tariffs or otherwise, give preference to its own marketing or sales function or to any Energy Affiliate, over any other wholesale customer in matters relating to the sale or purchase of transmission service (including, but not limited to, issues of price, curtailments, scheduling, priority, ancillary services, or balancing).

(d) *Discounts.*

Any offer of a discount for any transmission service made by the Transmission Provider must be posted on the OASIS or Internet Web site contemporaneously with the time that the offer is contractually binding. The posting must include: the name of the customer involved in the discount and whether it is an affiliate or whether an affiliate is involved in the transaction, the rate offered; the maximum rate; the time period for which the discount would apply; the quantity of power or gas scheduled to be moved; the delivery points under the transaction; and any conditions or requirements applicable to the discount. The posting must remain on the OASIS or Internet Web site for 60 days from the date of posting.

Note: The following Attachments will not be published in the *Code of Federal Regulations.*

List of Commenters

Ad Hoc Marketers Group (Ad Hoc Marketers)
AEC Storage and Hub Services, Inc.
Alabama Electric Cooperative, Inc.
Alabama Public Service Commission
Allegheny Energy Service Corporation
Allegheny Power
Algonquin Gas Transmission, LP (Algonquin)
Alliance Pipeline, LP (Alliance)
Alcoa Power Generating, Inc.
Apache Corporation
American Antitrust Institute (AAI)
American Electric Power Service Corporation (AEP)
American Forest and Paper Association (AFPA)
American Gas Association (AGA)
American Iron & Steel Institute
American Public Gas Association (APGA)
American Public Power Association (APPA)
Amoco Production Company and BP Energy Co. (Amoco/BP)
Arkansas Electric Cooperative Corporation
Association of Texas Intrastate Natural Gas Pipelines
Atlanta Gas Light Company
Atlantic City Electric Company and Delmarva Power and Light Co.
Atmos Energy Corporation
Avista Corporation (Avista)
B–R Pipeline Company (B–R Pipeline)
BP Energy Co. (BP)
Bangor Hydro-Electric Company
Basin Electric Power Cooperative, Inc. (Basin Electric)
Bonneville Power Administration (BPA)
Bowater, Inc.
Businesses Advocating Tariff Equity
California Dairy Coalition
California Natural Gas Producers Association
California Oil & Gas Association
California Independent Petroleum Association
California Public Utilities Commission (CPUC)
Calpine Corporation (Calpine)
Canadian Association of Petroleum Producers
Carolina Power & Light Company (CP&L)
CenterPoint Energy Gas Transmission Company (CEGT)
Chattanooga Gas Company
Cheyenne Light Fuel & Power Company
Cinergy Services, Inc. (Cinergy)
City of Memphis
City of New Orleans
CLECO Power LLC (Cleco)
CMS Energy, Inc. (CMS)
Coalition of Midwest Transmission Customers
Colorado Springs Utilities (Colorado Springs)
Commonwealth Edison Company
Congressman Michael Oxley
Connecticut DPUC (Connecticut Commission)
Connecticut Industrial Energy Consumers (New England Pool)
Connexus Energy
Consolidated Edison Company of New York
Delmarva Power & Light Co.
Dairyland Power Cooperative
Discovery Gas Transmission LLC (Discovery)
Discovery Producer Services LLC
Distrigas of Massachusetts Corporation (Distrigas of Massachusetts)
Dominion Resources, Inc. (Dominion)
DTE Energy
Duke Energy Corporation (Duke Energy)
Dynegy, Inc. (Dynegy)
Dynegy Power Marketing, Inc.
East Texas Electric Cooperative, Inc.
Edison Electric Institute (EEI)
El Paso Corporation
El Paso Energy Partners, LP
El Paso Merchant Energy, LP
Electric Power Supply Association (EPSA)
Electricity Consumers Resource Council
Empire District Electric Co.
Enbridge, Inc.
Energy East Companies and Rochester Gas and Electric Corporation
Entergy-Koch Trading, LP
Entergy Services, Inc. (Entergy)
Equitable Resources, Inc. (Equitable)
Exelon Corporation (Exelon)
Exelon Generation Co., LLC
Federal Trade Commission (FTC)
First Electric Cooperative Corp.
FirstEnergy Corporation
Florida Power Corporation (FPC)
Florida Power & Light Company (FP&L)
Florida Public Service Commission (Florida Commission)
Fort Chicago Energy Partners, LP
Gas Processors Association
Georgia Industrial Group
Green Mountain Power Corporation
Gulf South Pipeline Company (Gulf South)
Gulfstream Natural Gas System, LLC
Hampshire Storage Company
Idaho Public Utilities Commission (Idaho Commission)
Illinois Commerce Commission (Illinois Commission)
Illinois Oil & Gas Association
Industrial Gas Users of Florida
Independent Oil & Gas Association of West Virginia (IOGA)
Independent Oil & Gas Association of Pennsylvania
Independent Petroleum Association of America, including, California Natural Gas Producers Association, California Oil and Gas Association, Illinois Oil and Gas Association, International Association of GeoPhysical Contractors, Kansas Independent Oil and Gas Association, Michigan Oil and Gas Association, Ohio Oil and Gas Association, Pennsylvania Oil and Gas Association, Permian Basin Petroleum Association, Independent Oil and Gas Association of West Virginia and Wyoming
Independent Producers Association (IPAA)
Industrial Energy Consumers of Pennsylvania
Industrial Energy Users
Interstate Natural Gas Association of America (INGAA)
International Association of Geophysical Contractors
Kansas Independent Oil & Gas Association
Keyspan Corporation (Keyspan)
Kinder Morgan (KM)
Kinder Morgan Interstate Gas Transmission LLC
Kinder Morgan Interstate Pipelines
Large Public Power Council
LG&E Energy Corporation (LG&E)
Long Island Lighting Company (LILCO)
Long Island Power Authority (LIPA)
M&N Management Company
Maritimes & Northeast Pipeline, LLC (Maritimes & Northeast Pipeline)
Michigan Oil & Gas Association
Michigan Public Service Commission (Michigan Commission)
Midwest Energy, Inc.
Midwest ISO (MISO)
Midwest United Energy LLC
MIGC, Inc. (MIGC)
Minnesota Department of Commerce (Minnesota Commission)
Mirant Americas Energy Marketing (Mirant)
Mississippi Public Utilities Staff (Mississippi Commission)
Modesto Irrigation District (MID)
Monongahela Power Company
Montana Power Co.
Montana-Dakota Utilities Company
National Association of Regulatory Utilities Commissioners (NARUC)
National Association of State Utility Consumer Advocates (NASUCA)
National Energy Marketers Association (NEMA)
National Fuel Gas Distribution Corporation
National Fuel Gas Supply Corporation
National Grid USA (National Grid)
National Propane Gas Association
National Rural Electric Cooperative Association (NRECA)
Natural Gas Pipeline Co. of America
Natural Gas Supply Association (NGSA)
NEPOOL Industrial Customer Coalition
New York Independent System Operator (NYISO)
New York State Public Service Commission (New York Commission)

NICOR Gas
Niagara Mohawk Power Corporation
NiSource, Inc. (NiSource)
North Carolina Utilities Commission (North Carolina Commission)
Northeast Utilities Service Company
Northeastern Independent Transmission Co.
Northern States Power Company
Northwest Natural Gas Company
Ohio Oil & Gas Association
Oklahoma Corporation Commission (Oklahoma Commission)
Oklahoma Gas and Electric Company (OGE)
Orlando Utilities Commission
PacifiCorp
Pancanadian Energy Services, Inc.
PECO Energy Company
Pennsylvania Oil & Gas Association
Pennsylvania Public Utility Commission (Pennsylvania Commission)
Permian Basin Petroleum Association
Piedmont Natural Gas Company
Pinnacle West Companies (Pinnacle West)
Pinnacle West Capital Corporation
PJM Industrial Customer Coalition
Portland General Electric Company
Portland Natural Gas Transmission System
Potomac Edison Company
PPL Companies
Process Gas Consumers Group, including American Forest and Paper Association, American Iron and Steel Institute, Georgia Industrial Group, Industrial Gas Users of Florida, Florida Industrial Gas Users, U.S. Gypsum Co. (Industrials)
Proliance Energy, LLC
PSEG Companies
Public Alliance for Community Energy
Public Service Co. of Colorado
Public Service Co. of North Carolina
Public Utilities Commission of Ohio (Ohio Commission)
Public Utilities Commission of Michigan (Michigan Commission)
Puget Sound Energy, Inc.
Questar Corporation
Questar Market Resources, Inc.
Questar Pipeline Co., Questar Gas Co., Questar Regulated Services Co. (Questar)
Reliant Resource, Inc. (Reliant)
Rural Utilities Service of the U.S. Department of Agriculture (Rural Utilities Service)
Salt River Project
SCANA Energy Marketing, Inc.
SCANA Services, Inc.
SCG Pipeline, Inc. (SCG)
Seminole Electric Cooperative, Inc.
Sempra Energy
Shell Gas Transmission, LLC (Shell Gas)
Shell Offshore, Inc. (Shell Offshore)
South Carolina Electric & Gas Co.
South Carolina Pipeline Corporation
South Carolina Public Service Authority
Southern California Edison Co.
Southern Company Services, Inc. (Southern)
Southwest Gas Corporation (Southwest Gas)
Southwest Transmission Cooperative
Southwestern Public Service Co.
State of Arkansas
State of Colorado
State of Illinois
State of New York
State of Pennsylvania
State of Washington
State of Wyoming
Superior Natural Gas Corporation
Teco Energy, Inc.
Texas Eastern Transmission Company
The New Power Company
Transcanada Pipelines Limited
Transmission Access Policy Study Group (TAPS)
Transmission Group (Northern Natural Gas Co. *et al.*)
Unaffiliated Marketers
UtiliCorp United, Inc.
United States Gypsum Company
Upper Peninsula Power Company
US Gypsum Corporation
USG Pipeline Company
Utah Associated Municipal Power Systems
Utah Division of Public Utilities (Utah Commission)
Vector Pipeline
Vermont Department of Public Service (Vermont Commission)
Viking Gas Transmission Co. (Viking)
Virginia Natural Gas Company
Walter Oil & Gas Corporation
Wastach Energy Corporation
Washington Gas Light Company
Washington Utilities & Transportation Commission (Washington Commission)
Wells Rural Electric Company
West Penn Power Company
West Virginia Energy Users Group
Western Resources, Inc., including Kansas Power & Light (Western Resources)
Westgas Interstate, Inc.
Williams Companies (Williams)
Williams Energy Marketing & Trading Co. (WEMT)
Williston Basin Interstate Pipeline Company (Williston Basin)
Wisconsin Electric Power Co.
Wisconsin Gas Company
Wisconsin Public Service Corporation
Wyoming Independent Producers Association
Wyoming Public Service Commission (Wyoming Commission)
XCEL Energy Companies (Xcel)
XCEL Energy Services, Inc.

Brownell, Commissioner, *dissenting in part*

1. The proposed changes to our standards of conduct generated a great amount of comment. There were many questions raised, clarifications requested and alternative proposals advocated. Many commenters argued that a general rule was unnecessary. I disagree. The current standards of conduct do not reflect the significant changes that have occurred in the electric and gas industries since they were first adopted. In particular, the current standards of conduct do not reflect the interplay between physical and financial transactions that is now present in the energy markets.

2. We had a lot of process and debate. After carefully considering all the comments, we revised and clarified many of the proposed changes to the current standards of conduct. The revised standards of conduct adopted in the Final Rule are a positive step toward eliminating undue discrimination and undue preferences in the provision of interstate transmission service. In particular, the Final Rule:

- Uses the same standards of conduct language for the interstate natural gas pipelines and public utility transmission providers;
- Adopts the ''no conduit rule'' for implementing information disclosure prohibitions (currently used by public utility transmission providers), which is more flexible than the ''automatic imputation rule'' (currently used by interstate natural gas pipeline transmission providers);
- Prohibits the Transmission Provider from sharing employees and information with its Energy Affiliates, including affiliated asset managers, and trading and financial affiliates;
- Prohibits the sharing of employees and information across industries (*e.g.,* between a natural gas pipeline and an affiliated generator); and
- Requires mandatory training for employees and the designation of a Chief Compliance Officer.

I support these provisions of the Final Rule.

3. The Final Rule retains the existing exemption from Order No. 497 for affiliated local distribution companies (LDCs) and the existing exemption from Order No. 889 for the bundled retail sales function. In contrast, the Final Rule eliminates the existing exemption in Order No. 497 for affiliated producers, gatherers, processors, intrastate pipelines, and Hinshaw pipelines. The facts and equity support maintaining the existing exemption for affiliated producers, gatherers, processors, intrastate pipelines, and Hinshaw pipelines. Therefore, I will dissent on this one point.

4. There is no practical distinction in the relationship between a jurisdictional pipeline and its affiliated LDCs and the relationship between a jurisdictional pipeline and an affiliated intrastate or Hinshaw pipeline that warrants applying the standards of conduct in an asymmetrical manner. Furthermore, we exempt FERC-jurisdictional transmission providers from the definition of Energy Affiliates. Consequently, for example, affiliated jurisdictional pipelines are permitted to share transmission function employees and information. Again, there appears to be no significant difference in the relationships to support disparate treatment.

5. Under the current standards of conduct, a producer is exempt when selling gas solely from its own production and an LDC is exempt if it only makes on-system sales. There does not appear to be any reason that undue discrimination and undue preferences in the provision of interstate transmission service are more likely to occur with a producer than with an LDC. Furthermore, as the Final Rule notes, there was much discussion at the May 21, 2002 conference about the possibility that expanding the standards of conduct to producers, gatherers and processors would harm deepwater operations and future off-shore development efforts.

6. Lastly, there appears to be insufficient evidence to support eliminating the exemption for affiliated producers, gatherers, and processors. The Final Rule cites *Shell Offshore Inc.* v. *Transcontinental Gas Pipe Line Corp., et al.,* 100 FERC ¶ 61,254 (2002), *order on reh'g,* 103 FERC ¶ 61,177 (2003), *appeal filed* June 27, 2003 (D.C. Cir. No. 03–1179) as the basis for eliminating the exemption for producers, gatherers and

processors. I dissented in that case because, *inter alia,* the evidence of cooperative action was mixed.

7. For these reasons, I respectfully dissent in part.

Nora Mead Brownell,

Commissioner.

[FR Doc. 03–30444 Filed 12–10–03; 8:45 am]

BILLING CODE 6717–01–P

Federal Register

Thursday,
December 11, 2003

Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[Docket ID No. OAR–2003–0178; FRL–7554–3]

RIN 2060–AK59

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for miscellaneous coating manufacturing facilities. The final rule establishes emission limits and work practice requirements for new and existing miscellaneous coating manufacturing operations, including process vessels, storage tanks, wastewater, transfer operations, equipment leaks, and heat exchange systems, and implements section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet hazardous air pollutant (HAP) emission standards reflecting application of the maximum achievable control technology (MACT). The HAP emitted from miscellaneous coating manufacturing facilities include toluene, xylene, glycol ethers, methyl ethyl ketone, and methyl isobutyl ketone. Exposure to these substances has been demonstrated to cause adverse health effects such as irritation of the lung, eye, and mucous membranes, effects on the central nervous system, and cancer. We do not have the type of current detailed data on each of the facilities and the people living around the facilities covered by the final rule for this source category that would be necessary to conduct an analysis to determine the actual population exposures to the HAP emitted from these facilities and the 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 the adverse effects do occur, and the final rule reduces emissions, subsequent exposures will be reduced. The final rule will reduce HAP emissions by 4,900 tons per year (tpy) for existing facilities that manufacture miscellaneous coatings.

EFFECTIVE DATE: December 11, 2003.

ADDRESSES: Docket ID. No. OAR–2003–0178 and A–96–04 are located at the U.S. EPA, Office of Air & Radiation Docket & Information Center (6102T), 1301 Constitution Avenue, NW., room B108, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (MD–C504–04), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5402, electronic mail (e-mail) address *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAICS*	Examples of regulated entities
Industry	3255	Manufacturers of coatings, including inks, paints, or adhesives.

*North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.7985 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established official electronic public dockets for this action under Docket ID No. OAR–2003–0178 and A–96–04. 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, a 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 Air and Radiation 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 Air and Radiation Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

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 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. Portions of the docket materials are available electronically through Docket ID No. OAR–2003–0178. Once in the system, select ''search,'' then key in the appropriate docket identification number. You may still access publicly available docket materials through the Docket ID No. A–96–04.

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 through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the final NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 9, 2004. Under section 307(d)(7)(B) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under CAA section 307(b)(2) of the CAA, the requirements established by the final rule may not be challenged separately in any civil or criminal proceeding brought to enforce these requirements.

Background Information Document. The EPA proposed the NESHAP for miscellaneous coating manufacturing on April 4, 2002 (67 FR 16154), and received 81 comment letters and comments from 8 speakers at a public hearing on the proposal. A background information document (BID) (''National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Miscellaneous Coating Manufacturing Industry, Summary of Public Comments and Responses,'') containing EPA's responses to each public comment is available in Docket ID No. OAR–2003–0178.

Outline. The information presented in this preamble is organized as follows:

I. Background
A. What is the source of authority for development of NESHAP?
B. What criteria are used in the development of NESHAP?
C. What is the history of the source category?
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B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

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 some area sources of HAP and to establish NESHAP for the listed source categories and subcategories. Major sources of HAP are those that are located within a contiguous area and under common control and have the potential to emit greater than 9.1 megagrams per year (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 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable, taking into consideration the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as the maximum achievable control technology or 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 all major sources achieve the level of control 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 for which the Administrator has emissions information (or the best-performing five sources for which the Administrator has or could reasonably obtain emissions information for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. In considering whether to establish standards more stringent than the floor, we must consider cost, non-air quality health and environmental impacts, and energy requirements.

C. What Is the History of the Source Category?

Section 112 of the CAA requires us to establish rules for categories of emission sources that emit HAP. On July 16, 1992, we published an initial list of 174 source categories to be regulated (57 FR 31576). The listing was our best attempt to identify major sources of HAP by manufacturing category. Following the publication of that listing, we published a schedule for the promulgation of emission standards for each of the 174 listed source categories. At the time the initial list was published, we recognized that we might have to revise the list from time to time as better information became available.

Based on information we collected in 1995, we realized that several of the original source categories on the list had similar process equipment, emission characteristics and applicable control technologies. Additionally, many of these source categories were on the same schedule for promulgation, by November 15, 2000. Therefore, we decided to combine a number of source categories from the original listing into one broad set of emission standards. On November 7, 1996, we published a **Federal Register** notice combining 21 source categories from the initial list of 174 into the Miscellaneous Organic Chemical Processes source category (61 FR 57602). One of the 21 source categories was the manufacture of paints, coatings, and adhesives.

On November 18, 1999, we published a **Federal Register** notice describing changes to the source category list (64 FR 63035). At that time, we also described our intent to group the source categories into two new source categories instead of one. The two new source categories are called the miscellaneous organic chemical manufacturing source category and the miscellaneous coating manufacturing source category. We proposed the NESHAP for both source categories on April 4, 2002 (67 FR 16154).

Today's action establishes final standards for miscellaneous coating manufacturing (40 CFR part 63, subpart HHHHH). Final standards for miscellaneous organic chemical manufacturing (40 CFR part 63, subpart FFFF) will be published separately.

D. What Are the Health Effects Associated With the Pollutants Emitted From Miscellaneous Coating Manufacturing?

The CAA was created, in part, ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of the population'' (*see* section 101(b) of the CAA). These NESHAP will protect public health by reducing emissions of HAP from miscellaneous coating manufacturing facilities.

Miscellaneous coating manufacturing facilities emit an estimated 6,900 Mg/yr (7,600 tpy) of HAP. Approximately 30

percent of the HAP emitted by miscellaneous coating manufacturing facilities is toluene, 30 percent is xylene, and glycol ethers, methyl ethyl ketone, and methyl isobutyl ketone account for approximately 25 percent. The final rule reduces total HAP emissions from miscellaneous coating manufacturing facilities by 64 percent. As a result of controlling these HAP, the final NESHAP will also reduce emissions of volatile organic compounds (VOC). A summary of the potential health effects caused by exposure to these pollutants is presented in the preamble to the proposed rule (67 FR 16154).

E. How Did We Develop the Final Rule?

We proposed the NESHAP for the Miscellaneous Coating Manufacturing source category on April 4, 2002 (67 FR 16154) and provided an 85-day comment period. We received public comments on the proposed miscellaneous coating manufacturing NESHAP from 81 sources consisting of paint, ink, and adhesives manufacturers, industry trade associations, a federal government agency, an environmental group, and other interested parties. In addition, a public hearing was held, at which 8 of 11 speakers provided testimony related to the proposed miscellaneous coating manufacturing rule. A copy of each of the comment letters is available in Docket ID No. OAR–2003–0178.

The final rule reflects full consideration of all the comments we received on the proposed subpart HHHHH, as well as our reassessment of certain data in the rulemaking record. A detailed response to all comments is included in the BID for the promulgated standards (Docket ID No. OAR–2003–0178).

II. Summary of the Final Rule

A. What Are the Affected Sources and Emission Points?

The affected source for the miscellaneous coating manufacturing source category is the miscellaneous coating manufacturing operations at the facility. These operations include storage tanks, process vessels, equipment components, wastewater treatment and conveyance systems, transfer operations, and ancillary sources such as heat exchange systems.

The final standards for miscellaneous coating manufacturing cover vents from process vessels, storage tanks, wastewater, transfer operations, equipment leaks, and ancillary heat exchange operations. Total baseline HAP emissions for the miscellaneous coating manufacturing source category are estimated to be 6,900 Mg/yr (7,600 tpy).

B. What Are the Emission Limitations and Work Practice Standards?

Process Vessel Vents

For stationary process vessels with capacities greater than or equal to 0.94 cubic meters (m^3) (250 gallons (gal)) at existing sources, the final rule requires an overall reduction, adjusting for capture and control efficiency based on enclosure tests, as applicable, of at least 75 percent by weight for HAP with a vapor pressure greater than or equal to 0.6 kilopascals (kPa) (0.09 pounds per square inch absolute (psia)), and at least a 60 percent reduction by weight for HAP with a vapor pressure less than 0.6 kPa (0.09 psia). The final rule also provides an emissions averaging alternative for stationary process vessels at existing sources that are equipped with a tightly-fitting vented cover. The overall mass reduction in HAP emissions for vessels in the averaging group must be equal to or greater than the reduction that would have resulted if each of the covered vessels were vented to a control device that achieves a 75 percent emissions reduction for HAP with a vapor pressure greater than or equal to 0.6 kPa (0.09 psia) or a 60 percent emissions reduction for HAP with a vapor pressure less than 0.6 kPa (0.09 psia). The final rule requires that portable process vessels at existing sources with capacities greater than or equal to 0.94 m^3 (250 gal) be equipped with a cover. Stationary and portable vessels at new sources must be equipped with a tightly-fitting vented cover, and the vented organic HAP emissions must be reduced by at least 95 percent by weight. Alternatively, for stationary process vessels with capacities greater than or equal to 0.94 m^3 (250 gal) at existing and new sources and portable process vessels with capacities greater than or equal to 0.94 m^3 (250 gal) at new sources, you may install a tightly-fitting vented cover and vent emissions to a condenser operated at specified temperature limits to satisfy the overall control requirement. Another option for meeting the standards for stationary process vessels at existing sources is to use the vessels to produce coatings with less than 5 percent HAP by weight; no additional control of process vessel vents is required when producing such coatings.

We did not specifically request information on process vessels with capacities less than 0.94 m^3 (250 gal). Thus, we do not have information indicating that a sufficient number of sources are using control devices or other HAP emission reduction techniques to enable us to set a MACT floor based on such devices or techniques. Therefore, the MACT floor for process vessels with capacities less than 0.94 m^3 (250 gal) is no emissions reduction. We examined one regulatory alternative that would require the same 75 percent emissions reduction as for larger process vessels. We concluded that the total impacts of this alternative, including cost, non-air quality health and environmental impacts, and energy requirements, are unreasonable in light of the HAP emission reductions achieved. Thus, we did not develop standards for process vessels with capacities less than 250 gal.

Storage Tanks

The standards for storage tanks at existing sources require either organic HAP emissions reductions of 90 percent by weight or more, or the use of floating roofs, or vapor balancing if the storage tanks have capacities greater than or equal to 75 m^3 (20,000 gal) and store material with an organic HAP vapor pressure greater than or equal to 13.1 kPa (1.9 psia). The standards for storage tanks at new sources require either organic HAP emissions reductions of at least 80 percent by weight, the use of floating roofs, or vapor balancing if the storage tanks have capacities greater than or equal to 10,000 gal and store material with an organic HAP vapor pressure greater than or equal to 0.02 psia. The standards for new sources also require either organic HAP emissions reductions of at least 90 percent by weight, the use of floating roofs, or vapor balancing for storage tanks that have capacities equal to or greater than 75 m^3 (20,000 gal) but less than 94 m^3 (25,000 gal) and store material that has an organic HAP vapor pressure greater than or equal to 10.3 kPa (1.5 psia), and tanks with capacities greater than 94 m^3 (25,000 gal) storing material that has an organic HAP vapor pressure greater than or equal to 0.7 kPa (0.1 psia). The final rule does not include standards for storage tanks smaller than 20,000 gal at existing sources or for storage tanks smaller than 10,000 gal at new sources because the MACT floor for these tanks was determined to be no emissions reduction.

Wastewater

For existing sources, the final rule requires that wastewater containing a total partially soluble and soluble HAP load of 750 pounds per year (lb/yr) and a concentration of 4,000 parts per million by weight (ppmw) or greater be treated as hazardous waste or in an

enhanced biological treatment unit. The final rule also allows for offsite treatment provided the affected sources that ship their wastewater to an offsite facility for treatment as a hazardous waste note this fact along with the name of the facility to which the wastewater is shipped in their notification of compliance status report. If the wastewater is shipped offsite for treatment in an enhanced biological treatment unit, the offsite facility must comply with the monitoring, recordkeeping, and reporting requirements in subpart HHHHH. For new sources, the applicability triggers for control are more stringent, affecting all streams that contain partially soluble and soluble HAP at a concentration greater than or equal to 1,600 ppmw.

Transfer Operations

Standards for transfer operations at existing and new sources require 75 percent control of HAP emissions from product loading to tank trucks and railcars if the amount of material transferred contains at least 11.4 million liters per year (l/yr) (3.0 million gal/yr) of HAP, and the material has a HAP partial pressure greater than or equal to 10.3 kPa (1.5 psia). Acceptable control strategies also include routing displaced vapors back to the process, or the use of condensers operated below specified temperature limits.

Equipment Leaks

The final rule requires compliance with leak detection and repair (LDAR) programs for equipment leaks. Existing sources must comply with the sensory-based LDAR provisions of 40 CFR part 63, subpart R, the NESHAP for Gas Distribution Facilities. Alternatively, existing sources may comply with the LDAR program in 40 CFR part 63, subpart TT, or subpart UU (the National Emission Standards for Equipment Leaks—Control Level 1 and Control Level 2, respectively) because these alternatives are equivalent to or more stringent than the sensory-based LDAR program. New sources must comply with either the subpart TT or subpart UU LDAR provisions. For heat exchange systems at existing and new sources, the final rule requires a leak detection program, consistent with the program in 40 CFR 63.104 (the Hazardous Organic NESHAP (HON)).

Cleaning operations are considered part of the miscellaneous coating manufacturing operations at existing and new sources. Therefore, cleaning fluids are considered to be process fluids, and the requirements for process vessels, storage tanks, equipment leaks, and wastewater systems that apply to other process operations also apply to cleaning operations.

C. What Are the Testing and Initial Compliance Requirements?

To verify that the required reductions have been achieved, you must either test or use calculation methodologies, depending on the emission stream characteristics, control device, and the type of process vent. Initial compliance demonstration provisions for stationary process vessels at miscellaneous coating manufacturing sources reference the 40 CFR part 63, subpart SS, closed vent system and performance test provisions and the capture efficiency Method 204 in appendix M to 40 CFR part 51. Control devices handling greater than 9.1 Mg/yr (10 tpy) of HAP must be tested, while engineering assessments are allowed for control devices with lower loads and for condensers. Performance test provisions are based on worst case operating conditions for devices controlling process vents.

The initial compliance demonstration procedures reference 40 CFR part 63, subpart SS, for storage tanks complying using control devices and transfer operations, and 40 CFR part 63, subpart WW, for storage tanks complying using floating roofs.

D. What Are the Continuous Compliance Requirements?

The final rule requires monitoring to determine whether you are in compliance with emission limits on an ongoing basis. This monitoring is done either by continuously measuring HAP emissions reductions or by continuously measuring a site-specific operational parameter, the value of which you would establish during the initial compliance demonstration. These parameters are required to be monitored at 15-minute intervals throughout the operation of the control device. For control devices that do not control more than 1 tpy of HAP emissions, only a daily verification of the operating parameter is required, as is provided in 40 CFR part 63, subpart GGG. To demonstrate compliance with work practice standards, such as the requirement to maintain floating roofs, inspection of equipment serves as the monitoring demonstration.

E. What Are the Notification, Recordkeeping, and Reporting Requirements?

The final rule requires recordkeeping and initial and semiannual reporting. The initial notification is required within 120 days of the effective date of the NESHAP. That report, which is very brief, serves to alert appropriate agencies (State agencies and EPA Regional Offices) of the existence of your affected source and puts them on notice for future compliance actions. The precompliance report details compliance alternatives that require preapproval and is required 6 months prior to the compliance date. The notification of compliance status (NOCS) report, which is due 150 days after the compliance date of the NESHAP, is a comprehensive report that describes the affected source and the strategy being used to comply. The final rule also incorporates a number of provisions in subpart A of 40 CFR part 63 (General Provisions), among them the startup, shutdown and malfunction provisions.

III. Summary of Environmental, Energy, and Economic Impacts

A. What Are the Air Emission Reduction Impacts?

We estimate nationwide baseline HAP emissions from the miscellaneous coating manufacturing sources to be 6,900 Mg/yr (7,600 tpy). We project that the final rule will reduce HAP emissions by about 4,400 Mg/yr (4,900 tpy). Because many of the HAP emitted by miscellaneous coating manufacturing facilities are also VOC, the proposed NESHAP will also reduce VOC.

Combustion of fuels to generate electricity and steam will increase secondary emissions of carbon monoxide (CO), nitrogen oxides (NO_X), and sulfur dioxide (SO_2) by about 25 Mg/yr (27 tpy). These impacts were estimated assuming electricity is generated in coal-fired power plants and steam is produced in natural gas-fired industrial boilers.

B. What Are the Cost Impacts?

The cost impacts include the capital cost to install control devices and monitoring equipment, and include the annual costs involved in operating control devices and monitoring equipment, implementing work practices, and conducting performance tests. The annual cost impacts also include the cost savings generated by reducing the loss of product or solvent in the form of emissions. The total capital costs for existing sources are estimated to be $57 million, and the total annualized costs for existing sources are estimated to be $16 million. Total capital costs for new sources are estimated to be $1.3 million per new facility and total annualized costs are estimated to be $.25 million per new facility. Three new facilities were estimated in the first 3 years after promulgation of this rule.

We estimate that in the first 3 years after the effective date of 40 CFR part 63, subpart HHHHH, that the annual cost burden will average $3,500/yr per respondent for recordkeeping and reporting requirements for an estimated 129 sources. Most of these costs are for new and reconstructed sources that must be in compliance upon startup; other costs are for existing sources to prepare initial notifications and plans. In the fourth year after the effective date, existing facilities must begin to monitor and record operating parameters to comply with operating limits and prepare compliance reports. These activities will significantly increase the nationwide annual burden.

We expect that the actual compliance cost impacts of the NESHAP will be less than described above because of the potential to use common control devices, upgrade existing control devices, implement emissions averaging, or comply with the preset temperature limits for condensers. Because the effect of such practices is highly site-specific and data were unavailable to estimate how often the lower cost compliance practices could be utilized, we could not quantify the amount by which actual compliance costs will be reduced.

C. What Are the Economic Impacts?

The economic impact analysis shows that the expected price increase for affected output would be 0.3 percent as a result of the NESHAP for miscellaneous coating manufacturers. The expected change in production of affected output is a reduction of 0.1 percent as a result of the final rule. One plant closure is expected out of the 127 facilities affected by the final rule. It should be noted that the baseline economic conditions of the facility predicted to close affect the closure estimate provided by the economic model, and that the facility predicted to close appears to have low profitability levels currently. Therefore, no adverse impact is expected to occur for those industries that produce output affected by the NESHAP, such as paints, inks, and adhesives.

D. What Are the Non-Air Quality Health and Environmental Impacts and Energy Impacts?

We do not expect wastewater, solid waste, or hazardous waste to be generated from controlling HAP emissions from miscellaneous coating manufacturing facilities. Thus, we expect no non-air quality health impacts from controlling HAP emissions from miscellaneous coating manufacturing facilities. We expect the overall energy demand (*i.e.*, for electricity generation and steam production) to increase by an estimated 32,000 gigajoules per year (30.0 billion British thermal units per year (Btu/yr).

IV. Summary of Responses to Major Comments

A. What Changes to Applicability Did the Commenters Suggest?

Comment: A number of commenters opposed regulation of activities such as mixing additives and other ingredients, thinning, and adjusting tint by facilities that are the end-users of coatings and are subject to any of the surface coating NESHAP; several of the commenters described these activities as ''affiliated operations,'' and they concurred with the definition and draft preamble language for the Paper and Other Web Coating (POWC) NESHAP that were discussed during POWC stakeholder meetings on May 22 and June 26, 2002.[1] For example, several of the commenters requested specific exemptions for affiliated operations at facilities subject to surface coating rules in subpart GG (National Emission Standards for Aerospace Manufacturing and Rework Facilities), subpart KK of 40 CFR part 63 (NESHAP for the Printing and Publishing Industry), and/or subpart JJJJ of 40 CFR part 63 (NESHAP: Paper and Other Web Coating). Another commenter requested an exemption for the onsite formulation and mixing of specialty, ablative coatings that are applied to space vehicles at a National Aeronautics and Space Administration (NASA) site and are exempt from control under subpart GG of 40 CFR part 63. Two commenters requested specific language in either the preamble or final rule to clarify that operations at facilities subject to subpart DDDD of 40 CFR part 63 (the plywood and composite wood products NESHAP) are not subject to subpart HHHHH of 40 CFR part 63. Another commenter also suggested extending the provision to all equipment associated with a process for which another 40 CFR part 63 standard has been promulgated. One commenter stated that end users, particularly those at facilities subject to subpart MMMM of 40 CFR part 63 (NESHAP: Surface Coating of Miscellaneous Metal Parts and Products), should be exempt because subpart MMMM already addresses emissions associated with the use of diluents at such facilities. Another commenter noted that the exemption in § 63.7985(a)(4) of operations that are part of an affected source under another subpart of 40 CFR part 63 should apply to end-users subject to subparts MMMM, IIII (auto surface), and PPPP (plastic parts and products) because affiliated operations are part of the affected sources under those rules. One commenter requested clarification that the exemption in § 63.7985(a)(4) is not limited only to operations that are required to implement controls under other standards.

Two commenters requested exemptions for affiliated operations at facilities subject to any of the surface coating NESHAP. According to the commenters, the exemption is necessary because we obtained no information on end-users while developing subpart HHHHH, some of the regulated community would not have an opportunity to comment on the proposal because some of the surface coating rules will not be published until after subpart HHHHH is finalized, and we considered emissions from affiliated operations in some surface coating source categories to be insignificant when we were developing the surface coating NESHAP. To exclude end users in general, one commenter recommended more clearly defining ''coatings manufacturing'' with a definition similar to that for ''batch process'' in subpart GGG of 40 CFR part 63, using a more narrow listing of Standard Industrial Classification (SIC) and North American Industrial Classification System (NAICS) codes, and adding specific exemptions for temporary activities such as mixing prior to painting a tank or structure at a major source.

Response: The final rule does not apply to activities conducted by end users of coating products in preparation for application. As noted by some of the commenters, we have decided to exempt affiliated operations at POWC facilities from subpart HHHHH. In the preamble to the final POWC surface coating MACT rule (67 FR 72330, December 4, 2002), we define affiliated operations at POWC facilities and indicate that they are part of the POWC source category, but they are not part of the POWC affected source for a variety of reasons. We also examined other surface coating rules, and determined that the exemption for affiliated operations should also be applied to sources that are subject to the printing and publishing rule (subpart KK), the aerospace manufacturing rule (subpart GG), the metal coil coating rule (subpart SSSS of 40 CFR part 63), and the miscellaneous metal parts and products rule (subpart MMMM). These five rules lack requirements for affiliated

[1] The final POWC NESHAP was published on December 4, 2002 (67 FR 72330).

operations, but affiliated operations were considered during the development of the rules and controls were determined not to be warranted. We have not extended this exemption to other surface coating rules (or certain other rules) that already include affiliated operations as part of the affected source under the applicable subpart because operations that are part of another affected source are exempt from the final subpart HHHHH according to § 63.7985(a)(4). One commenter's assumption that this exemption is not limited to those operations within another affected source that must implement controls is correct. Preparations for painting equipment or structures at a facility are not part of a manufacturing process and thus are not subject to subpart HHHHH.

Comment: Several commenters recommended clarifying the provision in § 63.7985(c)(3) of the proposed rule that would exempt all equipment associated with a process that has less than 5 percent HAP in process vessels. One commenter noted that this provision will not exempt all water-based coating manufacturing because the actual HAP content in the process vessel varies during the process. To be useful, this commenter stated the determination must be based on the HAP content of the final product. According to another commenter, the exemption should be based on ''organic'' HAP, and sources should be allowed to determine this percentage based on material safety data sheets (MSDS) or other available information as an alternative to chemical analysis. One commenter suggested that the exemption would be less confusing if it were applied to individual vessels rather than a ''coating process'' because equipment is generally associated with a specific process vessel and the definition of ''process'' is too broad. One commenter also stated that if a process vessel is not subject to control because its capacity is less than 250 gallons or the HAP emissions are less than 50 parts per million by volume (ppmv), then it is also reasonable that no other requirements should apply to any of the equipment associated with that process vessel (*i.e.*, the storage tank, equipment leak, and wastewater standards).

To minimize the compliance burden, one commenter requested exemptions for impurities and trace constituents present in quantities less than 0.1 percent by weight for carcinogens and less than 1.0 percent by weight for all other HAP, values which are consistent with the levels that must be provided on MSDS. The commenter stated that this would reduce the burden of determining the HAP content in a vessel for comparison with the 5 percent exemption level and for determining the HAP content in process vessel vents for comparison to the 50 ppmv limit.

Response: Under the proposed rule, whenever the contents of a process vessel contain less than 5 percent HAP by weight, the owner or operator would be exempt from all requirements for the process vessel and related equipment. Under the final rule, this provision has been replaced with a provision that provides for compliance with the stationary process vessel standards at existing sources when the vessel is being used to manufacture a coating that contains less than 5 percent HAP by weight. Our rationale for allowing the mass limit as an alternative standard is based on an estimated equivalent reduction in HAP emissions as compared to complying with the process vessel standards. Although we did not collect specific data on coatings content, we reviewed information that we collected in the development of standards for other coating manufacturing source categories. Based on these data, we concluded that we could achieve equivalent reductions in HAP emissions if coating manufacturers reduce the HAP content of final products to less than 5 percent by weight. In order to achieve equivalent reductions of 75 percent for process vessels, the average HAP content of coatings would have to be greater than 20 percent. Other data collection efforts support the conclusion. For example, the average HAP levels in all the solventborne coatings reported in the metal can and wood building products source categories are 32 and 28 percent, respectively. On a consumption-weighted basis, the HAP content of coatings in the metal can source category is 20 percent. Further, although the HAP content of many water-based coatings is less than 5 percent by weight, we did not include an explicit exemption for waterborne coatings because the HAP content of some waterborne coatings could be relatively high as long as the HAP is soluble in water.

In developing this alternative, we are persuaded by one commenter's suggestion to apply it to all vessels that are associated with the manufacturing of the final product. Although another commenter suggested that identifying all process vessels in a manufacturing process would be confusing, we think that this alternative would actually simplify compliance for most owners and operators. As long as the process vessel meets the definition in the final rule, an owner or operator could comply with the alternative standard when the vessel was processing material that would ultimately contain less than 5 percent HAP by weight as final product.

To further eliminate confusion, we clarified that the alternative applies only to process vessels. Storage tanks are not considered because their control requirements are determined based on the size of the tank and the HAP partial pressure, not whether the tank is used for an individual product. Transfer operations are not considered because their control requirements are determined based on the total annual quantity of coating that is loaded and its weighted average partial pressure. Equipment leaks also are not considered because the need for control is determined by the number of hours a particular component is in organic HAP service within the affected source, not the specific product being produced. Also, we did not exempt wastewater streams from process vessels smaller than 250 gal because we have no evidence that such vessels are cleaned by a different procedure than larger vessels or that the wastewater streams from such cleaning operations are kept separate.

We did not allow in the final rule a *de minimis* exemption of 0.1 or 1 weight percent HAP for trace constituents. This exemption is not relevant to the 5 weight percent HAP product alternative standard. Further, we do not feel that an additional *de minimis* or trace constituent exemption for compliance with the remaining standards is necessary.

Comment: One commenter recommended establishing applicability based on the affected source rather than the major source so that small coating manufacturing operations co-located with large surface coating sources are not subject to subpart HHHHH.

Response: We have not made the suggested change because the definition of a ''major source'' encompasses an entire plant site without being subdivided according to industrial classifications or activities. This definition is contained in section 112(a)(1) of the CAA, which includes ''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 considering controls, in the aggregate, 10 tpy or more of any HAP or 25 tpy or more of any combination of HAP.''

Comment: One commenter requested an exemption for processes with uncontrolled emissions less than 10,000 lb/yr.

Response: We have not incorporated the requested exemption because it is not supported by the available data.

Comment: One commenter requested an exemption for waterborne coatings.

Response: We have not included an explicit exemption for waterborne coatings because the HAP content of a waterborne coating could be relatively high as long as the HAP is soluble in water. However, a source can reformulate coatings to contain less than 5 percent HAP as a means of meeting the process vessel vent emission limits and work practice standards for existing sources.

Comment: One commenter requested an exemption for low vapor pressure HAP.

Response: We did not provide an exemption for low vapor pressure HAP materials because we could not justify a no emissions reduction MACT floor for these materials based on our information. We did not collect information that could be used to support the concept that process vessels containing only low vapor pressure materials would not be controlled to the same levels as those containing higher vapor pressure materials. Further, we reviewed HAP storage tank throughput at facilities that reported control of process vessels, and noted that lower vapor pressure HAP, such as glycol ethers and ethylene glycol, were also used at these facilities. However, for the final rule, we have written the standard for stationary process vessels at existing sources to require 75 percent reduction only for HAP with a vapor pressure greater than or equal to 0.6 kPa. We made this change based on a revised analysis that showed the total impacts of the regulatory alternative are unreasonable for HAP with vapor pressures less than 0.6 kPa. Thus, these HAP must be controlled to the MACT floor level of 60 percent.

Comment: Three commenters requested clarification of how to determine whether 40 CFR part 63, subpart FFFF, or 40 CFR part 63, subpart HHHHH, applies to their operations. One commenter noted that the proposed definition of ''coating manufacturing'' is expansive and would unnecessarily subject facilities to both subparts.

Response: If the product being manufactured is a coating, and the manufacturing steps involve blending, mixing, diluting, and related formulation operations, without an intended reaction, then the process is subject to subpart HHHHH. If a reaction as well as various other operations are involved, then the process typically is subject to subpart FFFF. However, if the downstream formulation operations are distinct from the preceding synthesis process(es), (perhaps because the synthesized product is isolated and some of it is sold or transferred offsite), then the formulation operations are subject to subpart HHHHH, and the synthesis operations are subject to subpart FFFF. In the event that equipment used for manufacturing products in processes that are subject to subpart FFFF is also used for coating manufacturing operations that are subject to subpart HHHHH, then the primary use of the equipment determines applicability.

B. How Did We Develop the Standards?

Comment: According to one commenter, the lack of standards for all HAP is unlawful. The commenter cited hydrogen chloride (HCl), hydrogen fluoride, chlorine, potassium compounds, and maleic and phthalic anhydrides as examples of HAP that are not regulated. Another commenter recommended listing the HAP that are subject to the final rule, or cross-referencing Table 2 in subpart F of the HON.

Response: The standards in subpart HHHHH apply to all HAP that are used in coating manufacturing. Of the six compounds cited by the first commenter, only HCl and phthalic anhydride are listed in our database. All process vessels larger than 250 gallons that emit any HAP, including the six cited by the first commenter, must be controlled. We did not list the HAP in the final rule because the rule applies to all HAP listed in the Clean Air Act.

Comment: One commenter stated that the thresholds in the proposed subpart HHHHH unlawfully exempt emission points from control. According to the commenter, all emission points must be controlled.

Response: We disagree that every emission point at a major source must be required to reduce emissions. First, section 112(a) of the CAA defines ''stationary source'' (through reference to section 111(a)) as: * * * any building, structure, facility, or installation which emits or may emit any air pollutant * * * .'' (42 U.S.C. 7412(a)(3) and 7411(a)(3)). The General Provisions for the MACT program define the term ''affected source'' as * * * the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a section 112(c) source category or subcategory for which a section 112(d) standard or other relevant standard is established pursuant to section 112 * * *.'' (40 CFR 63.2). Nothing in the definition of ''stationary source'' or in the regulatory definition of ''affected source'' states or implies that each emission point or volume of emissions must be subjected to control requirements in standards promulgated under CAA section 112.

Further, even under the commenter's interpretation of ''stationary source,'' the Agency would still have discretion in regulating individual emission sources. Section 112(d)(1) of the CAA allows the Administrator to * * * distinguish among classes, types, and sizes of sources within a category or subcategory in establishing such standards * * *.'' We interpret this provision for the miscellaneous coating manufacturing NESHAP, as we have for previous rules, as allowing emission limitations to be established for subcategories of sources based on size or volume of materials processed at the affected source. Under the discretion allowed by the CAA for the Agency to consider sizes of sources, we made the determination that certain small-capacity and low-use operations (*e.g.*, smaller storage tanks) can be analyzed separately for purposes of identifying the MACT floor and determining whether beyond-the-floor requirements are reasonable. In addition, our MACT floor determinations for certain categories (*e.g.*, stationary process vessels), which are set according to section 112(d)(3) of the CAA, reflect the performance levels of the best-performing sources for which we had information, including vapor pressure thresholds or cutoffs below which the best-performing sources do not reduce emissions.

In general, our MACT floor determinations have focused on the best-performing sources in each source category, and they consider add-on control technologies as well as other practices that reduce emissions. As part of our information collection effort, we requested information on emission reduction measures. We generally did not receive information indicating that, for the emission points covered by 40 CFR part 63, subpart HHHHH, sources are currently reducing emissions through measures other than control technologies (*e.g.*, by fuel switching or raw materials or process changes) in sufficient numbers to support a MACT floor based on such measures. Accordingly, our standards include a performance level that represents the level achieved by the best control technology, and a threshold or cutoff that represents the lowest emission potential that is controlled by the best 12 percent of sources. Because the miscellaneous coating manufacturing source category is broad in terms of the

numbers and types of processing operations that are covered, one challenge was to develop a format by which all sources could be compared to each other to establish the best-performing sources. The performance level generally is of the format that can be applied to different types of control technology and processes and is generally consistent with existing State and local rules. Thus, different types of control technology and emission levels resulting from existing rules are captured in our MACT floor analysis. The cutoff allows owners and operators that have reduced their emissions below a certain level using one or more methods, including process changes to reduce or eliminate pollution at the source, to comply without additional control. Both performance levels and cutoffs have been set to account for variations in emission stream characteristics so that the standards can be applied consistently across the source category. This approach is consistent with the language of CAA section 112(d)(3) that requires us to set the MACT floor based on the best-performing 12 percent of existing sources.

C. Standards for Process Vessels

Comment: One commenter is not convinced that the existing source MACT floor for portable vessels should be only a cover because some portable vessels have a cover plus add-on control devices, and the actual performance of a covered vessel varies depending on the type of cover and other factors such as the HAP content and vapor pressure of the material being processed. Similarly, the commenter also objected to the existing source MACT floor for stationary process vessels, claiming that it does not reflect the actual performance of the best performers, and that we have not accounted for various factors that affect the performance.

Other commenters indicated that the existing source MACT floor is too stringent, or at the very least the control level should not be increased from 60 percent to 80 percent. For example, one commenter is not convinced that 6 percent, or the average of the best performing 12 percent, are controlled because many of the controls are applied only to vessels with specific characteristics rather than facility-wide. Another commenter questioned the validity of averaging uncontrolled sources with controlled sources in developing the MACT floor, and concluded that the floor should be no control. In response to a solicitation for comment regarding the setting of the floor based on the mean or the median of controlled vessels (*i.e.*, 60 percent versus 80 percent control, respectively), the commenter stated the mean is appropriate for several reasons: (1) There are sufficient data points to use the mean, (2) 60 percent represents a real-world technology, (3) EPA claimed in MACT floor memoranda that the mean is a better measure of the central tendency of the data, (4) EPA indicated during the stakeholder process that the mean would be used as it is representative of the industry and consistent with Congress' intent under the CAA, and (5) EPA guidelines for MACT determinations under CAA section 112(j) state that the MACT floor should be based on the mean unless there is a large discrepancy between the emission reductions achieved by available control options (which the commenter indicated is not the case here because control efficiencies are uniformly distributed between 2 and 99 percent). Numerous other commenters simply stated that the MACT floor has been adequately characterized, and should not be revised

Nearly all of the commenters objected to the apparent requirement for 100 percent capture of emissions for the new and existing source MACT floors for stationary process vessels, and they stated the floor control levels should specify only the efficiency of the control device. They expressed particular concern with a statement in the preamble to the proposed rule that indicated covers must be sealed and gasketed. The commenters noted that 100 percent capture is not feasible (and, therefore, not achieved in practice except possibly if using chemical reaction type vessels and closed solids charging systems) because covers often must include an opening for an agitator shaft, and vessels must be opened periodically to take samples, add material, and perform inspections. They also noted that this requirement contradicts our position in stakeholder meetings and background memoranda, and they concluded that the information collection request (ICR) data do not support a capture component to the floor (*i.e.*, only information about the control efficiency was requested). Even if actual capture efficiencies are allowed, they noted that the proposed overall capture plus control efficiency of 95 percent for process vessels at new sources would be virtually impossible to achieve because it effectively requires nearly 100 percent capture.

Numerous commenters objected to the requirement that emissions from cleaning are subject to control, at least if the vessel does not have an automatic wash system. One commenter noted that most vessels are cleaned by hand, but even vessels that have automatic wash systems must be opened for inspections after cleaning.

Response: We did not adjust the MACT floors for portable or stationary vessels. For portable vessels, the MACT floor is to equip each vessel larger than 250 gal with a cover. Our data show that less than 6 percent of portable vessels are equipped with add-on control devices, but over 90 percent are equipped with covers. We did not receive information regarding any other emission reduction techniques besides the use of covers or add-on control devices for portable vessels in responses to our ICR request for such information. Thus, we do not have information indicating that a sufficient percentage of sources to set a floor are using any emission reduction techniques other than covers, and we cannot support a floor determination based on the use of any other techniques.

Our database includes information for 4,628 stationary process vessels larger than 250 gal. Six percent of all stationary process vessels corresponds to a total of 278 vessels. A total of 368 vessels are equipped with some type of add-on device, or about 8 percent. The average control of the best-performing 12 percent (60 percent reduction) represents a technically feasible level of control and, therefore, we disagree with the assertion that the floor should be no control. The average control efficiency was determined for 368 vessels, including 278 controlled vessels and factoring in no control for the remaining 187 top records.

The commenters also contended that reported efficiencies do not consider capture efficiency. Of the 378 vessels that are controlled, over 278 (6 percent of the stationary process vessels) reported either direct ventilation to control devices, reported closed vent systems to control devices, or reported operating essentially 100 percent capture (routing building exhausts to an incinerator a capture system) and control. Therefore, we concluded that it is appropriate to set the existing source MACT floor for stationary process vessels larger than 250 gal on an overall control efficiency based on the reported efficiencies.

The new source MACT floors for portable and stationary process vessels larger than 250 gal are based on the best-performing source. For both portable and stationary process vessels, the best-performing source covers the vessels and vents emissions through a closed-vent system to a thermal incinerator with an overall control efficiency of 95

percent. Thus, the MACT floors are based on these conditions.

We recognize that basing MACT floors for stationary and portable vessels on capture and control does not overtly consider fuel, materials, process, or similar changes that could result in lower overall mass emissions. However, based on the information we have, we cannot accurately quantify a level of mass emissions that could result from such emission reduction techniques as a MACT floor and that could be achieved by all coating manufacturers given the variability in processing operations, the scale of processing operations, and products manufactured.

We did not specifically request information for portable or stationary process vessels with capacities less than 250 gal, and we do not have any such information. We set a MACT floor of no emissions reductions because we do not have information indicating that a sufficient percentage of sources are using emission reduction techniques or add-on controls to enable us to set a MACT floor.

The MACT floor for stationary process vessels at existing sources is based on overall control. Thus, the final rule specifies that these process vessels must either be equipped with tightly-fitting vented covers and closed vent systems meeting the requirements of subpart SS of 40 CFR part 63. We have decided to exempt some emissions releases that result from safety and hygiene practices because it is unlikely that these vents would reach the 50 ppmv concentration level defined to be a process vessel vent. The exemption also will relieve owners and operators from the burden of demonstrating that they meet the concentration level. Specifically, the definition of process vessel vent excludes flexible elephant trunk systems that draw ambient air (*i.e,* systems that are not ducted, piped, or otherwise connected to the unit operations) away from operators that could be exposed to fumes when vessels are opened. As an alternative, capture efficiency must be considered in the overall control efficiency determination if vessels are not equipped with tightly-fitting vented covers and closed vent systems. Opening of covers for addition of materials, sampling, etc., is included as part of the capture efficiency demonstration. For new sources, the final rule requires the use of tightly-fitting vented covers to controls; determining capture is not an option because, as the commenters noted, achieving 95 percent overall control would require nearly 100 percent capture.

Finally, we have not required control of cleaning that is accomplished manually. However, emissions resulting from automatic wash systems are required to be considered and controlled. Similarly, control is required for emissions resulting from flushing of lines or other equipment with solvent at the end of a batch because these are closed operations.

Comment: Most of the commenters stated that the standard for stationary process vessels at existing sources should be set at the MACT floor. According to the commenters, the cost of the regulatory alternative is unreasonable because our analysis overstated the uncontrolled emissions, used unrealistic model plant and emission stream characteristics, and understated the costs.

The commenters disputed our estimate of uncontrolled emissions for a number of reasons. Their primary argument is that using the Emission Inventory Improvement Program (EIIP) equations would give a more accurate estimate of the HAP emissions than the AP–42 VOC emission factor. They noted that EPA has identified the EIIP equations as the preferred method, companies use them as the basis for title V permits, States prefer them for permitting and compliance demonstrations, and EPA specifies the use of similar equations in 40 CFR part 63, subpart GGG. Conversely, they noted that the AP–42 VOC emission factor is inappropriate because, typically, half or less of the VOC is HAP; the factor is meant to estimate emissions from the entire process, not just stationary process vessels; and the industry has shifted to less volatile solvents in recent years. One commenter provided data showing that the EIIP methodology, calibrated with stack testing, results in emissions equal to about 0.2 to 0.6 percent of HAP throughput. Another commenter also noted that our baseline emissions estimate exceeds facility-wide Toxic Release Inventory (TRI) emissions (which also include non-HAP, fugitives, emissions from portable vessels, and emissions from other processes) by factors between 3 and 36. The commenter also does not believe that 5 facilities generate half of the emissions in the source category. For example, the commenter contacted the facility in our database with the highest estimated emissions and determined that only 2 percent of the solvent throughput is attributable to the manufacture of inks and coatings; the remainder is associated with the distribution of paint thinners and paint reducers.

The commenters considered many of the model plant parameters and emission stream characteristics to be unrealistic. Related to their concerns that 100 percent capture is infeasible, they noted that local exhaust ventilation systems usually convey large volumes of air to minimize worker exposure, reduce the risk of fires, and contain dust. As a result of the high air flow rates, they noted that the HAP concentration is much lower than the 40,000 ppmv in our impacts analysis. Based on stack test data, one commenter stated that actual concentrations are less than 1,200 ppmv. Another commenter indicated the concentrations are in the hundreds of ppmv. The commenters noted that for toluene, the surrogate HAP used in our analysis, 40,000 ppmv is within the flammable range, which poses safety concerns and would necessitate the use of expensive fire/explosion prevention equipment and inerting systems. One commenter stated that xylene should be used as the surrogate HAP because it is now four times more prevalent than toluene. The commenters noted that the model included emissions only from filling, but emissions also result from other process steps such as mixing, gas sweep, heat-up, holding, emptying, and cleaning. They also disagreed with the assumption that a control device needs to be sized to handle emissions from only 5 vessels at a time. For example, one commenter indicated that many facilities have dozens of process vessels being filled simultaneously (as much as 50 to 75 percent of all vessels onsite). Another commenter noted that each vessel would have to have its own condenser because a common header poses safety and product quality risks. One commenter objected to the assumption that condensers can be used to control all process vessels because water cooled condensers will not be effective for the low concentration (and high flow) streams in the industry, and condensers are meant to operate for long periods of time under steady-state conditions, not intermittently during filling steps.

According to this commenter, our cost analysis included a number of errors and deficiencies. For example, the analysis did not include the cost to replace existing vessels with chemical reaction type tanks and raw material addition equipment, which would be needed to even approach 100 percent capture. If cleaning emissions must be controlled, the commenter indicated that a cost for automatic wash systems must be included. Fire and safety instrumentation and systems would be needed since the model operates with toluene in the flammable range.

Even if condensers are assumed to be applicable for all process vessels (which

the commenter opposed), the commenter noted the following concerns with the analysis: (1) Solvent recovery is not feasible because the condensed solvent is contaminated with condensed water vapor (and must be disposed of as hazardous waste); (2) the amount of coolant piping and valves per condenser is underestimated; (3) baghouses will be needed upstream of the condenser to remove particulate if solid materials are added to the process vessel; (4) two-stage rather than single stage condensers will be required to operate at the model operating temperature of 32°F; (5) the refrigeration unit needs to be large enough to service 75 percent of the facility's condensers; and (6) costs are needed for foundations and supports, electrical components, instrumentation, insulation, site preparation, and buildings.

The commenter also stated the analysis understates the incremental cost effectiveness relative to the floor because it used uncontrolled emissions rather than baseline emissions; the condenser count is incorrect for more than 30 facilities; the costs for covers were not included for the vessels that do not currently have them; the results reported in $/Mg are actually in $/ton; and the saturation toluene concentration is 37,370 ppmv, not 40,000 ppmv. Based on a sensitivity analysis that incorporates some of these suggested changes and looks at a range of emission stream flows, HAP concentrations, and control devices, the commenter estimated that costs are at least 5 to 20 times higher than our estimate. The commenter noted that these estimates are conservatively low because they do not include costs for chemical reaction tanks, raw material addition equipment, and fire safety equipment; they also do not consider the impact of using a less volatile surrogate HAP on emission reductions. Even without changing the elements in the analysis, the commenter stated that we should consider the average facility cost effectiveness value rather than the nationwide value because a majority of the facilities in the analysis have incremental costs above $3,500/Mg; typically, these facilities are small or produce predominately water-based coatings.

Response: We agree that the EIIP guidance is appropriate for use in estimating emissions from coating manufacturing process sources. We did not use EIIP models because we did not have the level of detail required to conduct emission estimates from the facilities in our database. We considered the 1 to 2 percent solvent throughput values contained in the Chapter 5 AP–42 documentation to be adequate in characterizing the level of emissions for nationwide impacts. And, although one commenter indicated that the EIIP methodology would result in HAP emissions between 0.2 and 0.6 percent of HAP throughput for his facilities, this commenter also calculated a loss of 1.3 percent for one facility due to more conservative assumptions associated with that facility's operations. While our 1 percent factor may be conservative, it was a reasonable value for the impacts analysis. The commenters noted that the AP–42 VOC emission factor is inappropriate because, typically, half or less than half of the VOC is HAP; however, because the factor is based on HAP throughput, only the portion of solvent that is HAP is considered, and therefore, basing the emissions on HAP throughput appropriately limits the estimates to HAP, not VOC. Regarding the comment that our baseline emissions estimate exceeds facility-wide TRI emissions, we note that one commenter indicated that baseline HAP emissions total 6.3 million pounds for all 127 facilities in the database, as compared to our estimate of 13.5 million pounds, roughly a factor of two. Because of the uncertainty associated with estimation methods, and varying operational practices from site to site, these estimates are reasonable.

Regarding assumptions made in our cost analysis of the regulatory alternative for stationary process vessels, we note that the low overall control efficiency (75 percent) enables numerous control scenarios for achieving compliance, including those scenarios where air flows are increased to enable proper capture of emissions from opening in vessels. While we did not cost out this alternative for presentation of impacts, it would likely be a scenario employed by owners and operators. As discussed previously, the two predominant types of control devices are condensers and thermal incinerators. Therefore, to further examine the cost effectiveness of the regulatory alternative, we evaluated the cost effectiveness of applying a capture and control system using thermal incineration. We started with the analyses generated by one commenter, which are based on EPA's COST–AIR control cost spreadsheets for regenerative thermal oxidizers and included the commenter's estimated installation costs for ductwork, auxiliary equipment, vapor collection systems and lids for tanks. The commenter also noted that cost calculations did not include chemical reaction type tanks to approach 100 percent capture, automatic cleaning systems, raw material addition equipment, baghouses or fire control system costs. We also excluded chemical reaction tanks and raw material feed equipment because they would not be needed when high air flow rates and a capture system are used to collect and route emissions from the existing tanks to a thermal incinerator.

The commenter apparently generated an industry-wide cost effectiveness estimate for thermal oxidizers from average flow and concentration value ranges. The commenter did not provide enough information to methodically step through the procedure to arrive at the resulting value of $16,138/Mg. In fact, it was not clear whether the commenter selected ranges of concentrations and flowrates corresponding to 36 stack test data points and then calculated cost effectiveness values from the midpoints of these ranges or whether the commenter calculated the cost effectiveness of 36 stack test data points and developed an arithmetic average. We note that the table supplied by the commenter identifying concentration and flowrate ranges indicates that flowrates and concentrations were considered to be independent of each other and produced a counterintuitive result that flowrate and concentrations would be directly proportional, as opposed to inversely proportional. For example, the low flow rate range midpoint values were listed as 300 cubic feet per minute (cfm) and 50 ppmv, while the high flowrate range midpoints were listed as 7,500 cfm and 1,750 ppmv. We would expect that as flowrates increased, concentrations would decrease, and we concluded that an analysis resulting from the use of these ranges would likely not represent the actual emission stream characteristics. Further, we estimated the cost effectiveness of incinerator controls for these 5 ranges and obtained values ranging from $290,000/Mg for the 300 cfm, 50 ppmv concentration stream to $400/Mg for the stream with 7,500 cfm and 1,750 ppmv, indicating a wide range of cost effectiveness.

We reasoned that a more representative evaluation would be based on a selected model emission stream. This model stream was based on a common value resulting from the histogram presented by the commenter; we selected as model emission stream characteristics a flowrate of 5,000 standard cubic feet per minute (scfm) waste gas and a concentration of 500 ppmv. Our analysis indicated that the cost effectiveness value for this model stream would be $2,200/Mg, assuming only 75 percent reduction of potential HAP emission was achieved. Based on

this result, we concluded that an evaluation of capture and control systems using thermal incineration would result in reasonable costs.

Our original analysis that was the basis for selecting the 75 percent regulatory alternative based on condenser control is still valid and the total impacts, considering the emission reduction achieved as well as cost, non-air quality health and environmental impacts, and energy requirements, are reasonable. Thus, we continue to base the standard for stationary process vessels at existing sources on the regulatory alternative. However, the commenter has pointed out valid concerns regarding our assumptions. Upon review, we agree that we mistakenly overestimated reductions from the regulatory alternative by approximately 15 percent from the uncontrolled levels. Therefore, our estimated total reductions for the regulatory alternative should be on the order of 4,400 Mg/yr, not 5,000 Mg/yr. The revised incremental HAP reduction achieved by the regulatory alternative is about 1,000 Mg/yr, and it reduces costs by an estimated $130/Mg of HAP controlled. The incremental electricity consumption to operate the refrigeration unit for the condensers is about 1.7 million kilowatt hours per year (kWh/yr), and the fuel energy to generate the electricity is about 16 billion Btu/yr. Total CO, NO_X, and SO_2 emissions from combustion of the additional fuel to generate the electricity is 14 Mg/yr. There would be no wastewater, solid waste, or other non-air quality health or environmental impacts.

Regarding concerns expressed by the commenter on the system design requirements, such as the required size of the refrigeration units, the amount of piping and valves per condenser, and various installation cost elements, we recognize that these costs could be higher, depending on the site specific situation. In general, the costs would increase for the MACT floor condenser system as well as the regulatory alternative condenser system. The basis for selecting the 75 percent regulatory alternative is that the incremental cost between the MACT floor of 60 percent and the regulatory alternative is reasonable when considered in light of the non-air quality health and environmental impacts and energy requirements. In our original analysis based on condensation of toluene, the difference in total annual cost of the two model systems, one rendering an exit gas temperature of 36°F and one rendering an exit gas temperature of 50°F, was about the same, $45,100 for the regulatory alternative, and $43,417 for the MACT floor alternative; our costs did not specifically assume that the condenser system rendering an outlet gas temperature of 36°F would require a precooler; however, our conservative approach to estimating condenser costs based on a minimum surface area would account for the precooler costs, since the calculated surface area of the model condenser system was lower than the minimum size for which costs are available. Given all the cost elements, we note that the significant factor in annualized cost differences between the two alternatives is the recovery credit, which for the regulatory alternative was $37,063 while the recovery credit for the MACT floor alternative was $29,650. When subtracted from the total annual cost, the annualized cost for the regulatory alternative was $8,038, while the annualized cost for the MACT floor alternative was $13,766. Because cost effectiveness is expressed as total annualized cost divided by emissions reductions, recovery credit factors in not only by lowering the total cost of the option, but increases the denominator in the cost effectiveness term. The incremental difference between the two models, and also between the nationwide impacts that were essentially extrapolated from these two models, is negative. Further, the effect of the recovery credit essentially drives this decision, and is valid for our analysis. We assumed that each vessel would be equipped with a condenser and the condensed material could be returned directly to the vessel without further refinement; we do not agree that cross contamination would be a problem under this scenario; further, moisture generated from condensation of humid air does not appear to be a concern currently as indicated by the predominance of air systems and lack of nitrogen blanketing systems on storage tanks.

The commenters suggested that our cost analysis would have yielded different conclusions had we designed the model condensation systems for xylene, rather than toluene. We agree that cost effectiveness of implementing the model condensation systems largely depends on emission potential, which in turn varies according to the volatility of the HAP materials. Therefore, we decided to expand the commenter's issue and determine the HAP materials for which incremental costs for the 75 percent regulatory alternative are reasonable. We conducted an additional analysis on a model set of emission events consisting of identical processing steps, but processing a different HAP. For the analysis we evaluated the following HAP: Toluene, xylene, cumene, phenol, and ethylene glycol. These compounds represent a range of vapor pressures for common HAP in the industry. We found that the incremental cost impacts of going above the MACT floor are unreasonable for HAP with vapor pressures less than that of cumene. Therefore, we revised the regulatory alternative and standard for stationary process vessels at existing sources to include a HAP vapor pressure threshold of 0.6 kPa at 25°C. Emissions of HAP with vapor pressures above the threshold must be controlled to the regulatory alternative level of 75 percent, whereas HAP with lower vapor pressures must be controlled to the MACT floor level of 60 percent. About 1 percent of the total HAP throughput in the industry consists of HAP with vapor pressures below the threshold; thus, we did not revise the incremental impacts for the regulatory alternative.

Note that we could not do a similar analysis for thermal incinerators because the efficiency of incinerators is generally assumed at 98 percent, and the analysis becomes dependent on assumptions made about incremental costs of capture efficiency. Instead, we assumed that the incremental analysis based on condenser control alone could also be used to justify the regulatory alternative.

We examined the feasibility of a regulatory alternative for portable process vessels with capacities greater than or equal to 250 gal at existing sources that would require the same 75 percent overall control as the regulatory alternative for stationary process vessels with capacities greater than or equal to 250 gal at existing sources. Using the same condenser cost analysis, we concluded that the total impacts of this option are unreasonable in light of the emissions reductions achieved. The incremental HAP reduction achieved by this beyond-the-floor option is approximately 400 Mg/yr, and the incremental cost was estimated to be approximately $21,000/Mg of HAP controlled. In addition, electricity consumption to operate refrigeration units would increase from zero at the MACT floor to nearly 2.0 million kwh/yr. Fuel consumption (coal) to generate the electricity would increase by more than 19.0 billion Btu/yr; collectively, CO, NO_x, and SO_2 emissions would increase by about 16.5 Mg/yr; and there would be no wastewater, solid waste, or other non-air quality health or environmental impacts.

We also evaluated a regulatory alternative for portable and stationary process vessels smaller than 250 gal at existing sources that would require the

same 75 percent overall control as the regulatory alternative for stationary process vessels larger than 250 gal at existing sources. We do not know the number of such vessels or their size distribution. Therefore, we conducted the analysis for a model 250 gal vessel with a tightly-fitting vented cover at baseline that is used in the production of a coating that is manufactured using toluene. As for the other analyses, we assumed the vessel is controlled using a condenser to meet the regulatory alternative, and the condenser can be served by the same refrigeration unit as for the stationary process vessels. We concluded that the total impacts of this alternative are unreasonable in light of the emission reduction achieved. The incremental HAP reduction achieved by this beyond-the-floor alternative is 0.07 Mg/yr, and the incremental cost is over $25,000/Mg of HAP controlled. If the vessel at baseline does not have a tightly-fitting vented cover, the baseline emissions would be greater by an unknown amount, but the total costs would still be unreasonable. We also assumed that there would be no additional electricity or energy impacts because they are based on sized refrigeration systems, and addition of one or more vessels smaller than 250 gal would not require additional refrigeration capacity. Also, there would be no wastewater, solid waste, or other non-air quality health or environmental impacts.

Comment: One commenter requested flexibility in the control requirements for process vessels. The commenter noted that the proposed standard was tailored to the use of condensers on every process vessel, but it is not suited for the use of other control technologies or varying control levels among process vessels. The commenter also urged us to provide flexible averaging provisions that would allow different levels of control on different vessels while achieving overall control equivalent to that achieved by requiring the same control efficiency for each vessel. Furthermore, the commenter stated the proposed emissions averaging provisions are not useful because most vessels are not larger than 10,000 gallons; too few emission points are allowed in the average; it is too complex and burdensome; submitting a plan in the precompliance report 18 months before the compliance date is infeasible because facilities would not have determined how to comply by that date, and the requirement to obtain approval prior to making changes is cumbersome and restricts operations; it does not account for changes in the mix of processes being run; and it should be available for use at anytime, not just when demonstrating initial compliance.

Response: The final rule includes an emissions averaging option for stationary process vessels at existing sources that may address the commenter's concerns. To demonstrate initial compliance with the emissions averaging option, an owner or operator must estimate three sets of emissions for each vessel in the averaging group. First, the owner or operator must determine the uncontrolled emissions. Procedures for estimating uncontrolled emissions are specified in § 63.1257(d)(2), except that for purging events the final subpart HHHHH specifies a procedure for estimating the specific partial pressure of each HAP rather than allowing an assumption of saturation or 25 percent of saturation. Second, the owner or operator must estimate emissions from each vessel in the averaging group as if it were controlled in accordance with the percent reduction standard (*i.e.*, 60 percent or 75 percent reductions depending on the vapor pressure of the HAP in the emission stream). Third, the owner or operator must determine the actual emissions, which may range from uncontrolled for some vessels to control levels significantly higher than those determined in the previous step. The owner or operator must include these data and calculations in the precompliance report along with rationale for why the sum of the actual emissions on a quarterly basis will be less than the sum of the emissions if 60 percent or 75 percent, as applicable, were achieved for each individual vessel. To demonstrate ongoing compliance, the owner or operator must track the number of batches produced, calculate the quarterly actual emissions and emissions under the regular percent reduction standard for each vessel, and sum the two sets of quarterly emissions. Compliance is demonstrated if the sum of the actual emissions is lower than the sum of emissions under the regular percent reduction standard.

D. Standards for Storage Tanks

Comment: One commenter stated the MACT floor for storage tanks was determined incorrectly because we did not consider the actual performance of scrubber controls. The commenter also stated that the standard must be revised because tank capacity and HAP partial pressure cutoffs are illegal.

Response: None of the storage tanks containing organic HAP at the surveyed facilities was controlled with a scrubber. Therefore, the MACT floors for both existing and new sources are based on the actual reported performance of sources' controls and our consideration of whether sources are reducing emissions by other means besides controls.

Regarding tank capacity cutoffs, we considered two subcategories of storage tanks in our floor analysis: tanks with capacities less than 10,000 gal and storage tanks with capacities greater than or equal to 10,000 gal. We did not specifically request information for storage tanks with capacities less than 10,000 gal, and we did not receive any information about such smaller tanks. However, since the costs relative to the amount of control achieved tend to increase as the size of the storage tank decreases, we consider it highly unlikely that the industry is reducing emissions from tanks with capacities smaller than 10,000 gal when they are not reducing emissions from tanks with larger capacities. Thus, we concluded that the existing source and new source MACT floors for storage tanks with capacities less than 10,000 are no emissions reduction. We did not set beyond-the-floor standards for these smaller tanks because the total impacts to reduce emissions from storage tanks smaller than 20,000 gal were found to be unreasonable, and impacts for smaller tanks would be even less favorable.

With respect to storage tanks with capacities greater than or equal to 10,000 gal, fewer than 6 percent of the storage tanks in our database use controls or reduce emissions by any other means. Thus, we concluded that the existing source MACT floor for all storage tanks with capacities greater than or equal to 10,000 gal is no emissions reduction.

In setting the MACT floor for existing sources, we considered whether some facilities may implement emission reduction measures to reduce emissions from storage tanks, instead of using control technologies. Internal and external floating roofs are used to minimize emissions in many other industries, and vapor balancing when filling the tank is another common technique in other industries. However, we did not obtain any information in the responses to the ICR or from other resources that such measures are being used in the miscellaneous coating manufacturing industry. Another factor that can affect the emissions level is the color of the tank, but we have no information to suggest that any facilities are not already using the most favorable color scheme. Also, we have no information that any other measures are being used to reduce emissions. Therefore, because we lack information indicating that a sufficient number of storage tanks employ measures other

than control technologies to reduce HAP emissions to set a floor, we were unable to set a MACT floor based on emission reduction measures.

We examined two regulatory alternatives for storage tanks with capacities greater than or equal to 10,000 gal at existing sources, both of which would require the use of either a floating roof or venting to a control device that reduces emissions by 90 percent. The first alternative would apply to storage tanks with capacities greater than or equal to 20,000 gal that store material with a HAP partial pressure greater than or equal to 1.9 psia. The second alternative uses a size cutoff of 10,000 gal with the same HAP partial pressure cutoff. We set the standard at the level of the first regulatory alternative because, considering the level of emission reduction achieved, the total impacts of that alternative were determined to be reasonable, whereas the total impacts of the second alternative were determined to be unreasonable. Specifically, the first regulatory alternative reduces HAP emissions by 2.5 Mg/yr at an incremental cost of $2,700 to $4,900 per Mg of HAP controlled, depending on the characteristics of the tank. In addition, because this option can be achieved by using floating roofs, there are no non-air quality health or environmental impacts, including wastewater impacts and solid waste impacts, and no energy impacts. The second alternative reduces emissions by 7.5 Mg/yr at an incremental cost of at least $17,000 per Mg of HAP controlled, depending on the characteristics of the tank. The second regulatory alternative also has no non-air quality health or environmental impacts, including wastewater impacts and solid waste impacts, and no energy impacts for tanks that can be controlled with floating roofs. However, horizontal tanks (all of which in our database are smaller than 20,000 gal) must be controlled with an add-on control device such as a condenser. The incremental electricity consumption to run the condensers and fuel energy consumption to generate electricity would be 31,000 kwh/yr and 300 million Btu/yr, respectively. Total CO, NO_X, and SO_2 emissions from combustion of additional fuel to generate the electricity would be about 0.26 Mg/yr. There would be no wastewater, solid waste, or other non-air quality health and environmental impacts.

The new source MACT floor for storage tanks is based on the control achieved by the best-performing source. The proposed floor consisted of 90 percent control of emissions from storage tanks with capacities greater than or equal to 20,000 gal that store material with a HAP partial pressure greater than or equal to 1.5 psia and 90 percent control of emissions from storage tanks with capacities greater than or equal to 25,000 gal that store material with a HAP partial pressure greater than or equal to 0.1 psia. However, another facility reduces emissions by 80 percent from storage tanks with capacities of 10,000 gal that store material with a HAP vapor pressure of 0.02 psia. Upon further consideration since proposal, we determined that we cannot exclude these tanks from the floor analysis simply because the HAP vapor pressure is extremely low. Thus, the revised new source MACT floor for storage tanks consists of venting through a closed-vent system to a control device that reduces HAP emissions by at least 80 percent for storage tanks with a capacity greater than or equal to 10,000 gal that store material with a HAP partial pressure greater than or equal to 0.02 psia; the new source floor also consists of venting emissions through a closed-vent system to a control device that reduces HAP emissions by at least 90 percent for storage tanks with either capacities greater than or equal to 20,000 gal that store material with a HAP partial pressure greater than or equal to 0.1 psia or capacities greater than or equal to 25,000 gal that store material with a HAP partial pressure greater than or equal to 1.5 psia. Each of these new source standards reflects, or is equivalent to, the performance of the best-controlled source because the control levels for existing tanks increase with both increasing tank capacity and increasing HAP partial pressure.

The revised emission limits for storage tanks at new sources are based on the MACT floor because the MACT floor is more stringent than the second regulatory alternative for existing sources, which we determined to have unreasonable impacts.

E. Standards for Wastewater

Comment: Four commenters disagreed with our determination that the MACT floor for wastewater is HON-equivalent management and treatment procedures for wastewater that contains more than 4,000 ppmw of HAP listed in Table 9 to 40 CFR part 63, subpart G. One commenter stated that the floor should be recalculated to be based on the actual performance of the best sources, not simply set at the median concentration of controlled streams. According to one commenter, the floor should be no control because no add-on control is used by more than 6 percent of all wastewater streams. One commenter indicated that we have obtained accurate information on 30 wastewater streams, and all of the data must be used in setting the floor, including data for streams that contain less than 1,000 ppmw of HAP and streams that contain only inorganic HAP. Further, the commenter stated that flow is needed as well as concentration to determine the best performers. Flow is needed to convert concentrations to mass loadings, and it, or total volume, has been used to determine applicability in past rules and is the determining factor in disposal costs. According to the commenter, our assumptions that coating manufacturing facilities are only small quantity generators, and only the concentration drives the cost of disposal, are incorrect. The commenter noted that our database includes wastewater streams that have higher flows than the five top-performing streams that we used to set the MACT floor, but these streams are not sent offsite for treatment because the cost to do so would be prohibitive. In addition, if our assumption that concentration drives the cost of disposal were true, the commenter stated that other streams in the database with concentrations similar to those of the top 5 streams would also be treated offsite, but they are actually treated onsite, sent to a publicly-owned treatment works (POTW), or sent offsite for solidification. Taking all of these factors into account, the commenter concluded the floor should be no control.

The commenter also provided additional comments in the event that we maintain that a floor exists and develop a standard, despite their objections noted above. First, the commenter stated that applicability thresholds must be based on the mean rather than the median because our hierarchy is to use the mean first when it results in a standard that matches real world technology. Second, if the standard still requires management and treatment procedures like those in the HON, the commenter requested an exemption from the steam stripping requirement for streams containing soluble HAP because steam stripping is inefficient and expensive for such streams; the commenter also stated that enclosed sewers are unnecessary for such streams. Third, two commenters requested that offsite RCRA waste treatment facilities not be required to certify that they will meet the requirements for wastewater in the final rule because such facilities are already stringently controlled. One commenter was concerned that RCRA facilities may

decline to accept wastewater if they are unnecessarily burdened with compliance requirements under the final rule. The commenter noted that a similar change was made recently to the NESHAP for Publicly Owned Treatment Works (POTW) in response to litigation.

Response: The miscellaneous coating manufacturing database contains ten streams from nine facilities. The 30 streams cited by one commenter was a preliminary draft value that was subsequently changed because it was incorrect.

After consideration of the comments, we decided to make two changes to the MACT floor analysis. First, to simplify the analysis, we have focused on only the actual management and treatment techniques used for the top performing five streams rather than calling them HON-equivalent. All five of these streams are collected and shipped offsite for destruction by combustion at a RCRA hazardous waste treatment facility. Second, we have decided that specifying only a concentration cutoff for determining which streams are subject to control is insufficient. Specifying only the concentration means even very small streams would be subject to control as long as the concentration of HAP listed on Table 9 of the HON (*i.e.*, partially soluble and soluble HAP in the final rule) is greater than or equal to 4,000 ppmw, but this is inconsistent with the statutory requirement to base the floor on the average of the top five streams. We considered specifying either load or flow rate in addition to the concentration, and we decided that load is the best choice. For the top five streams, the load tracks better with the concentration (*i.e.,* ranking the controlled streams by increasing load is the same as ranking by increasing concentration).

Of the top five streams, the median stream has a HAP concentration of 4,000 ppmw and a HAP load of 750 lb/yr. We continue to use the median rather than the mean because the median better represents the central tendency of the data. The top five streams (as well as the other five streams in the database) are skewed towards low concentrations; three of the five have relatively similar low concentrations, but the other two streams have concentrations ten or more times higher. A mean would be closer to the midpoint of the range, but it would not represent the bulk of the data. Therefore, the revised existing source MACT floor for wastewater consists of treatment as a hazardous waste for all streams with partially soluble and soluble HAP at a concentration greater than or equal to 4,000 ppmw and a load greater than or equal to 750 lb/yr. We estimate that a standard based on the MACT floor will reduce HAP emissions by 12.9 Mg/yr (14.2 tpy) at a cost of $306,000 per year.

The revised new source MACT floor is based on the requirements for the best performing stream, which is a stream that contains 1,600 ppmw and 12 lb/yr of partially soluble and soluble HAP. Since this load is negligible, the new source MACT floor consists of treatment as a hazardous waste for wastewater streams that contain partially soluble and soluble HAP at a concentration greater than or equal to 1,600 ppmw at any load.

In setting the MACT floor, we considered whether some facilities may implement emission reduction measures other than control technologies to reduce HAP emissions from wastewater. We requested information on emission reduction measures in our CAA section 114 information collection request. Several facilities reported that they have implemented changes in the type or quantity of cleaning solution used, or in the method of cleaning. However, we do not know how effective these changes were in reducing HAP emissions, and we have no information to conclude that similar measures could be implemented by the facilities that reported HAP in their wastewater. Further, some HAP in the wastewater is HAP that is used in coatings products, and this HAP cannot be reduced without impacting the coating products produced. Therefore, we were unable to set a MACT floor based on emission reduction measures other than treatment.

We examined one regulatory alternative beyond the floor for existing sources that would require treatment as a hazardous waste for wastewater containing partially soluble and soluble HAP at a concentration greater than or equal to 1,000 ppmw and a load greater than or equal to 100 lb/yr. We concluded that the total impacts of this alternative are unreasonable because the incremental cost would be about $280,000/Mg; it would increase electricity consumption by 640 kwh/yr; increase fuel consumption by 182 million Btu/yr; and increase CO, NO_X, and SO_2 emissions by 0.02 Mg/yr. There would be no wastewater or solid waste impacts. Therefore, the standard for wastewater in the final rule is based on the revised MACT floor.

In addition, analyses for the HON and other projects concluded that enhanced biotreatment for soluble HAP compounds could achieve reductions as high as 99 percent. Because wastewater containing soluble HAP is generated at miscellaneous coating manufacturing facilities, the final rule also allows onsite or offsite treatment in an enhanced biological treatment unit as an effectively equivalent alternative for soluble HAP. This alternative also may prove to be less costly than treatment as a hazardous waste for high-volume wastewater streams. Finally, we agree with the comment that Resource Conservation and Recovery Act (RCRA) facilities do not need to certify that they are meeting the requirements of subpart HHHHH; therefore, the final rule requires affected sources that ship their wastewater to an offsite facility for treatment as a hazardous waste to note this fact along with the name of the facility to which the wastewater is shipped in their notification of compliance status report.

F. Standards for Equipment Leaks

Comment: One commenter objected to our determination that the MACT floor is a LDAR program. According to the commenter, the actual performance of the best sources was not determined, and the selected program was simply borrowed from another rulemaking. If we make a determination of the floor based on the actual performance of relevant sources, the commenter noted that we must provide the public an opportunity to comment on it, or the rule would be unlawful, and arbitrary and capricious.

Response: The proposed floor was based on actual performance, but this concept takes a different form for equipment leak controls than for controls on other types of emission points because equipment leaks are essentially malfunctions, which are not predictable. However, a program of inspections and repair will ensure that any leaks that do occur are identified and fixed. We rate the performance of different LDAR programs based on the type of leak detection method, leak definition, and leak frequency. Specifically, performance is higher for instrument-based programs (*i.e.*, using portable organic vapor analyzers and EPA Method 21 of Appendix A to 40 CFR part 60) than sensory programs, lower leak definitions, and increased inspection frequency.

Based on the ICR responses from coating manufacturers, more than 12 percent of the facilities are implementing some type of LDAR program. One facility reported using an organic vapor analyzer (OVA), a 10,000 ppmv leak definition, and various monitoring frequencies for the different types of components; this program appears to be similar to the requirements of 40 CFR part 63, subpart TT (National Emission Standards for

Equipment Leaks—Control Level 1) and 40 CFR part 60, subpart VV (Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry). The others reported using a sensory-program, with most of them conducting inspections monthly. No facilities are capturing all of their equipment leak emissions and venting them through a closed-vent system to a control device. Thus, the MACT floor for existing sources was determined to be a sensory-based LDAR program with monthly inspections of all components. The new source MACT floor was determined to be an LDAR program based on 40 CFR part 63, subpart TT, consistent with the program implemented by the best-performing source.

Comment: One commenter objected to the standard being based on an LDAR program because it is a work practice standard rather than an emission limit. According to the commenter, the CAA requires us to set an emission limit rather than a work practice standard unless it is not feasible to prescribe or enforce an emission limit, and the commenter found no evidence or analysis in the record suggesting that it infeasible to do so.

Response: We determined that an LDAR program is the most reasonable option for control of leaking components. Unlike other emission sources, leaking components are not deliberate emission sources but rather result from mechanical limitations associated with process piping and machinery. A well-managed facility follows a preventive maintenance program to minimize leaks but in all practicality cannot guarantee that no leaks will occur. Therefore, an emission standard for equipment leaks would be difficult to enforce or prescribe. In order to develop such an option, all processes and equipment containing process piping that could potentially leak would require complete capture and control. While the practice of enclosing components and venting to control is allowed as an alternative to LDAR, it is not practiced except in limited cases.

Comment: Many commenters stated the standard should be based on the MACT floor (*i.e.*, a sensory-based LDAR program). According to the commenters, we assumed leak frequencies and leak rates that are too high and costs that are too low; changing these assumptions will show the regulatory alternative (*i.e.*, an LDAR program requiring monitoring using Method 21) is not cost effective. According to the commenters, the SOCMI average factors are not representative of the coatings manufacturing industry because coatings processes generally use less volatile HAP, operate at lower temperatures and pressures, and all operation is in the liquid phase. The commenters considered coatings process conditions to be similar to those for gasoline distribution facilities, which they noted are required to comply with a sensory-based LDAR program. To support their position that leak frequencies and emission rates for coatings manufacturing processes are low, one commenter provided monitoring data for 13 facilities in the industry, including bagging sample data for a few of the pumps, valves, and connectors at one facility.

Response: We reviewed the leak data submitted by the commenter for 13 facilities, including three facilities from which data was recently collected by a fugitive emissions contractor. The three-facility study was well documented and conducted by the same contractor and using the same monitoring instrument that was calibrated on methane. Data from the remaining ten facilities was not as well documented and in some cases, the monitoring data appear to have been based on various instruments and that were calibrated on compounds other than methane. While these data may have been adequate for the individual facility purposes, we did not consider them in our analysis because we felt these data were not consistently obtained. The commenter also conducted a bagging study at one of the three plants for which screening data was collected. Using the results of the bagging study, the commenter calculated emission factors that are 0.00054 kilograms per hour (kg/hr)-source for valves, 0.0025 kg/hr-source for pumps, and 0.0000422 kg/hr-source for connectors. In developing the emission factors, the commenter essentially took an arithmetic average of the VOC emission rates for all components in the bagging study.

After reviewing the information, we decided to recalculate the emission factors according to the method documented in both American Petroleum Institute (API) and EPA publications (''Development of Fugitive Emission Factors for Petroleum Marketing Terminals,'' Publication Number 4588, March 1993, Prepared by Radian Corporation for API; and ''Protocol for Equipment Leak Emission Estimates,'' EPA Publication EPA–453/R–95–017, November 1995). Using the bagging study and the corresponding screening data, we developed emission rate equations for pumps, valves, and connectors that relate the VOC emission rate (in kg/hr) to the average screening value (in ppmv) for each component. As a second step, we used the data from the three-facility screening study to calculate average emission factors. Our analysis resulted in average emission factors of 0.000412 kg/hr-source for valves, 0.0042 kg/hr-source for pumps, and 0.000015 kg/hr-source for connectors. When we applied these emission factors to our model plant that was the basis for the cost analysis, we found that the uncontrolled HAP emissions are 0.70 tpy, versus the 4.03 tpy that was used in the original analysis. For comparison, if we had used the commenter's calculated emission factors, we would have estimated 0.66 tpy HAP, a slightly lower value but well within the same order of magnitude as the factor we developed. In either case, we note that the revised estimate is only about 20 percent of the previous uncontrolled estimate.

We revised our impacts calculation by conservatively assuming that the relative reductions achieved by the MACT floor sensory LDAR program and the regulatory alternative (40 CFR part 63, subpart UU program) would be the same as assumed in prior analyses. For the model facilities, our previous analysis assumed a 29 percent reduction from uncontrolled baseline for the MACT floor and a 62 percent reduction for the subpart UU regulatory alternative. We multiplied the previously estimated nationwide reductions of implementing the MACT floor and the regulatory alternative by the ratio of model facility revised uncontrolled emission over the earlier estimate of uncontrolled emissions, or 0.7/4.03, to obtain revised emissions reductions. We assumed that the capital and total annual cost estimates would be unchanged from the previous analysis. The incremental cost effectiveness of going beyond the floor using this analysis was estimated to be $15,800, and there are essentially no energy impacts or non-air quality health and environmental impacts associated with the regulatory alternative. Therefore, we cannot justify going beyond the floor in the final rule.

G. Standards for Transfer Operations

Comment: One commenter stated we must set a MACT floor for transfer operations at existing sources. According to the commenter, not setting a MACT floor because no State regulations apply to transfer operations is unlawful.

Response: In setting the MACT floor for existing sources, we considered the available information. We did not specifically request information for transfer operations in our CAA section 114 information request. Based on

follow-up conversations with representatives from five facilities with high solvent throughput rates that potentially are the most likely to control emissions from transfer operations, we determined that these facilities are not controlling their emissions from transfer operations. We also examined State regulations and determined that they apply only to throughput rates above those at coating manufacturing facilities, and they apply only to loading of tank trucks and railcars, which is less common than filling of smaller containers at coating manufacturing facilities. There are no other known means by which sources may be reducing emissions from transfer operations. Therefore, we concluded that the MACT floor for transfer operations at existing sources is no emissions reductions. Because we lack information indicating that any source is implementing or required to implement any measures to reduce HAP emissions from transfer operations, we concluded that the new source MACT floor also is no emissions reductions.

Comment: One commenter opposed the beyond-the-floor standard for existing and new sources. This commenter also claimed that we have not demonstrated that emissions from transfer operations warrant regulation because the facility on which impacts were estimated is not representative of the industry. The commenter contacted that facility and learned they primarily repackage and distribute paint stripper, thinners, and spray gun cleaning solvent. According to the commenter, we generally overestimated emissions from transfer operations because we assumed that the industry transfers pure solvents or mixtures with high vapor pressures when in fact the industry transfers primarily materials with low vapor pressures, including waterborne products. Furthermore, the commenter stated that the regulatory alternative cannot be justified based on cost because the impacts are based on incorrect assumptions. For example, the commenter suggested the following changes: (1) Use the AP–42 saturation factor of 0.6 for submerged loading in dedicated vapor balance service instead of the assumption that displaced vapors are saturated; (2) use a tank truck filling rate of 25 gal/min instead of 150 gallons per minute (gal/min); (3) use characteristics of toluene (or better yet, xylene) instead of an arbitrary HAP with a molecular weight of 80 and a vapor pressure of 3.93 psia; (4) use a gas flow rate of 100 scfm instead of less than 4 scfm; (5) include capital costs for a refrigeration unit and auxiliary equipment such as a precooler, ductwork, a fan, and pump for collected solvent; and (6) conduct the analysis over a range of coating throughput rates to bracket the actual operations in the industry. Taking these changes into account, the commenter estimated a cost of more than $30,000/Mg for bulk loading tank trucks at rates between 1.8 million gal/yr and 7.3 million gal/yr. Another commenter stated that the standard should be no control.

Response: It appears that the first commenter thinks we used the results of the impacts analysis for one facility as the basis for our decision to set the existing and new source standards at a level beyond the floor. This is not correct. We actually conducted two analyses. The first was a sensitivity analysis, comparable to that suggested by the commenter, to determine the characteristics of emission streams for which the total impacts associated with a regulatory alternative that reduces emissions by 75 percent (the same level as the standard for stationary process vessels at existing sources) was reasonable. The second analysis involved estimating the impacts for existing facilities that met the characteristics from the first analysis.

Based on the results of our sensitivity analysis, we concluded that the total impacts are reasonable in light of the emissions reductions achieved if the coating products that are bulk loaded contain at least 3.0 million gal/yr of HAP with a partial pressure of at least 1.5 psia. The incremental HAP reduction achieved to meet the regulatory alternative for a model facility with these characteristics was estimated to be 10.8 Mg/yr, and the incremental cost was estimated to be $3,200/Mg of HAP removed. These estimates assume the emissions are controlled using a condenser, and that the refrigeration unit used in the process vessels analysis can be replaced by one with a slightly larger capacity to accommodate all of the condensers. The incremental electricity consumption to operate the enlarged refrigeration unit is 3,200 kwh/yr, and the incremental fuel energy consumption to generate the electricity is 31 million Btu per year. Total CO, NO_x, and SO_2 emissions from combustion of the additional fuel is 0.03 Mg/yr. The condensed HAP would be a hazardous waste. There would be no wastewater or other non-air quality health or environmental impacts.

At the maximum product loading volume cited by the commenter, we estimate the HAP or solvent throughput would be about 2.0 million gal/yr (*i.e.*, based on an average 1.75 lb HAP/gal coating); thus, none of the bulk loading scenarios evaluated by the commenter would be subject to control under the standard. However, we provide the following discussion of the analysis in the event that a facility may expand production beyond the rates used in the commenter's analysis, or the quantity of HAP in their product is higher than the average value that we used.

In our analysis, we assumed the emission stream is saturated because emissions occur only as a result of vapor displacement, and the vent from the tank truck or rail car can be hard-piped to a control device. Because our analysis assumes that the control is a condenser with coolant supplied from the same refrigeration unit that we assumed would be used with condensers for process vessel emissions, we did not include the cost of a separate refrigeration unit in this analysis. We also included a smaller maintenance labor factor than would be used for a separate refrigerated condenser system. These assumptions mean the costs for overhead, taxes, and capital recovery are lower in our analysis than the commenter's.

Although we agree that adding costs for a precooler, ductwork, and a pump would be reasonable, we note that the overall cost of the auxiliary equipment in our analysis equals more than 50 percent of the cost for all auxiliary equipment in the commenter's analysis, even though we have a much smaller condenser. Furthermore, based on the commenter's data, it appears that we overestimated the cost of the condenser and waste solvent storage tank, which offsets our lack of costs for other auxiliary equipment.

We assumed a fill rate of 30 gal/min, which we consider to be consistent with the commenter's suggested rate of 25 gal/min. This rate also defines the gas flow into the condenser in our analysis because the system can be hard-piped, and there is no need to include supplemental dilution air at a rate 25 times the flow of the displaced volume. As the commenter noted, we assumed the coating product consists only of HAP solvent and solids. This was done to simplify the analysis. Also, products that contain little HAP or less volatile HAP are not likely to meet the thresholds that we set. Finally, we note that our analysis likely overestimates the actual costs because we assumed a waste disposal unit cost four times higher than the cost the commenter considers to be realistic. Therefore, we maintain that for transfer operations meeting the specified flow rate and partial pressure levels in the regulatory alternative, the incremental cost to

control emissions (relative to the floor of no emissions reduction) is reasonable.

In our second analysis, we searched the database for any facilities with HAP throughput and partial pressure that meet the cutoffs established for the regulatory alternative. We identified only one facility that potentially met the criteria. The estimated impacts for this facility are comparable to those for the model facility. Assuming the commenter is correct that most of the reported throughput at this facility is not associated with coating manufacturing, then the impacts of the standard may be lower than we estimated.

H. Pollution Prevention

Comment: One commenter stated that the exemption for equipment that contain less than 5 percent HAP is not a viable pollution prevention alternative. Several commenters consider the lack of a viable pollution prevention alternative to be a serious shortcoming in the rule as proposed, and they suggested several options for consideration. First, numerous commenters favored an option that allows manufacturers to take credit for reductions achieved by voluntarily choosing to manufacture lower HAP coatings or making other changes in production technology. Second, two commenters suggested exempting any compliance coating manufacturing from subpart HHHHH if the facility certifies that the coatings are manufactured to meet the surface coating rules. Third, one commenter suggested that we consider allowing delayed implementation of subpart HHHHH or provide an opt-out provision for facilities whose emissions drop below major source thresholds; this would minimize the impact of the ''once-in, always-in'' policy. Fourth, if none of the preceding options is acceptable, one commenter requested that the stringency of the standards be reduced because the industry has already achieved reductions as great as or greater than those expected by the proposed standards. Many commenters cited numerous changes in the industry over the past few years that have reduced emissions from coating manufacturing and have not been accounted for in setting the standards. For example, the shift in production to waterborne, UV cure, and high solids coatings, some of which has been driven by other regulatory requirements, contribute to reducing emissions from coating manufacturing as well as from coating application. One commenter estimated that the shift to manufacturing compliant coatings to meet the surface coating MACT will reduce HAP content of coatings by 265,000 tpy, which also translates into the same reduction in HAP throughput for the manufacturing processes. Assuming 0.5 to 1.0 percent of the throughput is emitted during manufacturing means this reduction in throughput has already achieved a significant fraction of the expected reductions under subpart HHHHH. Other changes that have reduced emissions include the shift to using low vapor pressure solvents, making coatings exclusively in one vessel, and the production of smaller batch sizes with shorter lead times. Finally, the commenters noted that the industry has undertaken various voluntary efforts to reduce emissions including the paint industry's Coatings Care program, ACC's Responsible Care program, EPA's National Environmental Track program, and various State and local programs.

Response: We do not agree that facilities can demonstrate that any of the suggested alternatives are comparable to the specified emission standards. A percent reduction in the HAP content of products may not necessarily yield an equivalent percent reduction in emissions. A format such as a demonstration in reduction of HAP content at coatings manufacturers is not easily linked to overall HAP usage upon application.

I. Initial Compliance

Comment: One commenter has encountered difficulty in applying existing EPA stack sampling methods to determine condenser inlet concentrations of VOC and HAP for use in demonstrating the control efficiency of the condenser. The commenter manufactures adhesives and sealants in closed vessels to which solvent is introduced through closed piping systems, and solids are introduced via closed screw conveyors. Nitrogen is used to purge the conveyors and vessels, and the exhaust gas is vented to a chilled water condenser. The commenter noted that the vapor space in the process vessels is typically saturated with solvent vapor, which quickly overwhelms the sampling equipment. The commenter noted that the sampling equipment also artificially increases the emissions by drawing off vapor from the precondenser headspace that would not otherwise represent emissions. Furthermore, the commenter stated that the method and volume of nitrogen inerting dramatically affects the sampling effectiveness without actually altering total emissions. Therefore, the commenter supported the proposed option that would allow compliance to be demonstrated by documenting operation at a suitable outlet temperature, but the commenter recommended modifying the option to consider the combined effect of covers and other vessel sealing devices as well as the efficiency of the condenser.

Response: Without additional details regarding operation of the equipment, characteristics of the gas stream(s), and modifications to the testing protocol that have already been attempted, we cannot provide constructive suggestions for modifying the sampling methods. However, we note that performance testing is only one of three options for demonstrating initial compliance for condensers. As the commenter indicated, a second option is to demonstrate that the condenser operates below a specified temperature, where the required level is based on the HAP partial pressure of the gas stream entering the condenser. The third option is to determine the percent reduction based on calculations of the uncontrolled and controlled emissions using the equations specified in § 63.1257(d).

J. Ongoing Compliance

Comment: According to one commenter, the monitoring provisions are arbitrary and capricious because they exempt sources with the greatest emissions (*i.e.*, those that fall outside of the MACT floor due to size have the loosest monitoring).

Response: We disagree with the commenter's assertions. The final rule, like the proposed rule, requires monitoring of all control devices. In some cases, to minimize the burden on small operations (*e.g.*, small control devices controlling process vessel vents), the final rule has different monitoring requirements for lower-emitting sources; however, these sources are not sources with the greatest HAP emissions as asserted by the commenter.

Comment: One commenter considered the proposed quality assurance/quality control (QA/QC) requirements for continuous parameter monitors to be unduly burdensome and stated that they contravene existing EPA standards and test methods. The commenter recommended that sources be required to develop preventive maintenance programs that are based on manufacturer's recommendations and actual operating/maintenance history of the instruments. Another commenter recommended adding a provision that allows sources to request approval, using the precompliance report, of alternatives to the QA/QC procedures

specified in § 63.8035 of the proposed rule.

Response: The final rule references the QA/QC requirements for continuous parameter monitoring systems (CPMS) in 40 CFR part 63, subpart SS. We deleted the proposed requirements for the same reasons we decided not to implement similar proposed QA/QC requirements in subpart SS (67 FR 46260, July 12, 2002). Specifically, we are currently developing performance specifications for CPMS to be followed by owners and operators of all sources subject to standards under 40 CFR part 63, which includes subpart HHHHH. Also, subpart SS currently specifies requirements for CPMS, and the requirements of subpart SS are referenced by the final rule. Even though they may not be as specific as those proposed, we decided it would be premature to promulgate performance specifications for subpart HHHHH when the performance specifications that would ultimately be promulgated for all 40 CFR part 63 may be significantly different. Until those performance specifications are ready, we consider the requirements in subpart SS to be the best choice because they are consistent with other rules applied to source categories containing similar control and monitoring equipment as in this source category. Further, references to these standard standards streamline compliance requirements for facilities with operations in numerous source categories. The procedures in subpart SS require monitoring equipment to be installed, calibrated, maintained, and operated according to manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately. These provisions are consistent with the commenters' suggestions.

K. Recordkeeping and Reporting

Comment: According to one commenter, the initial notification requirements are unnecessary because facilities in the miscellaneous coating source category have already submitted an initial notification under CAA section 112(j). Another commenter considers the notification to be unnecessary because it is already required under title V.

Response: The requirement to submit an initial notification is part of the General Provisions, which apply to all NESHAP. If the required information is already in the sources' title V permit applications, the requirement for sources to copy this information into their one-time initial notifications should not be unduly burdensome. Having this information will help the regulatory authorities and the public better understand what is being regulated, especially since a source's initial notification may be submitted before its title V permit is issued or renewed.

Comment: Three commenters requested that the notification of compliance status report be due no earlier than 150 days or 180 days after the compliance date, as in other rules and the General Provisions. According to the commenters, facilities will need the full 3 years (if not longer) after the promulgation date to respond to actions taken by their customers and to evaluate their own compliance options, particularly to determine whether they can make changes such that they are no longer major sources.

Response: We accept the argument that some facilities may need the full 3 years after the effective date to bring controls online or to make product formulation changes to meet new customer requirements in response to the surface coating MACT rules. Therefore, we have decided to change the due date for the notification of compliance status report. In the final rule, the report is due no later than 150 days after the compliance date, as in many other rules.

L. Startup, Shutdown and Malfunction

Comment: According to one commenter, the startup, shutdown, and malfunction (SSM) provisions are unlawful because they allow sources to avoid enforcement actions merely by complying with their startup, shutdown, and malfunction plan (SSMP), but the CAA requires compliance continuously except for unavoidable deviations during SSM.

Response: We recently adopted final amendments to the General Provisions which address the concerns raised by the commenter (68 FR 32586, May 30, 2003). The final amendments clarify that § 63.6(e)(1)(i) establishes a general duty to minimize emissions. During a period of SSM, that general duty requires an owner or operator to reduce emissions to the greatest extent consistent with safety and good air pollution control practices. However, ''during an SSM event, the general duty to minimize emissions does not require an owner or operator to achieve the levels required by the applicable MACT standard at other times, or to make further efforts to reduce emissions if such levels have been successfully achieved.'' As discussed in the preamble to the final amendments, we disagree with the commenter's legal position that sources' compliance with SSMP requirements in lieu of applicable emission standards is permissible only where violations of emission limitations are unavoidable. As stated in the preamble to the final amendments to the General Provisions, ''we believe that we have discretion to make reasonable distinctions concerning those particular activities to which the emission limitations in a MACT standard apply * * *. However, we note that the general duty to minimize emissions is intended to be a legally enforceable duty which applies when the emission limitations in a MACT standard do not apply, thereby limiting exceedances of generally applicable emission limitations to those instances where they cannot be reasonably avoided.'' We further explained that the general duty to minimize emissions requires that owners or operators review their SSMP on an ongoing basis and make appropriate improvements to ensure that excess emissions are avoided.

Comment: Two commenters recommended that ''startup'' be defined as in the Amino and Phenolic Resins NESHAP (40 CFR part 63, subpart OOO). According to the commenters, the proposed definition more accurately defines a ''new process.''

Response: We clarified the definition of ''startup'' for the final rule. However, we did not use the definition from the Amino and Phenolic Resins final rule because we do not consider the language regarding flexible operation units and continuous processes to be appropriate for the miscellaneous coatings manufacturing source category. For the final rule, we removed the term ''family of coatings,'' and we removed the list of actions that are not startup so that the definition focuses only on items that are startup. In addition, since it is possible that actions taken to bring equipment back online after it has been configured and used to produce a different product, we also decided to specify that the first time equipment is put into operation at the start of a campaign, even if the same product has been produced in the past, is startup if the actions taken differ from routine operation.

Comment: One commenter recommended that we clearly apply the SSMP to the emission control equipment rather than to individual process vessels on a batch to batch basis. According to the commenter, tracking the startup and shutdown of individual process vessels would require thousands of records, it would be nearly impossible to insure that all information is collected properly, and

the tracking adds no environmental value.

Response: Startup and shutdown do apply to control equipment because the definitions specify that they apply to ''equipment required or used to comply with this subpart.'' Similarly, the definition of ''malfunction'' in § 63.2 specifies that it applies to control equipment. However, startup, shutdown, and malfunction also apply to the processing equipment. We disagree with the commenter's characterization that applying startup, shutdown, and malfunction to process vessels will result in the need to generate thousands of records because startup only applies to new sources, new equipment, and possibly the start of campaigns; and malfunctions, by definition, are infrequent failures of equipment. In addition, the definition of shutdown has been changed to specify that shutdown applies to the cessation of operation of process vessels only if the steps taken to cease operation differ from routine procedures for removing the vessel or equipment from service. This change also makes the definition of shutdown consistent with the revised definition of startup.

Comment: Several commenters recommended excluding periods of SSM from the definition of ''deviation'' and reporting deviations separately from reporting of SSM events. One commenter noted that periods of SSM are exempt from compliance under the rule as proposed and concluded that the proposed requirements are redundant and provide no useful information regarding compliance. Another commenter also noted that requirements in previous rules and the General Provisions differentiate between SSM events and deviations (or exceedances and excursions, in the terminology of previous rules). According to the commenter, changing the terminology and requirements for the final rule will at a minimum be confusing for facilities that also must comply with previous rules.

Response: We disagree with the commenter's contention that the proposed requirements are redundant. Section 63.6(e) of the General Provisions requires operation at all times (including during periods of SSM) in a manner consistent with safety and good air pollution control practices for minimizing emissions to the levels required by the relevant standards (*i.e.*, meet the standards or comply with the SSMP). Nothing in the General Provisions says the standards do not apply during periods of SSM, but compliance with the SSMP is allowed in the event the standard cannot otherwise be met. Furthermore, although a deviation may occur for a day during which an SSM event also occurs, the recordkeeping and reporting requirements associated with the deviation differ from the recordkeeping and reporting requirements for the SSM event; thus, there is no redundancy. Information about all periods during which an emission limit, operating limit, or work practice standard is not met and the reasons for noncompliance is important. Thus, we have not changed the intent of the requirements for the final rule.

Comment: One commenter considers the proposed requirement for immediate reporting of actions taken that are inconsistent with the SSMP to be overly burdensome. According to the commenter, reporting these events with other SSM events on a semi-annual basis in the compliance report is sufficient, and the commenter noted that this approach has been used in 40 CFR part 63, subpart JJJ (Polymers and Resins) and subpart PPP (Polyether Polyols).

Response: We agree that immediate notifications are not necessary. The industries covered by this source category generally have extensive upset/SSM reporting requirements under the Comprehensive Environmental Response, Compensation, and Liability Act and state reporting requirements that should be adequate in supplying timely notification of events. Further, the final rule requires information regarding actions inconsistent with the SSMP to be submitted in semiannual compliance reports. For these reasons, and to maintain consistency with the HON and the Consolidated Air Rule (CAR), we have overridden the immediate SSM reporting required by §§ 63.6(e)(3)(iv) and 63.10(d)(5)(ii) of the General Provisions.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

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 requirements are not enforceable until OMB approves them. The ICR number is 2115.01.

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 owners or operators subject to NESHAP. These recordkeeping and reporting requirements are specifically authorized by section 112 of the CAA (42 U.S.C. 7412). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B.

The final NESHAP require maintenance inspections of the control devices but do not require any notifications or reports beyond those required by the NESHAP General Provisions (40 CFR part 63, subpart A). The recordkeeping requirements collect only the specific information needed to determine compliance.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the final rule) is estimated to average 79 labor hours per year at an annual cost of $3,500 for 129 respondents. These estimates include one-time submissions of notifications and precompliance reports, preparation of an SSMP with

semiannual reports for any event when the procedures in the plan were not followed, preparation of semiannual compliance reports, and recordkeeping. Total annualized capital/startup costs associated with the monitoring requirements for the 3-year period of the ICR are estimated at $10,000/yr. Average operation and maintenance costs associated with the monitoring requirements for the 3-year period are estimated at $34,000/yr.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations in 40 CFR are in 40 CFR part 9. When the ICR is approved by OMB, the Agency 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 purposes of assessing the impact of today's rule on small entities, small entity is defined as: (1) A small business having up to 500 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 impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities.

Our economic analysis identified as small businesses 32 of the 58 companies owning affected coating manufacturing facilities. This constitutes 55 percent of the affected businesses. Although small businesses represent 55 percent of the companies withing the source category, they are expected to incur 24 percent of the total industry compliance costs of $16 million. According to EPA's economic assessment, there are two small firms with compliance costs equal to or greater than 3 percent of their sales. In addition, there are five small firms with cost-to-sales ratios between 1 and 3 percent.

An economic impact analysis was performed to estimate the changes in product price and production quantities for the firms affected by subpart HHHHH. The analysis shows that of the 70 facilities owned by affected small firms, one is expected to shut down after implementation of the NESHAP.

The baseline economic condition of the facility predicted to close affects the closure estimate provided by the economic model. Facilities that are already experiencing adverse economic conditions will be more severely impacted than those that are not, and the facility predicted to close currently has low profitability levels.

Although the NESHAP will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to limit the impact of the final rule on small entities. We have worked closely with the National Paint and Coatings Association, the National Association of Printing Ink Manufacturers, and the Adhesives and Sealants Council. These trade organizations, which represent the majority of facilities covered by subpart HHHHH, have represented their members at stakeholder meetings throughout the standards development process. We worked with the coating manufacturers to minimize the overlap of MACT standards and provide several alternative ways to comply with the standards to allow as much flexibility as possible. The multi-process vessel alternative emission limit and the pollution prevention option help those small entities that have been proactive in reducing their HAP emissions and usage, respectively.

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 by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires 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 one year. The maximum total annual costs of the final rule for any year is estimated to be less than $16 million. Thus, the final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

In addition, the NESHAP contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the final rule is not subject to the requirements of section 203 of the 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 regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the sources are owned or operated by State or local governments. Thus, Executive Order 13132 does not apply to the final rule.

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. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. No tribal governments own or operate miscellaneous coating operations. Thus, Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 1985, 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 the Executive Order because it is based on technology performance and not health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

The final rule is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Approximately 3.0 million kwh/yr of electricity will be needed to operate fans and pumps for control systems. Generating this amount of electricity will consume about 1,000 tpy of coal. If owners and operators elect to use combustion-based control devices, a small amount of natural gas will also be used.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rule involves technical standards. The final rule uses EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2G, 2F, 3, 3A, 3B, 4, 18, 25, 25A, 26, 26A, 305, 320, 624, 625, 1624, 1625, 1666, 1671, 8260, and 8270. Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. The search and review results have been documented and placed in the docket for the NESHAP (Docket ID No. OAR–03–0178). The search for emissions monitoring procedures for measuring emissions of the HAP or surrogates subject to emission limitations in these NESHAP identified 19 voluntary consensus standards that appeared to have possible use in lieu of EPA standard reference methods. However, after reviewing the available standards, EPA determined that 13 of the candidate consensus standards would not be practical due to lack of equivalency, documentation, and validation data. The 13 standards are: ASME C00031 or Performance Test Code 19–10–1981, ASTM D3154–91 (1995), ASTM D3464–96, ASTM D3796–90 (1998), ASTM D5835–95, ASTM D6060–96, ASTM E337–84 (Reapproved 1996), CAN/CSA Z2232.2–M–86, European Norm (EN) 12619 (1999), EN 1911–1,2,3 (1998), ISO 9096:1992, ISO 10396:1993, and ISO 10780:1994. Of the six remaining candidate consensus standards, the following five are under development or under EPA review: ASME/BSR MFC 12M, ASME/BSR MFC 13m, ASTM D5790–95 (1995), ISO/DIS 12039, and ISO/FDIS 14965. The EPA plans to follow, review, and consider adopting these candidate consensus standards after their development and further review by EPA is completed.

One consensus standard, ASTM D6420–99, Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (GC/MS), is appropriate in the cases described below for inclusion in these NESHAP in addition to the currently available EPA Method 18 codified at 40 CFR part 60, appendix A for measurement of organic compounds. Therefore, the standard ASTM D6420–99 is cited in the final rule.

Similar to EPA's performance based Method 18, ASTM D6420–99 is also a performance based method for measurement of gaseous organic compounds. However, ASTM D6420–99 was written to support the specific use of highly portable and automated GC/MS. While offering advantages over the traditional Method 18, the ASTM method does allow some less stringent criteria for accepting GC/MS results than required by Method 18. Therefore, ASTM D6420–99 (Docket ID No. OAR–2003–0178) is a suitable alternative to Method 18 only where the target compound(s) are those listed in section 1.1 of ASTM D6420–99; and the target concentration is between 150 ppb(v) and 100 ppm(v).

For target compound(s) not listed in Table 1.1 of ASTM D6420–99, but potentially detected by mass spectrometry, the regulation specifies that the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble. For target

compound(s) not listed in Section 1.1 of ASTM D6420–99, and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply.

As a result, EPA cites ASTM D6420–99 in subpart HHHHH of part 63. The EPA also cites Method 18 as a gas chromatography (GC) option in addition to ASTM D6420–99. This will allow the continued use of GC configurations other than GC/MS.

Some EPA testing methods and performance standards are specified in § 63.8000(d)(1) of subpart HHHHH. Most of the standards have been used by States and industry for more than 10 years. Nevertheless, under § 63.7(f), the final rule also allows any State or source to apply to EPA for permission to use an alternative method in place of any of the EPA testing methods or performance standards listed in the NESHAP.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement 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 rule in the **Federal Register**. The final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

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

Dated: August 29, 2003.

Marianne Lamont Horinko,

Acting Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

■ 2. Part 63 is amended by adding a new subpart HHHHH to read as follows:

Subpart HHHHH—National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing

Sec.

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Subpart HHHHH—National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing

What This Subpart Covers

§ 63.7980 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for miscellaneous coating manufacturing. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limits, operating limits, and work practice standards.

§ 63.7985 Am I subject to the requirements in this subpart?

(a) You are subject to the requirements in this subpart if you own or operate miscellaneous coating manufacturing operations, as defined in paragraph (b) of this section, that meet the conditions specified in paragraphs (a)(1) through (4) of this section.

(1) Are located at or are part of a major source of hazardous air pollutants (HAP) emissions, as defined in section 112(a) of the Clean Air Act (CAA).

(2) Manufacture coatings as defined in § 63.8105.

(3) Process, use, or produce HAP.

(4) Are not part of an affected source under another subpart of this part 63.

(b) Miscellaneous coating manufacturing operations include the facilitywide collection of equipment described in paragraphs (b)(1) through (4) of this section that is used to manufacture coatings as defined in § 63.8105. Miscellaneous coating manufacturing operations also include cleaning operations.

(1) Process vessels.

(2) Storage tanks for feedstocks and products.

(3) Components such as pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems.

(4) Wastewater tanks and transfer racks.

(c) If the predominant use of a transfer rack loading arm or storage tank

(including storage tanks in series) is associated with miscellaneous coating manufacturing, and the loading arm or storage tank is not part of an affected source under a subpart of this part 63, then you must assign the loading arm or storage tank to the miscellaneous coating manufacturing operations. If the predominant use cannot be determined, and the loading arm or storage tank is not part of an affected source under a subpart of this part 63, then you must assign the loading arm or storage tank to the miscellaneous coating manufacturing operations. If the use varies from year to year, then you must base the determination on the utilization that occurred during the year preceding December 11, 2003 or, if the loading arm or storage tank was not in operation during that year, you must base the use on the expected use for the first 5-year period after startup. You must include the determination in the notification of compliance status report specified in § 63.8075(d). You must redetermine the predominant use at least once every 5 years after the compliance date.

(d) The requirements for miscellaneous coatings manufacturing sources in this subpart do not apply to operations described in paragraphs (d)(1) through (4) of this section.

(1) Research and development facilities, as defined in section 112(c)(7) of the CAA.

(2) The affiliated operations located at an affected source under subparts GG (National Emission Standards for Aerospace Manufacturing and Rework Facilities), KK (National Emission Standards for the Printing and Publishing Industry), JJJJ (NESHAP: Paper and Other Web Coating), future MMMM (National Emission Standards for Miscellaneous Metal Parts and Products Surface Coating Operations) and SSSS (NESHAP: Surface Coating of Metal Coil) of 40 CFR part 63. Affiliated operations include, but are not limited to, mixing or dissolving of coating ingredients; coating mixing for viscosity adjustment, color tint or additive blending, or pH adjustment; cleaning of coating lines and coating line parts; handling and storage of coatings and solvent; and conveyance and treatment of wastewater.

(3) Ancillary equipment such as boilers and incinerators (only those not used to comply with the emission limits in Tables 1 through 5 to this subpart), chillers and refrigeration systems, and other equipment that is not directly involved in the manufacturing of a coating (*i.e.*, it operates as a closed system, and materials are not combined with materials used to manufacture the coating).

(4) Quality assurance/quality control laboratories.

§ 63.7990 What parts of my plant does this subpart cover?

(a) This subpart applies to each miscellaneous coating manufacturing affected source as defined in § 63.7985(a).

(b) The miscellaneous coating manufacturing affected source is the miscellaneous coating manufacturing operations as defined in § 63.7985(b).

(c) An affected source is a new affected source if you commenced construction or reconstruction after April 4, 2002, and you met the applicability criteria at the time you commenced construction or reconstruction.

Compliance Dates

§ 63.7995 When do I have to comply with this subpart?

(a) If you have a new affected source, you must comply with this subpart according to the requirements in paragraphs (a)(1) and (2) of this section.

(1) If you start up your new affected source before December 11, 2003, then you must comply with the requirements for new sources in this subpart no later than December 11, 2003.

(2) If you start up your new affected source after December 11, 2003, then you must comply with the requirements for new sources in this subpart upon startup of your affected source.

(b) If you have an existing affected source on December 11, 2003, then you must comply with the requirements for existing sources in this subpart no later than December 11, 2005.

(c) If you add equipment to your existing affected source after December 11, 2003 you must comply with the requirements for existing sources in this subpart upon startup of the added equipment.

(d) You must meet the notification requirements in § 63.8070 according to the schedule in § 63.8070 and in 40 CFR part 63, subpart A. Some of the notifications must be submitted before you are required to comply with the emission limits, operating limits, and work practice standards in this subpart.

Emission Limits, Work Practice Standards, and Compliance Requirements

§ 63.8000 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limits and work practice standards in Tables 1 through 5 to this subpart at all times, except during periods of startup, shutdown, and malfunction. You must meet the requirements specified in paragraphs (b) and (c) of this section. You must meet the requirements specified in §§ 63.8005 through 63.8025 (or the alternative means of compliance in § 63.8050), except as specified in paragraph (d) of this section. You must meet the notification, reporting, and recordkeeping requirements specified in §§ 63.8070, 63.8075, and 63.8080.

(b) *General requirements.* (1) If an emission stream contains halogen atoms, you must determine whether it meets the definition of a halogenated stream by calculating the concentration of each organic compound that contains halogen atoms using the procedures specified in § 63.115(d)(2)(v), multiplying each concentration by the number of halogen atoms in the organic compound, and summing the resulting halogen atom concentrations for all of the organic compounds in the emission stream. Alternatively, you may elect to designate the emission stream as halogenated.

(2) Opening of a safety device, as defined in § 63.8105, is allowed at any time conditions require it to avoid unsafe conditions.

(c) Compliance requirements for closed vent systems and control devices. If you use a control device to comply with an emission limit in Table 1, 2, or 5 to this subpart, you must comply with the requirements in subpart SS of 40 CFR part 63 as specified in paragraphs (c)(1) through (3) of this section, except as specified in paragraph (d) of this section.

(1) If you reduce organic HAP emissions by venting emissions through a closed-vent system to any combination of control devices (except a flare), you must meet the requirements of § 63.982(c) and the requirements referenced therein.

(2) If you reduce organic HAP emissions by venting emissions through a closed-vent system to a flare, you must meet the requirements of § 63.982(b) and the requirements referenced therein. You may not use a flare to control halogenated vent streams or hydrogen halide and halogen HAP emissions.

(3) If you use a halogen reduction device to reduce hydrogen halide and halogen HAP emissions that are generated by combusting halogenated vent streams, you must meet the requirements of § 63.994 and the requirements referenced therein. If you use a halogen reduction device before a combustion device, you must determine the halogen atom emission rate prior to

the combustion device according to the procedures in § 63.115(d)(2)(v).

(d) *Exceptions to the requirements specified in other subparts of this part 63.* (1) *Requirements for performance tests.* The requirements specified in paragraphs (d)(1)(i) through (v) of this section apply instead of or in addition to the requirements for performance testing of control devices as specified in subpart SS of 40 CFR part 63.

(i) Conduct gas molecular weight analysis using Method 3, 3A, or 3B in appendix A to 40 CFR part 60.

(ii) Measure moisture content of the stack gas using Method 4 in appendix A to 40 CFR part 60.

(iii) As an alternative to using Method 18, Method 25/25A, or Method 26/26A of 40 CFR part 60, appendix A to comply with any of the emission limits specified in Tables 1 through 7 to this subpart, you may use Method 320 of 40 CFR part 60, appendix A. When using Method 320, you must follow the analyte spiking procedures of section 13 of Method 320, unless you demonstrate that the complete spiking procedure has been conducted at a similar source.

(iv) Section 63.997(c)(1) does not apply. For the purposes of this subpart, results of all initial compliance demonstrations must be included in the notification of compliance status report, which is due 150 days after the compliance date, as specified in § 63.8075(d)(1).

(v) The option in § 63.997(e)(2)(iv)(C) to demonstrate compliance with a percent reduction emission limit by measuring total organic carbon (TOC) is not allowed.

(vi) If you do not have a closed-vent system as defined in § 63.981, you must determine capture efficiency using Method 204 of appendix M to 40 CFR part 51 for all stationary process vessels subject to requirements of Table 1 to this subpart.

(2) *Design evaluation.* To determine the percent reduction of a small control device, you may elect to conduct a design evaluation as specified in § 63.1257(a)(1) instead of a performance test as specified in subpart SS of 40 CFR part 63. You must establish the value(s) and basis for the operating limits as part of the design evaluation.

(3) *Periodic verification.* For a control device with total inlet HAP emissions less than 1 ton per year (tpy), you must establish an operating limit(s) for a parameter(s) that you will measure and record at least once per averaging period (*i.e.*, daily or block) to verify that the control device is operating properly. You may elect to measure the same parameter(s) that is required for control devices that control inlet HAP emissions equal to or greater than 1 tpy. If the parameter will not be measured continuously, you must request approval of your proposed procedure in the precompliance report. You must identify the operating limit(s) and the measurement frequency, and you must provide rationale to support how these measurements demonstrate the control device is operating properly.

(4) *Continuous emissions monitoring systems.* Each continuous emissions monitoring system (CEMS) must be installed, operated, and maintained according to the requirements in § 63.8 and paragraphs (d)(4)(i) through (iv) of this section.

(i) Each CEMS must be installed, operated, and maintained according to the applicable Performance Specification of 40 CFR part 60, appendix B, and according to paragraph (d)(4)(ii) of this section, except as specified in paragraph (d)(4)(i)(A) of this section. For any CEMS meeting Performance Specification 8, you must also comply with appendix F, procedure 1 of 40 CFR part 60.

(A) If you wish to use a CEMS other than a Fourier Transform Infrared Spectroscopy (FTIR) meeting the requirements of Performance Specification 15 to measure hydrogen halide and halogen HAP before we promulgate a Performance Specification for such CEMS, you must prepare a monitoring plan and submit it for approval in accordance with the procedures specified in § 63.8.

(B) [Reserved]

(ii) You must determine the calibration gases and reporting units for TOC CEMS in accordance with paragraph (d)(4)(ii)(A), (B), or (C) of this section.

(A) For CEMS meeting Performance Specification 9 or 15 requirements, determine the target analyte(s) for calibration using either process knowledge of the control device inlet stream or the screening procedures of Method 18 on the control device inlet stream.

(B) For CEMS meeting Performance Specification 8 used to monitor performance of a combustion device, calibrate the instrument on the predominant organic HAP and report the results as carbon (C_1), and use Method 25A or any approved alternative as the reference method for the relative accuracy tests.

(C) For CEMS meeting Performance Specification 8 used to monitor performance of a noncombustion device, determine the predominant organic HAP using either process knowledge or the screening procedures of Method 18 on the control device inlet stream, calibrate the monitor on the predominant organic HAP, and report the results as C_1. Use Method 18, ASTM D6420–99, or any approved alternative as the reference method for the relative accuracy tests, and report the results as C_1.

(iii) You must conduct a performance evaluation of each CEMS according to the requirements in 40 CFR 63.8 and according to the applicable Performance Specification of 40 CFR part 60, appendix B, except that the schedule in § 63.8(e)(4) does not apply, and the results of the performance evaluation must be included in the notification of compliance status report.

(iv) The CEMS data must be reduced to operating day or operating block averages computed using valid data consistent with the data availability requirements specified in § 63.999(c)(6)(i)(B) through (D), except monitoring data also are sufficient to constitute a valid hour of data if measured values are available for at least two of the 15-minute periods during an hour when calibration, quality assurance, or maintenance activities are being performed. An operating block is a period of time from the beginning to end of batch operations in the manufacturing of a coating. Operating block averages may be used only for process vessel data.

(5) *Continuous parameter monitoring.* The provisions in paragraphs (d)(5)(i) through (iii) of this section apply in addition to the requirements for continuous parameter monitoring system (CPMS) in subpart SS of 40 CFR part 63.

(i) You must record the results of each calibration check and all maintenance performed on the CPMS as specified in § 63.998(c)(1)(ii)(A).

(ii) When subpart SS of 40 CFR part 63 uses the term a range or operating range of a monitored parameter, it means an operating limit for a monitored parameter for the purposes of this subpart.

(iii) As an alternative to measuring pH as specified in § 63.994(c)(1)(i), you may elect to continuously monitor the caustic strength of the scrubber effluent.

(6) *Startup, shutdown, and malfunction.* Sections 63.998(b)(2)(iii) and (b)(6)(i)(A), which apply to the exclusion of monitoring data collected during periods of startup, shutdown, and malfunction (SSM) from daily averages, do not apply for the purposes of this subpart.

(7) *Reporting.* (i) When §§ 63.8005 through 63.8025 reference other subparts in this part 63 that use the term periodic report, it means compliance report for the purposes of this subpart.

(ii) When there are conflicts between this subpart and referenced subparts for the due dates of reports required by this subpart, reports must be submitted according to the due dates presented in this subpart.

(iii) Excused excursions, as defined in subpart SS of 40 CFR part 63, are not allowed.

§ 63.8005 What requirements apply to my process vessels?

(a) You must meet each emission limit and work practice standard in Table 1 to this subpart that applies to you, except as specified in §§ 63.8050 and 63.8055, and you must meet each applicable requirement specified in § 63.8000(b). For each control device used to comply with Table 1 to this subpart, you must comply with subpart SS of this part 63 as specified in § 63.8000(c), except as specified in § 63.8000(d) and paragraphs (b) through (g) of this section.

(b) When subpart SS of this part 63 refers to process vents, it means process vessel vents for the purposes of this section.

(c) Process condensers, as defined in § 63.1251, are not considered to be control devices for process vessels.

(d) *Initial compliance.* (1) To demonstrate initial compliance with a percent reduction emission limit in Table 1 to this subpart, you must conduct the performance test or design evaluation under conditions as specified in § 63.7(e)(1), except that the performance test or design evaluation must be conducted under worst-case conditions. Also, the performance test for a control device used to control emissions from process vessels must be conducted according to § 63.1257(b)(8), including the submittal of a site-specific test plan for approval prior to testing. The requirements in § 63.997(e)(1)(i) and (iii) also do not apply for performance tests conducted to determine compliance with the emission limits for process vessels.

(2) For the initial compliance demonstration for condensers, you must determine uncontrolled emissions using the procedures specified in § 63.1257(d)(2), and you must determine controlled emissions using the procedures specified in § 63.1257(d)(3)(i)(B) and (iii).

(3) You must demonstrate that each process condenser is properly operated according to the procedures specified in § 63.1257(d)(2)(i)(C)(*4*)(*ii*) and (d)(3)(iii)(B). The reference in § 63.1257(d)(3)(iii)(B) to the alternative standard in § 63.1254(c) does not apply for the purposes of this subpart. As an alternative to measuring the exhaust gas temperature, as required by § 63.1257(d)(3)(iii)(B), you may elect to measure the liquid temperature in the receiver.

(4) You must conduct a performance test or compliance demonstration equivalent to an initial compliance demonstration within 360 hours of a change in operating conditions that are not considered to be within the previously established worst-case conditions.

(e) *Establishing operating limits.* You must establish operating limits under the conditions required for your initial compliance demonstration, except you may elect to establish operating limit(s) for conditions other than those under which a performance test was conducted as specified in paragraph (e)(1) of this section and, if applicable, paragraph (e)(2) of this section.

(1) The operating limits may be based on the results of the performance test and supplementary information such as engineering assessments and manufacturer's recommendations. These limits may be established for conditions as unique as individual emission episodes. You must provide rationale in the precompliance report for the specific level for each operating limit, including any data and calculations used to develop the limit and a description of why the limit indicates proper operation of the control device. The procedures provided in this paragraph (e)(1) have not been approved by the Administrator and determination of the operating limit using these procedures is subject to review and approval by the Administrator.

(2) If you elect to establish separate operating limits for different emission episodes, you must maintain records as specified in § 63.8085(g) of each point at which you change from one operating limit to another, even if the duration of the monitoring for an operating limit is less than 15 minutes.

(f) *Averaging periods.* If you elect to establish separate operating limits for different emission episodes, you may elect to determine operating block averages instead of the daily averages specified in § 63.998(b)(3). An operating block is a period of time that is equal to the time from the beginning to end of an emission episode or sequence of emission episodes.

(g) *Flow indicators.* If flow to a control device could be intermittent, you must install, calibrate, and operate a flow indicator at the inlet or outlet of the control device to identify periods of no flow. Periods of no flow may not be used in daily or block averages, and it may not be used in fulfilling a minimum data availability requirement.

§ 63.8010 What requirements apply to my storage tanks?

(a) You must meet each emission limit in Table 2 to this subpart that applies to your storage tanks, and you must meet each applicable requirement specified in § 63.8000(b). For each control device used to comply with Table 2 to this subpart, you must comply with subpart SS of this part 63 as specified in § 63.8000(c), except as specified in § 63.8000(d) and paragraphs (b) through (d) of this section.

(b) *Exceptions to subparts SS and WW of this part 63.* (1) If you conduct a performance test or design evaluation for a control device used to control emissions only from storage tanks, you must establish operating limits, conduct monitoring, and keep records using the same procedures as required in subpart SS of this part 63 for control devices used to reduce emissions from process vents instead of the procedures specified in §§ 63.985(c), 63.998(d)(2)(i), and 63.999(b)(2).

(2) When the term storage vessel is used in subparts SS and WW of this part 63, the term storage tank, as defined in § 63.8105 applies for the purposes of this subpart.

(c) *Planned routine maintenance.* The emission limits in Table 2 to this subpart for control devices used to control emissions from storage tanks do not apply during periods of planned routine maintenance. Periods of planned routine maintenance of each control device, during which the control device does not meet the emission limit specified in Table 2 to this subpart, must not exceed 240 hours per year (hr/yr). You may submit an application to the Administrator requesting an extension of this time limit to a total of 360 hr/yr. The application must explain why the extension is needed, it must indicate that no material will be added to the storage tank between the time the 240 hr/yr limit is exceeded and the control device is again operational, and it must be submitted at least 60 days before the 240 hr/yr limit will be exceeded.

(d) *Vapor balancing alternative.* As an alternative to the emission limits specified in Table 2 to this subpart, you may elect to implement vapor balancing in accordance with § 63.1253(f), except as specified in paragraphs (d)(1) and (2) of this section.

(1) To comply with § 63.1253(f)(6)(i), the owner or operator of an offsite cleaning and reloading facility must comply with §§ 63.7995 through 63.8105 instead of complying with § 63.1253(f)(7)(ii).

(2) You may elect to set a pressure relief device to a value less than the 2.5

psig required in § 63.1253(f)(5) if you provide rationale in your notification of compliance status report explaining why the alternative value is sufficient to prevent breathing losses at all times.

§ 63.8015 What requirements apply to my equipment leaks?

(a) You must meet each requirement in Table 3 to this subpart that applies to your equipment leaks, except as specified in paragraphs (b) through (d) of this section.

(b) The requirement in § 63.424(a) to inspect each piece of equipment during the loading of a gasoline cargo tank means when the equipment is operating in organic HAP service for the purposes of this subpart.

(c) When § 63.1036 refers to batch processes, any part of the miscellaneous coating manufacturing operations applies for the purposes of this subpart.

(d) For the purposes of this subpart, pressure testing for leaks in accordance with § 63.1036(b) is not required after reconfiguration of an equipment train if flexible hose connections are the only disturbed equipment.

§ 63.8020 What requirements apply to my wastewater streams?

(a) You must meet each requirement in Table 4 to this subpart that applies to your wastewater streams, and you must meet each applicable requirement specified in § 63.8000 and paragraphs (b) through (d) of this section.

(b) For each wastewater stream that you generate, you must either designate the wastewater stream as a Group 1 wastewater stream according to the procedures in paragraph (b)(1) of this section, or you must determine whether the wastewater stream is a Group 1 wastewater stream according to the procedures in paragraph (b)(2) of this section.

(1) You may designate any wastewater stream as a Group 1 wastewater stream. You do not have to determine the concentration for any designated Group 1 wastewater stream.

(2) For wastewater streams that you do not designate as Group 1 wastewater streams, you must use the procedures specified in § 63.144(b) to establish the concentrations, except as specified in paragraphs (b)(2)(i) and (ii) of this section.

(i) References to Table 8 compounds in § 63.144 do not apply for the purposes of this subpart.

(ii) *Alternative test methods.* (A) As an alternative to the test methods specified in § 63.144(b)(5)(i), you may use Method 8260 or 8270 as specified in § 63.1257(b)(10)(iii).

(B) As an alternative to using the methods specified in § 63.144(b)(5)(i), you may conduct wastewater analyses using Method 1666 or 1671 of 40 CFR part 136, appendix A, and comply with the sampling protocol requirements specified in § 63.144(b)(5)(ii). The validation requirements specified in § 63.144(b)(5)(iii) do not apply if you use Method 1666 or 1671 of 40 CFR part 136, appendix A.

(c) For each enhanced biological treatment unit used to comply with the requirements in Table 4 to this subpart, you must monitor total suspended solids (TSS), biological oxygen demand (BOD), and the biomass concentration. In the precompliance report you must identify and provide rationale for proposed operating limits for these parameters, methods for monitoring, the frequency of monitoring, and recordkeeping and reporting procedures that will demonstrate proper operation of the enhanced biological treatment unit. Alternatively, you may use the precompliance report to request to monitor other parameters, and you must include a description of planned reporting and recordkeeping procedures and the basis for the selected monitoring frequencies and the methods that will be used.

(d) If you transfer the wastewater offsite for enhanced biological treatment, you must obtain written certification from the offsite facility stating that the offsite facility will comply with the requirements of this subpart. The certifying entity may revoke the certification by providing 90 days notice. Upon expiration of the notice period, you may not transfer wastewater to that treatment facility.

§ 63.8025 What requirements apply to my transfer operations?

(a) You must comply with each emission limit and work practice standard in Table 5 to this subpart that applies to your transfer operations, and you must meet all applicable requirements specified in § 63.8000(b). For each control device used to comply with Table 5 to this subpart, you must comply with subpart SS of this part 63 as specified in § 63.8000(c), except as specified in § 63.8000(d) and paragraph (b) of this section.

(b) If you have Group 1 transfer operations, as defined in § 63.8105, then all transfer racks used for bulk loading coatings must meet the requirements for high throughput transfer racks in subpart SS of this part.

§ 63.8030 What requirements apply to my heat exchange systems?

(a) You must comply with the requirements specified in Table 6 to this subpart that apply to your heat exchange systems, except as specified in paragraphs (b) through (e) of this section.

(b) The phrase a chemical manufacturing process unit meeting the conditions of § 63.100(b)(1) through (b)(3) of this section in § 63.104(a) means the miscellaneous coating manufacturing operations defined in § 63.7985(b) for the purposes of this subpart.

(c) The reference to § 63.100(c) in § 63.104(a) does not apply for the purposes of this subpart.

(d) The reference to § 63.103(c)(1) in § 63.104(f)(1) does not apply. For the purposes of this subpart, records must be retained as specified in § 63.10(b)(1).

(e) The reference to the periodic report required by § 63.152(c) of subpart G of this part means the compliance report required by § 63.8075(e) for the purposes of this subpart.

Alternative Means of Compliance

§ 63.8050 How do I comply with emissions averaging for stationary process vessels at existing sources?

(a) As an alternative to complying with the requirements in Table 1 to this subpart for each individual stationary process vessel, you may elect to comply with emissions averaging for stationary process vessels greater than or equal to 250 gallons (gal) at your existing affected source as specified in paragraphs (b) through (e) of this section.

(b) *General requirements.* (1) A State may prohibit averaging of HAP emissions and require the owner or operator of an existing affected source to comply with the emission limits and work practice standards in Table 1 to this subpart.

(2) All stationary process vessels in an emissions averaging group must be equipped with a tightly-fitting vented cover.

(c) *Initial compliance.* To demonstrate initial compliance with the emissions averaging alternative, you must comply with the provisions in paragraphs (c)(1) through (4) of this section.

(1) Estimate uncontrolled emissions from each affected stationary process vessel in pounds per batch using the procedures specified in § 63.1257(d)(2), except as specified in paragraphs (c)(1)(i) and (ii) of this section. For the purposes of this section, uncontrolled emissions means the emissions from the vessel if it were equipped only with a tightly-fitting vented cover. You must identify the range of typical operating parameters and perform the calculation using the values that result in the highest emissions, and you must document the operating parameters and

resulting emissions calculations in the precompliance report.

(i) When you are required to calculate uncontrolled emissions from heating, you may not calculate emissions using Equation 13 of subpart GGG of this part 63.

(ii) The statement in § 63.1257(d)(2)(i)(B) that ''the partial pressure of HAP shall be assumed to be 25 percent of the saturated value if the purge flow rate is greater than 100 scfm'' does not apply. For the purposes of this subpart, multiply the HAP partial pressure in Equation 12 of 40 CFR part 63, subpart GGG by a HAP-specific saturation factor determined in accordance with Equations 1 through 3 of this section. Solve equation 1 of this section iteratively beginning with saturation factors (in the right-hand side of the equation) of 1.0 for each condensable compound. Stop iterating when the calculated saturation factors for all compounds are the same to two significant figures for subsequent iterations. Note that for multi-component emission streams, saturation factors must be calculated for all noncondensables in the emission stream.

$$S_i = \frac{K_i A}{K_i A + V + \sum_{i=1}^{n} S_i V_i^{sat}} \qquad \text{Eq. 1}$$

$$V_i^{sat} = \frac{V P_i}{\left(P_T - \sum_{i=1}^{n} P_i\right)} \qquad \text{Eq. 2}$$

$$K_i = K_o \left(\frac{M_o}{M_i}\right)^{1/3} \qquad \text{Eq. 3}$$

where:

S_1=saturation factor for individual condensable compounds in the emission stream

P_i=partial pressure of individual condensable compounds in the emission stream calculated using Raoult's Law or other appropriate methods

P_T=pressure of the vessel vapor space

A=surface area of liquid

V=purge flow rate as used in Equation 12 of 40 CFR part 63, subpart GGG

V_i^{sat}=volumetric flowrate of condensable compounds in the emission stream

K_i=mass transfer coefficient of individual condensable compounds in the emission stream

K_o=mass transfer coefficient of a reference compound (*e.g.*, 0.83 cm/s for water)

M_o=molecular weight of reference compound (*e.g.*, 18.02 for water)

M_i=molecular weight of individual condensable compounds in the emission stream

n=number of condensable compounds in the emission stream

(2) Estimate controlled emissions in pounds per batch for each vessel as specified in paragraphs (c)(2)(i) through (iii) of this section.

(i) Except as specified in paragraphs (c)(2)(ii) and (iii) of this section, estimate controlled emissions as if the vessel were controlled in compliance with entry 2.b.i. in Table 1 to this subpart.

(ii) Estimate the controlled emissions using the control level achieved on November 15, 1990 if that value is greater than the applicable control level required by entry 2.b.i in Table 1 to this subpart.

(iii) Estimate the controlled emissions using the control level required to comply with a State or Federal rule other than this subpart if that level is greater than the applicable control level required by entry 2.b.i in Table 1 to this subpart and the other rule was in effect before the date when you request approval to comply with emissions averaging.

(3) Determine actual emissions in pounds per batch for each vessel in accordance with paragraphs (c)(2)(i), (ii), or (iii), as applicable.

(i) If emissions are routed through a closed-vent system to a condenser control device, determine controlled emissions using the procedures specified in § 63.1257(d)(3).

(ii) If emissions are routed through a closed-vent system to any control device other than a condenser, determine actual emissions after determining the efficiency of the control device using the procedures in subpart SS of this part 63 as specified in § 63.8000(c).

(iii) If the vessel is vented to the atmosphere, then actual emissions are equal to the uncontrolled emissions estimated in accordance with paragraph (c)(1) of this section.

(4) Provide rationale in the precompliance report for why the sum of the actual emissions will be less than the sum of emissions from the vessels if they had been controlled in accordance with Table 1 to this subpart. The approved actual emissions calculated according to paragraph (c)(3) of this section are emission limits that must be incorporated into your operating permit.

(d) *Continuous compliance.* (1) Maintain a monthly log of the number of batches produced that can be correlated with the emissions estimates per batch developed in accordance with paragraph (c) of this section.

(2) Sum the actual emissions for all of the process vessels in the emissions averaging group every three months, with the first 3-month period beginning on the compliance date, and compare the resulting total with the total emissions for the vessels calculated in accordance with paragraph (c)(2) of this section. Compliance is demonstrated if the sum of the actual emissions is less than the emissions estimated in accordance with paragraph (c)(2) of this section.

(3) For control devices, establish operating limits and monitor as specified in § 63.8000.

(e) *Recordkeeping and reporting.* Comply with §§ 63.8070, 63.8075, and 63.8080.

§ 63.8055 How do I comply with a weight percent HAP limit in coating products?

(a) As an alternative to complying with the requirements in Table 1 to this subpart for each individual stationary process vessel at an existing source, you may elect to comply with a 5 weight percent HAP limit for process vessels at your affected source that are used to manufacture coatings with a HAP content of less than 0.05 kg per kg product as specified in paragraph (b) of this section.

(b) You may only comply with the alternative during the production of coatings that contain less than 5 weight percent HAP, as determined using any of the procedures specified in paragraphs (b)(1) through (3) of this section.

(1) Method 311 (appendix A to 40 CFR part 63).

(2) Method 24 (appendix A to 40 CFR part 60). You may use Method 24 to determine the mass fraction of volatile matter and use that value as a substitute for the mass fraction of HAP.

(3) You may use an alternative test method for determining mass fraction of HAP if you obtain prior approval by the Administrator. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

Notification, Reports, and Records

§ 63.8070 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.6(h)(4) and (5), 63.7(b) and (c), 63.8(e), (f)(4) and (6), 63.9(b) through (h) that apply to you by the dates specified.

(b) *Initial notification.* (1) As specified in § 63.9(b)(2), if you have an existing affected source on December 11, 2003, you must submit an initial notification

not later than 120 calendar days after December 11, 2003.

(2) As specified in § 63.9(b)(3), if you start up your new affected source on or after December 11, 2003, you must submit an initial notification not later than 120 calendar days after you become subject to this subpart.

(c) *Notification of performance test.* If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1). For any performance test required as part of the initial compliance procedures for process vessels in Table 1 to this subpart, you must also submit the test plan required by § 63.7(c) and the emission profile with the notification of the performance test.

§ 63.8075 What reports must I submit and when?

(a) You must submit each report in Table 9 to this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report as specified in Table 9 to this subpart and paragraphs (b)(1) and (2) of this section.

(1) The compliance reports must be submitted semiannually. The first report must be submitted no later than 240 days after the applicable compliance date and shall cover the 6-month period beginning on the compliance date. Each subsequent compliance report must cover the 6-month period following the preceding period.

(2) 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 according to the dates in Table 9.

(c) *Precompliance report.* You must submit a precompliance report to request approval of any of the information in paragraphs (c)(1) through (4) of this section. We will either approve or disapprove the report within 90 days after we receive it. If we disapprove the report, you must still be in compliance with the emission limitations and work practice standards in this subpart by the compliance date.

(1) Requests for approval to set operating limits for parameters other than those specified in §§ 63.8005 through 63.8025, including parameters for enhanced biological treatment units. Alternatively, you may make these requests according to § 63.8(f).

(2) Descriptions of daily or per batch demonstrations to verify that control devices subject to § 63.8000(d)(3) are operating as designed.

(3) A description of the test conditions, data, calculations, and other information used to establish operating limits according to § 63.8005(e)(1).

(4) If you comply with emissions averaging in § 63.8050, the data and results of emission calculations as specified in § 63.8050(c)(1) through (3), and rationale for why the sum of actual emissions will be less than the sum of emissions if the process vessels were controlled in accordance with Table 1 to this subpart as specified in § 63.8050(c)(4).

(d) *Notification of compliance status report.* You must submit a notification of compliance status report according to the schedule in paragraph (d)(2) of this section, and the notification of compliance status report must include the information specified in paragraph (d)(2) of this section.

(1) You must submit the notification of compliance status report no later than 150 days after the applicable compliance date specified in § 63.7995.

(2) The notification of compliance status report must include the information in paragraphs (d)(3)(i) through (vi) of this section.

(i) The results of any applicability determinations (*e.g.*, HAP content of coating products; halogenated vent stream determinations; group determinations for storage tanks, wastewater, and transfer operations; and equipment that is in organic HAP service).

(ii) The results of performance tests, engineering analyses, design evaluations, flare compliance assessments, inspections and repairs, and calculations used to demonstrate initial compliance according to §§ 63.8005 through 63.8025 and 63.8055. For performance tests, results must include descriptions of sampling and analysis procedures and quality assurance procedures.

(iii) Descriptions of monitoring devices, monitoring frequencies, and the operating limits established during the initial compliance demonstrations, including data and calculations to support the levels you establish.

(iv) Identification of parts of the affected source that are subject to overlapping requirements described in § 63.8090 and the authority under which you will comply.

(v) Identify storage tanks for which you are complying with the vapor balancing alternative in § 63.8010(e).

(vi) If you transfer Group 1 wastewater stream to an offsite facility for treatment, include the name and location of the transferee and a description of the Group 1 wastewater stream that is sent to the treatment facility. If the offsite facility provides enhanced biological treatment, also include the certification required by § 63.8020(d) that the offsite facility will comply with the requirements of this subpart.

(e) *Compliance report.* The compliance report must contain the information specified in paragraphs (e)(1) through (8) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the accuracy of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) Applicable records and information for periodic reports as specified in referenced subparts F, SS, TT, UU, and WW of this part 63.

(5) For each SSM during which excess emissions occur, the compliance report must include the information specified in paragraphs (e)(5)(i) and (ii) of this section.

(i) Records that the procedures specified in your startup, shutdown, and malfunction plan (SSMP) were followed or documentation of actions taken that are not consistent with the SSMP.

(ii) A description of each malfunction.

(6) The compliance report must contain the information on deviations, as defined in § 63.8105, according to paragraphs (e)(6)(i), (ii), and (iii) of this section.

(i) If there are no deviations from any emission limit, operating limit, or work practice standard specified in this subpart, include a statement that there were no deviations from the emission limits, operating limits, or work practice standards during the reporting period.

(ii) For each deviation from an emission limit, operating limit, and work practice standard that occurs at an affected source where you are not using a continuous monitoring system (CMS) to comply with the emission limit or work practice standards in this subpart, you must include the information in paragraphs (e)(6)(ii)(A) through (C) of this section.

(A) The total operating time of each affected source during the reporting period.

(B) Information on the number, duration, and cause of deviations

(including unknown cause, if applicable), as applicable, and the corrective action taken.

(C) Operating logs for the day(s) during which the deviation occurred, except operating logs are not required for deviations of the work practice standards for equipment leaks.

(iii) For each deviation from an emission limit or operating limit occurring at an affected source where you are using a CMS to comply with the emission limit in this subpart, you must include the information in paragraphs (e)(6)(iii)(A) through (K) of this section. This includes periods of SSM.

(A) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(B) The date, time, and duration that each CEMS was out-of-control, including the information in § 63.8(c)(8).

(C) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(D) A summary of the total duration of the deviation during the reporting period, and the total duration as a percent of the total source operating time during that reporting period.

(E) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(F) A summary of the total duration of CMS downtime during the reporting period, and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(G) An identification of each HAP that is known to be in the emission stream or wastewater stream, as applicable.

(H) A description of the product being produced.

(I) Identification of the CMS.

(J) The date of the latest CMS certification or audit.

(K) The operating day or operating block average values of monitored parameters for each day(s) during which the deviation occurred.

(7) If you use a CEMS, and there were no periods during which it was out-of-control as specified in § 63.8(c)(7), include a statement that there were no periods during which the CEMS was out-of-control during the reporting period.

(8) *Notification of process change.* (i) Except as specified in paragraph (e)(8)(ii) of this section, whenever you change any of the information submitted in either the notification of compliance status report or any previously reported change to the notification of compliance status report, you must document the change in your compliance report. The notification must include all of the information in paragraphs (e)(8)(i)(A) and (B) of this section.

(A) Revisions to any of the information reported in the original notification of compliance status report under paragraph (d) of this section.

(B) Information required by the notification of compliance status report under paragraph (d) of this section for changes involving the addition of processes or equipment at the affected source.

(ii) You must submit a report 60 days before the scheduled implementation date of any of the changes identified in paragraphs (e)(8)(ii)(A), (B), or (C) of this section.

(A) Any change to the information contained in either the precompliance report or any previously reported change to the precompliance report.

(B) A change in the status of a control device from small to large.

(C) A change in compliance status.

§ 63.8080 What records must I keep?

You must keep the records specified in paragraphs (a) through (g) of this section.

(a) Each applicable record required by subpart A of this part 63 and in referenced subparts SS, TT, UU, and WW of this part 63.

(b) If complying with emissions averaging, records of the monthly number of batches for each process vessel, the quarterly actual emissions for each process vessel, the quarterly estimated emissions for each process vessel if it had been controlled as specified in Table 1 to this subpart, and comparison of the sums of the quarterly actual and estimated emissions as specified in § 63.8050(d).

(c) A record of each time a safety device is opened to avoid unsafe conditions in accordance with § 63.8000(b)(2).

(d) Records of the results of each CPMS calibration check and the maintenance performed, as specified in § 63.8000(d)(5).

(e) For each CEMS, you must keep the records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(f) In the SSMP required by § 63.6(e)(3), you are not required to include Group 2 or non-affected emission points. For equipment leaks only, the SSMP requirement is limited to control devices and is optional for other equipment.

(g) If you establish separate operating limits as allowed in § 63.8005(e), you must maintain a log of operation or a daily schedule indicating the time when you change from one operating limit to another.

Other Requirements and Information

§ 63.8090 What compliance options do I have if part of my plant is subject to both this subpart and another subpart?

(a) *Compliance with 40 CFR parts 264 and 265, subparts AA, BB, and/or CC.* (1) After the compliance dates specified in § 63.7995, if a control device that you use to comply with this subpart is also subject to monitoring, recordkeeping, and reporting requirements in 40 CFR part 264, subpart AA, BB, or CC; or the monitoring and recordkeeping requirements in 40 CFR part 265, subpart AA, BB, or CC; and you comply with the periodic reporting requirements under 40 CFR part 264, subpart AA, BB, or CC that would apply to the device if your facility had final-permitted status, you may elect to comply either with the monitoring, recordkeeping, and reporting requirements of this subpart; or with the monitoring and recordkeeping requirements in 40 CFR part 264 or 265 and the reporting requirements in 40 CFR part 264, as described in this paragraph (a), which constitute compliance with the monitoring, recordkeeping, and reporting requirements of this subpart. If you elect to comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR parts 264 and/or 265, you must report the information required for the compliance report in § 63.8075(e), and you must identify in the notification of compliance status report required by § 63.8075(d) the monitoring, recordkeeping, and reporting authority under which you will comply.

(2) After the compliance dates specified in this section, if any equipment at an affected source that is subject to this subpart is also subject to 40 CFR part 264, subpart BB or to 40 CFR part 265, subpart BB, then compliance with the recordkeeping and reporting requirements of 40 CFR part 264 and/or 265 may be used to comply with the recordkeeping and reporting requirements of § 63.1255, to the extent that the requirements of 40 CFR part 264 and/or 265 duplicate the requirements of this subpart. You must identify in the notification of compliance status report required by § 63.8075(d) if you will comply with the recordkeeping and reporting authority under 40 CFR part 264 and/or 265.

(b) *Compliance with 40 CFR part 60, subpart Kb.* After the compliance dates specified in § 63.7995, you are in compliance with this subpart for any storage tank that is assigned to miscellaneous coating manufacturing operations and that is both controlled with a floating roof and in compliance with the provisions of 40 CFR part 60, subpart Kb. You are in compliance with this subpart if you have a storage tank with a fixed roof, closed-vent system, and control device in compliance with 40 CFR part 60, subpart Kb, you must comply with the monitoring, recordkeeping, and reporting requirements in this subpart. You must also identify in your notification of compliance status report required by § 63.8075(d) which storage tanks are in compliance with 40 CFR part 60, subpart Kb.

§ 63.8095 What parts of the General Provisions apply to me?

Table 10 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.8100 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency also has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if 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 paragraphs (b)(1) through (4) of this section are retained by the Administrator of U.S. EPA and are not delegated to the State, local, or tribal agency.

(1) Approval of alternatives to the non-opacity emission limits and work practice standards in § 63.8000(a) under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.8105 What definitions apply to this subpart?

(a) For an affected source complying with the requirements in subpart SS of this part 63, the terms used in this subpart and in subpart SS of this part 63 have the meaning given them in § 63.981, except as specified in §§ 63.8000(d)(5)(ii) and (7), 63.8010(c)(2), 63.8025(b), and paragraph (g) of this section.

(b) For an affected source complying with the requirements in subpart TT of this part 63, the terms used in this subpart and in subpart TT of this part 63 have the meaning given them in § 63.1001.

(c) For an affected source complying with the requirements in subpart UU of this part 63, the terms used in this subpart and in subpart UU of this part 63 have the meaning given them in § 63.1020.

(d) For an affected source complying with the requirements in subpart WW of this part 63, the terms used in this subpart and subpart WW of this part 63 have the meaning given them in § 63.1061, except as specified in §§ 63.8000(d)(7), 63.8010(c)(2), and paragraph (g) of this section.

(e) For an affected source complying with requirements in §§ 63.1253, 63.1257, and 63.1258, the terms used in this subpart and in §§ 63.1253, 63.1257, and 63.1258 have the meaning given them in § 63.1251, except as specified in § 63.8000(d)(7) and paragraph (g) of this section.

(f) For an affected source complying with the requirements of § 63.104, the terms used in this subpart and in § 63.104 have the meaning given them in § 63.101, except as specified in § 63.8000(d)(7) and paragraph (g) of this section.

(g) All other terms used in this subpart are defined in the CAA, in 40 CFR 63.2, and in this paragraph (g). If a term is defined in § 63.2, § 63.981, § 63.1001, § 63.1020, § 63.1061, or § 63.1251 and in this paragraph (g), the definition in this paragraph (g) applies for the purposes of this subpart.

Bulk loading means the loading, into a tank truck or rail car, of liquid coating products that contain one or more of the organic HAP, as defined in section 112 of the CAA, from a loading rack. A loading rack is the system used to fill tank trucks and railcars at a single geographic site.

Coating means any material such as a paint, ink, or adhesive that is intended to be applied to a substrate and consists of a mixture of resins, pigments, solvents, and/or other additives. Typically, these materials are described by Standard Industry Classification (SIC) codes 285 or 289 and North American Industry Classification System (NAICS) codes 3255 and 3259.

Construction means the onsite fabrication, erection, or installation of an affected source. Addition of new equipment to an affected source does not constitute construction, but it may constitute reconstruction of the affected source if it satisfies the definition of reconstruction in § 63.2.

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.

Enhanced biological treatment system means an aerated, thoroughly mixed treatment unit(s) that contains biomass suspended in water followed by a clarifier that removes biomass from the treated water and recycles recovered biomass to the aeration unit. The mixed liquor volatile suspended solids (biomass) is greater than 1 kilogram per cubic meter throughout each aeration unit. The biomass is suspended and aerated in the water of the aeration unit(s) either by submerged air flow or mechanical agitation. A thoroughly mixed treatment unit is a unit that is designed and operated to approach or achieve uniform biomass distribution and organic compound concentration throughout the aeration unit by quickly dispersing the recycled biomass and the wastewater entering the unit.

Excess emissions means emissions greater than those allowed by the emission limit.

Group 1a storage tank means a storage tank at an existing source with a capacity greater than or equal to 20,000 gal storing material that has a maximum true vapor pressure of total organic HAP greater than or equal to 1.9 pounds per square inch, absolute (psia). Group 1a storage tank also means a storage tank at a new source with either a capacity greater than or equal to 25,000 gal storing material that has a maximum true vapor pressure of total HAP greater than or equal to 0.1 psia or a capacity

greater than or equal to 20,000 gal and less than 25,000 gal storing material that has a maximum true vapor pressure of total HAP greater than or equal to 1.5 psia.

Group 1b storage tank means a storage tank at a new source that has a capacity greater than or equal to 10,000 gal, stores material that has a maximum true vapor pressure of total organic HAP greater than or equal to 0.02 psia, and is not a Group 1a storage tank.

Group 2 storage tank means a storage tank that does not meet the definition of a Group 1a or Group 1b storage tank.

Group 1 transfer operations means all bulk loading of coating products if the coatings contain greater than or equal to 3.0 million gallons per year (gal/yr) of HAP with a weighted average HAP partial pressure greater than or equal to 1.5 psia.

Group 2 transfer operations means bulk loading of coating products that does not meet the definition of Group 1 transfer operations.

Group 1 wastewater stream means a wastewater stream that contains total partially soluble and soluble HAP at an annual average concentration greater than or equal to 4,000 parts per million by weight (ppmw) and load greater than or equal to 750 pounds per year (lb/yr) at an existing source or greater than or equal to 1,600 ppmw and any partially soluble and soluble HAP load at a new source.

Group 2 wastewater stream means a wastewater stream that does not meet the definition of a Group 1 wastewater stream.

Halogenated vent stream means a vent stream determined to contain halogen atoms in organic compounds at a concentration greater than or equal to 20 ppmv as determined by the procedures specified in § 63.8000(b).

Hydrogen halide and halogen HAP means hydrogen chloride, chlorine, and hydrogen fluoride.

In organic HAP service means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 5 percent by weight of total organic HAP as determined according to the provisions of § 63.180(d). The provisions of § 63.180(d) also specify how to determine that a piece of equipment is not in organic HAP service.

Large control device means a control device that controls total HAP emissions of greater than or equal to 10 tpy, before control.

Maximum true vapor pressure means the equilibrium partial pressure exerted by the total organic HAP in the stored or transferred liquid at the temperature equal to the highest calendar-month average of the liquid storage or transfer temperature for liquids stored or transferred above or below the ambient temperature or at the local maximum monthly average temperature as reported by the National Weather Service for liquids stored or transferred at the ambient temperature, as determined:

(1) In accordance with methods described in American Petroleum Institute Publication 2517, Evaporative Loss From External Floating-Roof Tanks (incorporated by reference as specified in § 63.14 of subpart A of this part 63); or

(2) As obtained from standard reference texts; or

(3) As determined by the American Society for Testing and Materials Method D2879–83 (incorporated by reference as specified in § 63.14 of subpart A of this part); or

(4) Any other method approved by the Administrator.

Partially soluble HAP means HAP listed in Table 7 of this subpart.

Point of determination (POD) means each point where process wastewater exits the miscellaneous coating operations.

Note to definition for point of determination: The regulation allows determination of the characteristics of a wastewater stream at the point of determination or downstream of the point of determination if corrections are made for changes in flow rate and annual average concentration of partially soluble and soluble HAP compounds as determined in § 63.144. Such changes include losses by air emissions; reduction of annual average concentration or changes in flow rate by mixing with other water or wastewater streams; and reduction in flow rate or annual average concentration by treating or otherwise handling the wastewater stream to remove or destroy HAP.

Process vessel means any stationary or portable tank or other vessel with a capacity greater than or equal to 250 gal and in which mixing, blending, diluting, dissolving, temporary holding, and other processing steps occur in the manufacturing of a coating.

Process vessel vent means a vent from a process vessel or vents from multiple process vessels that are manifolded together into a common header, through which a HAP-containing gas stream is, or has the potential to be, released to the atmosphere. Emission streams that are undiluted and uncontrolled containing less than 50 ppmv HAP, as determined through process knowledge that no HAP are present in the emission stream or using an engineering assessment as discussed in § 63.1257(d)(2)(ii), test data using Method 18 of 40 CFR part 60, appendix A, or any other test method that has been validated according to the procedures in Method 301 of appendix A of this part, are not considered process vessel vents. Flexible elephant trunk systems when used with closed vent systems and drawing ambient air (*i.e.*, the system is not ducted, piped, or otherwise connected to the unit operations) away from operators when vessels are opened are not process vessel vents. Process vessel vents do not include vents on storage tanks, wastewater emission sources, or pieces of equipment subject to the requirements in Table 3 of this subpart. A gas stream going to a fuel gas system is not a process vessel vent. A gas stream routed to a process for a process purpose is not a process vessel vent.

Recovery device, as used in the wastewater provisions, means an individual unit of equipment used for the purpose of recovering chemicals for fuel value (*i.e.*, net positive heating value), use, reuse, or for sale for fuel value, use, or reuse. Examples of equipment that may be recovery devices include organic removal devices such as decanters, strippers, or thin-film evaporation units. To be a recovery device, a decanter and any other equipment based on the operating principle of gravity separation must receive only multi-phase liquid streams. A recovery device is considered part of the miscellaneous coating manufacturing operations.

Responsible official means responsible official as defined in 40 CFR 70.2.

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purposes of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes and practices, or other

requirements for the safe handling of flammable, combustible, explosive, reactive, or hazardous materials.

Shutdown means the cessation of operation of an affected source, any process vessels within an affected source, or equipment required or used to comply with this subpart if steps taken to cease operation differ from those under routine procedures for removing the vessel or equipment from service. Shutdown also applies to the emptying and degassing of storage tanks.

Small control device means a control device that controls total HAP emissions of less than 10 tpy, before control.

Soluble HAP means the HAP listed in Table 8 of this subpart.

Startup means the setting in operation of a new affected source. For new equipment added to an affected source, including equipment required or used to comply with this subpart, startup means the first time the equipment is put into operation. Startup includes the setting in operation of equipment any time the steps taken differ from routine procedures for putting the equipment into operation.

Storage tank means a tank or other vessel that is used to store organic liquids that contain one or more HAP as raw material feedstocks or products. The following are not considered storage tanks for the purposes of this subpart:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere;

(3) Vessels storing organic liquids that contain HAP only as impurities;

(4) Wastewater storage tanks; and

(5) Process vessels.

Total organic compounds or (TOC) means the total gaseous organic compounds (minus methane and ethane) in a vent stream.

Wastewater storage tank means a stationary structure that is designed to contain an accumulation of wastewater and is constructed primarily of nonearthen materials (*e.g.*, wood, concrete, steel, plastic) which provide structural support.

Wastewater stream means water that is discarded from miscellaneous coating manufacturing operations through a POD, and that contains an annual average concentration of total partially soluble and soluble HAP compounds of at least 1,600 ppmw at any flow rate. For the purposes of this subpart, noncontact cooling water is not considered a wastewater stream.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act.

Tables to Subpart HHHHH of Part 63

As required in § 63.8005, you must meet each emission limit and work practice standard in the following table that applies to your process vessels:

TABLE 1 TO SUBPART HHHHH OF PART 63—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR PROCESS VESSELS

For each . . .	You must . . .	And you must . . .
1. Portable process vessel at an existing source.	Equip the vessel with a cover or lid that must be in place at all times when the vessel contains a HAP.	Non applicable
2. Stationary process vessel at an existing source.	a. Equip the vessel with a cover or lid that must be in place at all times when the vessel contains a HAP; or.	i. Considering both capture and any combination of control (except a flare), reduce emissions by ≥75 percent by weight for each HAP with a vapor pressure ≥0.6 kPa and by ≥60 percent for each HAP with a vapor pressure <0.6 kPa.
	b. Equip the vessel with a tightly fitting vented cover or lid that must be closed at all times when the vessel contains HAP.	i. Reduce emissions of each HAP with a vapor pressure ≥0.6 kPa by ≥75 percent by weight and each HAP with a vapor pressure <0.6 kPa by ≥60 percent by weight by venting emissions through a closed-vent system to any combination of control devices (except a flare); or ii. Reduce emissions of total organic HAP by venting emissions from a non-halogenated vent stream through a closed-vent system to a flare; or iii. Reduce emissions of total organic HAP by venting emissions through a closed-vent system to a condenser that reduces the outlet gas temperature to: <10°C if the process vessel contains HAP with a partial pressure <0.6 kPa, or <2°C if the process vessel contains HAP with a partial pressure ≥0.6 kPa and <17.2 kPa, or < −5°C if the process vessel contains HAP with a partial pressure ≥17.2 kPa.

TABLE 1 TO SUBPART HHHHH OF PART 63—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR PROCESS VESSELS—Continued

For each . . .	You must . . .	And you must . . .
3. Portable and stationary process vessel at a new source.	a. Equip the vessel with a tightly fitting vented cover or lid that must be closed at all times when the vessel contains HAP.	i. Reduce emissions of total HAP by ≥95 percent by weight by venting emissions through a closed-vent system to any combination of control devices (except a flare); or ii. Reduce emissions of total organic HAP by venting emissions from a non-halogenated vent stream through a closed-vent system to a flare; or iii. Reduce emissions of total organic HAP by venting emissions through a closed-vent system to a condenser that reduces the outlet gas temperature to: < −4°C if the process vessel contains HAP with a partial pressure <0.7 kPa, or <20°C if the process vessel contains HAP with a partial pressure ≥0.7 kPa and <17.2 kPa, or < −30°C if the process vessel contains HAP with a partial pressure ≥17.2 kPa.
4. Halogenated vent steam from a process vessel subject to the requirements of item 2 or 3 of this table for which you use a combustion control device to control organic HAP emissions.	a. Use a halogen reduction device after the combustion control device; or	i. Reduce overall emissions of hydrogen halide and halogen HAP by ≥95 percent; or ii. Reduce overall emissions of hydrogen halide and halogen HAP to ≤0.45 kilogram per hour (kg/hr).
	b. Use a halogen reduction device before the combustion control device.	Reduce the halogen atom mass emission rate to ≤0.45 kg/hr.

As required in § 63.8010, you must meet each emission limit in the following table that applies to your storage tanks:

TABLE 2 TO SUBPART HHHHH OF PART 63—EMISSION LIMITS FOR STORAGE TANKS

For each . . .	Then you must . . .
1. Group 1a storage tank	a. Comply with the requirements of subpart WW of this part, except as specified in § 63.8010(b); or b. Reduce total organic HAP emissions from the storage tank by ≥90 percent by weight by venting emissions through a closed-vent system to any combination of control devices (excluding a flare); or c. Reduce total organic HAP emissions from the storage tank by venting emissions from a non-halogenated vent stream through a closed-vent system to a flare.
2. Group 1b storage tank	a. Comply with the requirements of subpart WW of this part, except as specified in § 63.8010(b); or b. Reduce total organic HAP emissions from the storage tank by ≥80 percent by weight by venting emissions through a closed-vent system to any combination of control devices (excluding a flare); or c. Reduce total organic HAP emissions from the storage tank by venting emissions from a non-halogenated vent stream through a closed-vent system to a flare.

As required in § 63.8015, you must meet each requirement in the following table that applies to your equipment leaks:

TABLE 3 TO SUBPART HHHHH OF PART 63—REQUIREMENTS FOR EQUIPMENT LEAKS

For all . . .	You must . . .
1. Equipment that is in organic HAP service at an existing source.	a. Comply with the requirements in §§ 63.424(a) through (d) and 63.428(e), (f), and (h)(4), except as specified in § 63.8015(b); or b. Comply with the requirements of subpart TT of this part; or c. Comply with the requirements of subpart UU of this part, except as specified in § 63.8015(c) and (d).
2. Equipment that is in organic HAP service at a new source.	a. Comply with the requirements of subpart TT of this part; or b. Comply with the requirements of subpart UU of this part, except as specified in § 63.8015(c) and (d).

TABLE 4 TO SUBPART HHHHH OF PART 63—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR WASTEWATER STREAMS

For each . . .	You must . . .
1. Wastewater tank used to store a Group 1 wastewater stream.	Maintain a fixed roof, which may have openings necessary for proper venting of the tank, such as pressure/vacuum vent or j-pipe vent.
2. Group 1 wastewater stream.	a. Convey using hard-piping and treat the wastewater as a hazardous waste in accordance with 40 CFR part 264, 265, or 266 either onsite or offsite; or b. If the wastewater contains <50 ppmw of partially soluble HAP, you may elect to treat the wastewater in an enhanced biological treatment system that is located either onsite or offsite.

As required in § 63.8025, you must meet each emission limit and work practice standard in the following table that applies to your transfer operations:

TABLE 5 TO SUBPART HHHHH OF PART 63—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR TRANSFER OPERATIONS

For each . . .	You must. . . .
1. Group 1 transfer operation vent stream.	a. Reduce emissions of total organic HAP by ≥75 percent by weight by venting emissions through a closed-vent system to any combination of control devices (except a flare); or b. Reduce emissions of total organic HAP by venting emissions from a non-halogenated vent stream through a closed-vent system to a flare; or c. Use a vapor balancing system designed and operated to collect organic HAP vapors displaced from tank trucks and railcars during loading and route the collected HAP vapors to the storage tank from which the liquid being loaded originated or to another storage tank connected by a common header.
2. Halogenated Group 1 transfer operation vent stream for which you use a combustion device to control organic HAP emissions.	a. Use a halogen reduction device after the combustion device to reduce emissions of hydrogen halide and halogen HAP by ≥95 percent by weight or to ≤0.45 kg/hr; or b. Use a halogen reduction device before the combustion device to reduce the halogen atom mass emission rate to ≤0.45 kg/hr.

As required in § 63.8030, you must meet each requirement in the following table that applies to your heat exchange systems:

TABLE 6 TO SUBPART HHHHH OF PART 63—REQUIREMENTS FOR HEAT EXCHANGE SYSTEMS

For each . . .	You must . . .
Heat exchange system, as defined in § 63.101.	Comply with the requirements in § 63.104, except as specified in § 63.8030.

As specified in § 63.8020, the partially soluble HAP in wastewater that are subject to management and treatment requirements in this subpart are listed in the following table:

TABLE 7 TO SUBPART HHHHH OF PART 63—PARTIALLY SOLUBLE HAZARDOUS AIR POLLUTANTS

Chemical name . . .	CAS No.
1. 1,1,1-Trichloroethane (methyl chloroform)	71556
2. 1,1,2,2-Tetrachloroethane	79345
3. 1,1,2-Trichloroethane	79005
4. 1,1-Dichloroethylene (vinylidene chloride)	75354
5. 1,2-Dibromoethane	106934
6. 1,2-Dichloroethane (ethylene dichloride)	107062
7. 1,2-Dichloropropane	78875
8. 1,3-Dichloropropene	542756
9. 2,4,5-Trichlorophenol	95954
10. 2-Butanone (MEK)	78933
11. 1,4-Dichlorobenzene	106467
12. 2-Nitropropane	79469
13. 4-Methyl-2-pentanone (MIBK)	108101
14. Acetaldehyde	75070
15. Acrolein	107028

TABLE 7 TO SUBPART HHHHH OF PART 63—PARTIALLY SOLUBLE HAZARDOUS AIR POLLUTANTS—Continued

Chemical name . . .	CAS No.
16. Acrylonitrile	107131
17. Allyl chloride	107051
18. Benzene	71432
19. Benzyl chloride	100447
20. Biphenyl	92524
21. Bromoform (tribromomethane)	75252
22. Bromomethane	74839
23. Butadiene	106990
24. Carbon disulfide	75150
25. Chlorobenzene	108907
26. Chloroethane (ethyl chloride)	75003
27. Chloroform	67663
28. Chloromethane	74873
29. Chloroprene	126998
30. Cumene	98828
31. Dichloroethyl ether	111444
32. Dinitrophenol	51285
33. Epichlorohydrin	106898
34. Ethyl acrylate	140885
35. Ethylbenzene	100414
36. Ethylene oxide	75218
37. Ethylidene dichloride	75343
38. Hexachlorobenzene	118741
39. Hexachlorobutadiene	87683
40. Hexachloroethane	67721
41. Methyl methacrylate	80626
42. Methyl-t-butyl ether	1634044
43. Methylene chloride	75092
44. N-hexane	110543
45. N,N-dimethylaniline	121697
46. Naphthalene	91203
47. Phosgene	75445
48. Propionaldehyde	123386
49. Propylene oxide	75569
50. Styrene	100425
51. Tetrachloroethylene (perchloroethylene)	79345
52. Tetrachloromethane (carbon tetrachloride)	56235
53. Toluene	108883
54. Trichlorobenzene (1,2,4–)	120821
55. Trichloroethylene	79016
56. Trimethylpentane	540841
57. Vinyl acetate	108054
58. Vinyl chloride	75014
59. Xylene (m)	108383
60. Xylene (o)	95476
61. Xylene (p)	106423

As specified in § 63.8020, the soluble HAP in wastewater that are subject to management and treatment requirements of this subpart are listed in the following table:

TABLE 8 TO SUBPART FFFF OF PART 63—SOLUBLE HAZARDOUS AIR POLLUTANTS

Chemical name . . .	CAS No.
1. Acetonitrile	75058
2. Acetophenone	98862
3. Diethyl sulfate	64675
4. Dimethyl hydrazine (1,1)	58147
5. Dimethyl sulfate	77781
6. Dinitrotoluene (2,4)	121142
7. Dioxane (1,4)	123911
8. Ethylene glycol dimethyl ether	110714
9. Ethylene glycol monobutyl ether acetate	112072
10. Ethylene glycol monomethyl ether acetate	110496
11. Isophorone	78591
12. Methanol	67561
13. Nitrobenzene	98953
14. Toluidine (o-)	95534

TABLE 8 TO SUBPART FFFF OF PART 63—SOLUBLE HAZARDOUS AIR POLLUTANTS—Continued

Chemical name . . .	CAS No.
15. Triethylamine	121448

As required in § 63.8075(a) and (b), you must submit each report that applies to you on the schedule shown in the following table:

TABLE 9 TO SUBPART HHHHH OF PART 63—REQUIREMENTS FOR REPORTS

You must submit a . . .	The report must contain . . .	You must submit the report . . .
1. Precompliance report	The information specified in § 63.8075(c)	At least 6 months prior to the compliance date; or for new sources, with the application for approval of construction or reconstruction.
2. Notification of compliance status report	The information specified in § 63.8075(d)	No later than 150 days after the compliance date specified in § 63.7995.
3. Compliance report	The information specified in § 63.8075(e)	Semiannually according to the requirements in § 63.8075(b).

As specified in § 63.8095, the parts of the General Provisions that apply to you are shown in the following table:

TABLE 10 TO SUBPART HHHHH OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART HHHHH

Citation	Subject	Explanation
§ 63.1	Applicability	Yes.
§ 63.2	Definitions	Yes.
§ 63.3	Units and Abbreviations	Yes.
§ 63.4	Prohibited Activities	Yes.
§ 63.5	Construction/Reconstruction	Yes.
§ 63.6(a)	Applicability	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed sources.	Yes.
§ 63.6(b)(5)	Notification	Yes.
§ 63.6(b)(6)	[Reserved].	
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Yes.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources.	Yes.
§ 63.6(c)(3)–(4)	[Reserved].	
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Yes.
§ 63.6(d)	[Reserved].	
§ 63.6(e)(1)–(2)	Operation & Maintenance	Yes.
§ 63.6(e)(3)(i), (ii), and (v) through (viii).	SSMP	Yes, except information regarding Group 2 emission points and equipment leaks is not required in the SSMP, as specified in § 63.8080(f).
§ 63.6(e)(3)(iii) and (iv)	Recordkeeping and Reporting During Startup, Shutdown, and Malfunction (SSM).	No, §§ 63.998(d)(3) and 63.998(c)(1)(ii)(D) through (G) specify the recordkeeping requirement for SSM events, and § 63.8075(e)(5) specifies reporting requirements.
§ 63.6(f)(1)	Compliance Except During SSM	Yes.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Yes.
§ 63.6(h)	Opacity/Visible Emission (VE) Standards.	Only for flares for which Method 22 observations are required as part of a flare compliance assessment.
§ 63.6(i)(1)–(14)	Compliance Extension	Yes.
§ 63.6(j)	Presidential Compliance Exemption.	Yes.
§ 63.7(a)(1)–(2)	Performance Test Dates	Yes, except substitute 150 days for 180 days.
§ 63.7(a)(3)	CAA Section 114 Authority	Yes, and this paragraph also applies to flare compliance assessments as specified under § 63.997(b)(2).
§ 63.7(b)(1)	Notification of Performance Test	Yes.

TABLE 10 TO SUBPART HHHHH OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART HHHHH—Continued

Citation	Subject	Explanation
§ 63.7(b)(2)	Notification of Rescheduling	Yes.
§ 63.7(c)	Quality Assurance/Test Plan	Yes, except the test plan must be submitted with the notification of the performance test if the control device controls process vessels.
§ 63.7(d)	Testing Facilities	Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	Yes, except that performance tests for process vessels must be conducted under worst-case conditions as specified in § 63.8005.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Yes.
§ 63.7(e)(3)	Test Run Duration	Yes.
§ 63.7(f)	Alternative Test Method	Yes.
§ 63.7(g)	Performance Test Data Analysis	Yes.
§ 63.7(h)	Waiver of Tests	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements.	Yes.
§ 63.8(a)(2)	Performance Specifications	Yes.
§ 63.8(a)(3)	[Reserved].	
§ 63.8(a)(4)	Monitoring with Flares	Yes.
§ 63.8(b)(1)	Monitoring	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Yes.
§ 63.8(c)(1)(i)	Maintain and operate CMS	Yes.
§ 63.8(c)(1)(ii)	Routine repairs	Yes.
§ 63.8(c)(1)(iii)	SSMP for CMS	Yes.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Yes.
§ 63.8(c)(4)	Requirements	Only for CEMS; requirements for CPMS are specified in referenced subpart SS of 40 CFR part 63. This subpart does not contain requirements for continuous opacity monitoring systems (COMS).
§ 63.8(c)(4)(i)	CMS Requirements	No. This subpart does not require COMS.
§ 63.8(c)(4)(ii)	CMS requirements	Yes.
§ 63.8(c)(5)	COMS Minimum Procedures	No. This subpart does not contain opacity or VE limits.
§ 63.8(c)(6)	CMS Requirements	Only for CEMS; requirements for CPMS are specified in referenced subpart SS of 40 CFR part 63.
§ 63.8(c)(7)–(8)	CMS Requirements	Only for CEMS. Requirements for CPMS are specified in referenced subpart SS of 40 CFR part 63.
§ 63.8(d)	CMS Quality Control	Only for CEMS; requirements for CPMS are specified in referenced subpart SS of 40 CFR part 63.
§ 63.8(e)	CMS Performance Evaluation	Section 63.8(e)(6)(ii) does not apply because this subpart does not require COMS. Other sections apply only for CEMS; requirements for CPMS are specified in referenced subpart SS of 40 CFR part 63.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Yes, except you may also request approval using the precompliance report.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Only for CEMS.
§ 63.8(g)(1)–(4)	Data Reduction	Only when using CEMS, except § 63.8(g)(2) does not apply because data reduction requirements for CEMS are specified in § 63.8000(d)(4)(iv). The requirements for COMS do not apply because this subpart has no opacity or VE limits.
§ 63.8(g)(5)	Data Reduction	No. Requirements for CEMS are specified in § 63.8000(d)(4). Requirements for CPMS are specified in referenced subpart SS of 40 CFR part 63.
§ 63.9(a)	Notification Requirements	Yes.
§ 63.9(b)(1)–(5)	Initial Notifications	Yes.
§ 63.9(c)	Request for Compliance Extension	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	Yes.
§ 63.9(e)	Notification of Performance Test	Yes.
§ 63.9(f)	Notification of VE/Opacity Test	No. This subpart does not contain opacity or VE limits.
§ 63.9(g)	Additional Notifications When Using CMS.	Only for CEMS; requirements for CPMS are specified in referenced subpart SS of 40 CFR part 63.
§ 63.9(h)(1)–(6)	Notification of Compliance Status	Yes, except this subpart has no opacity or VE limits, and § 63.9(h)(2) does not apply because § 63.8075(d) specifies the required contents and due date of the notification of compliance status report.
§ 63.9(i)	Adjustment of Submittal Deadlines	Yes.
§ 63.9(j)	Change in Previous Information	No, § 63.8075(e)(8) specifies reporting requirements for process changes.
§ 63.10(a)	Recordkeeping/Reporting	Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting	Yes.

TABLE 10 TO SUBPART HHHHH OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART HHHHH—Continued

Citation	Subject	Explanation
§ 63.10(b)(2)(i)–(iv)	Records related to SSM	No, §§ 63.998(d)(3) and 63.998(c)(1)(ii)(D) through (G) specify recordkeeping requirements for periods of SSM.
§ 63.10(b)(2)(iii)	Records related to maintenance of air pollution control equipment.	Yes.
§ 63.10(b)(2)(vi), (x), and (xi)	CMS Records	Only for CEMS; requirements for CPMS are specified in referenced subpart SS of 40 CFR part 63.
§ 63.10(b)(2)(vii)–(ix)	Records	Yes.
§ 63.10(b)(2)(xii)	Records	Yes.
§ 63.10(b)(2)(xiii)	Records	Yes.
§ 63.10(b)(2)(xiv)	Records	Yes.
§ 63.10(b)(3)	Records	Yes.
§ 63.10(c)(1)–(6),(9)–(15)	Records	Only for CEMS; requirements for CPMS are specified in referenced subpart SS of 40 CFR part 63.
§ 63.10(c)(7)–(8)	Records	No. Recordkeeping requirements are specified in § 63.8080.
§ 63.10(d)(1)	General Reporting Requirements	Yes.
§ 63.10(d)(2)	Report of Performance Test Results.	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations.	No. This subpart does not contain opacity or VE limits.
§ 63.10(d)(4)	Progress Reports	Yes.
§ 63.10(d)(5)(i)	SSM Reports	No, § 63.8075(e)(5) and (6) specify the SSM reporting requirements.
§ 63.10(d)(5)(ii)	Immediate SSM reports	No.
§ 63.10(e)(1)–(2)	Additional CMS Reports	Only for CEMS, but § 63.10(e)(2)(ii) does not apply because this subpart does not require COMS.
§ 63.10(e)(3)	Reports	No. Reporting requirements are specified in § 63.8075.
§ 63.10(e)(3)(i)–(iii)	Reports	No. Reporting requirements are specified in § 63.8075.
§ 63.10(e)(3)(iv)–(v)	Excess Emissions Reports	No. Reporting requirements are specified in § 63.8075.
§ 63.10(e)(3)(vi–viii)	Excess Emissions Report and Summary Report.	No. Reporting requirements are specified in § 63.8075.
§ 63.10(e)(4)	Reporting COMS data	No. This subpart does not contain opacity or VE limits.
§ 63.10(f)	Waiver for Recordkeeping/Reporting.	Yes.
§ 63.11	Flares	Yes.
§ 63.12	Delegation	Yes.
§ 63.13	Addresses	Yes.
§ 63.14	Incorporation by Reference	Yes.
§ 63.15	Availability of Information	Yes.

[FR Doc. 03–22928 Filed 12–10–03; 8:45 am]

BILLING CODE 6560–50–U

Federal Register

Thursday,
December 11, 2003

Part IV

Securities and Exchange Commission

17 CFR Parts 228, 229, 240 et al.

Disclosure Regarding Nominating Committee Functions and Communications Between Security Holders and Boards of Directors; Final Rule; Republication

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 240, 249, 270 and 274

[Release Nos. 33–8340; 34–48825; IC–26262; File No. S7–14–03]

RIN 3235–AI90

Disclosure Regarding Nominating Committee Functions and Communications Between Security Holders and Boards of Directors; Republication

Editorial Note: Federal Register Rule document 03–29723 was originally published at page 66991 in the issue of Friday, November 28, 2003. In that publication text was left out. The corrected document is republished below in its entirety.

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting new disclosure requirements and amendments to existing disclosure requirements to enhance the transparency of the operations of boards of directors. Specifically, we are adopting enhancements to existing disclosure requirements regarding the operations of board nominating committees and a new disclosure requirement concerning the means, if any, by which security holders may communicate with directors. These rules require disclosure but do not mandate any particular action by a company or its board of directors; rather, the new disclosure requirements are intended to make more transparent to security holders the operation of the boards of directors of the companies in which they invest.

DATES: *Effective Date:* January 1, 2004.

Compliance Dates: Registrants must comply with these disclosure requirements in proxy or information statements that are first sent or given to security holders on or after January 1, 2004, and in Forms 10–Q, 10–QSB, 10–K, 10–KSB, and N–CSR for the first reporting period ending after January 1, 2004. Registrants may comply voluntarily with these disclosure requirements before the compliance date.

Comments: Comments regarding the ''collection of information'' requirements, within the meaning of the Paperwork Reduction Act of 1995, of Regulations S–B and S–K, and Forms 10–Q, 10–QSB, 10–K, 10–KSB, and N–CSR should be received by January 1, 2004.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method—U.S. mail or electronic mail—only. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–14–03. This number should be included in the subject line if sent via electronic mail. Electronically submitted comment letters will be posted on the Commission's Internet Web site *(http://www.sec.gov).* We do not edit personal information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Lillian C. Brown, at (202) 942–2920, Andrew Thorpe, at (202) 942–2910, or Andrew Brady, at (202) 942–2900, in the Division of Corporation Finance, or with respect to investment companies, Christian L. Broadbent, at (202) 942–0721, in the Division of Investment Management, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Item 401[1] of Regulation S–B [2] and Item 401[3] of Regulation S–K [4] under the Securities Act of 1933,[5] Items 7 and 22 of Schedule 14A [6] under the Securities Exchange Act of 1934,[7] Rule 30a–2[8] under the Investment Company Act of 1940,[9] Forms 10–Q [10] and 10–QSB [11] under the Exchange Act, and Form N–CSR [12] under the Exchange Act and the Investment Company Act. Although we are not adopting amendments to Schedule 14C [13] under the Exchange Act, the amendments will affect the disclosure provided in Schedule 14C, as Schedule 14C requires disclosure of some items of Schedule 14A. Similarly, although we are not adopting amendments to Forms 10–K [14] and 10–KSB [15] under the Exchange Act, the amendments to Item 401 of Regulations S–B and S–K will affect the disclosure under Forms 10–K and 10–KSB, as those forms require disclosure of the information required by Item 401 of Regulations S–K and S–B.

I. Background

On August 8, 2003, we proposed new disclosure standards intended to increase the transparency of nominating committee functions and the processes by which security holders may communicate with boards of directors of the companies in which they invest.[16] The disclosure standards that we adopt today are, in most respects, those proposed on August 8, 2003. Overall, most commenters supported new disclosure standards relating to nominating committee functions and security holder communications with directors;[17] however, as noted below, we received a number of comments and suggestions with regard to specific components of the proposed disclosure standards.[18] We have revised some elements of the proposed disclosure standards in response to these comments and suggestions.

The requirements we proposed on August 8, 2003,[19] and are adopting today, follow in many respects the recommendations made by the Division of Corporation Finance in a report provided to the Commission on July 15, 2003.[20] This report resulted from our April 14, 2003 directive to the Division to review the proxy rules relating to the election of corporate directors.[21] In preparing the report and developing its recommendations, the Division considered the input of members of the investing, business, legal, and academic

[1] 17 CFR 228.401.

[2] 17 CFR 228.10 *et seq.*

[3] 17 CFR 229.401.

[4] 17 CFR 229.10 *et seq.*

[5] 15 U.S.C. 77a *et seq.*

[6] 17 CFR 240.14a–101.

[7] 15 U.S.C. 78a *et seq.*

[8] 17 CFR 270.30a–2.

[9] 15 U.S.C. 80a–1 *et seq.*

[10] 17 CFR 249.308a.

[11] 17 CFR 249.308b.

[12] 17 CFR 249.331 and 17 CFR 274.128.

[13] 17 CFR 240.14c–101.

[14] 17 CFR 249.310.

[15] 17 CFR 249.310b.

[16] *See* Release No. 34–48301 (August 8, 2003) [68 FR 48724]. Comments received in response to the proposals, as well as a summary of these comments (''Summary of Comments'') may be found in File No. S7–14–03 and on our Web site at *http://www.sec.gov.*

[17] *See* Summary of Comments—File No. S7–14–03.

[18] *See id.*

[19] *See* Release No. 34–48301 (August 8, 2003).

[20] The Division also recommended that we propose amendments to the proxy rules regarding the inclusion in company proxy materials of security holder nominees for election as directors. Our proposals regarding this issue were included in a separate release. *See* Release No. 34–48626 (October 14, 2003) [68 FR 60784]. As such, this adopting release does not address that issue directly. The Division's Staff Report to the Commission, detailing the results of its review of the proxy process related to the nomination and election of directors, can be found on our Web site at *http://www.sec.gov.* Staff Report: Review of the Proxy Process Regarding the Nomination and Election of Directors, Division of Corporation Finance (July 15, 2003).

[21] *See* Press Release No. 2003–46 (April 14, 2003).

communities.[22] The majority of these commenters supported our decision to direct the review and, reflecting concern over corporate director accountability and recent corporate scandals, generally urged us to adopt rules that would grant security holders greater access to the nomination process and greater ability to exercise their rights and responsibilities as owners of their companies.[23] Many of the comments received in connection with the Division's review evidenced a growing concern among security holders that they lack sufficient input into decisions made by the boards of directors of the companies in which they invest.[24] Two particular areas of concern related to the nomination of candidates for election as director and the ability of security holders to communicate effectively with members of boards of directors.[25] We seek to address these concerns with the new disclosure standards we are adopting today.

II. New Disclosure Requirements

A. Disclosure Regarding Nominating Committee Processes

1. Discussion

We are adopting new proxy statement disclosure requirements that will provide greater transparency regarding the nominating committee and the nomination process.[26] This enhanced disclosure is intended to provide security holders with additional, specific information upon which to evaluate the boards of directors and nominating committees of the companies in which they invest. Further, we intend that increased transparency of the nomination process will make that process more understandable to security holders. In particular, we are adopting a number of specific and detailed disclosure requirements because we believe that disclosure in response to each of these requirements will assist security holders in understanding each of the processes and policies of nominating committees and boards of directors regarding the nomination of candidates for director.

Detailed disclosure regarding nomination processes will provide security holders with important information regarding the management and oversight of the companies in which they invest. The specific disclosure requirements we are adopting today will cause companies to provide security holders with that information. We believe that specific, detailed disclosure requirements are necessary and appropriate to assure that investors are provided with disclosure that presents the desired degree of clarity and transparency. In the absence of these specific disclosure requirements, we believe that disclosure could be at a level of generality that would not be sufficiently useful to security holders.

Each of the requirements we are adopting today furthers the goal of providing the transparency that is necessary for security holders to understand the nomination process. For example, the rules we are adopting requiring disclosure of the following matters are necessary to give security holders a more complete overview of the nomination process for directors of the companies in which they invest:

- A company's determination whether to have a nominating committee;
- The nominating committee's charter, if any;
- The nominating committee's processes for identifying and evaluating candidates; and
- The minimum qualifications for a nominating committee-recommended nominee and any qualities and skills that the nominating committee believes are necessary or desirable for board members to possess.

In addition, as noted in the proposing release,[27] we believe that information as to whether nominating committee members are independent within the requirements of listing standards applicable to a company is meaningful to security holders in evaluating the nomination process of a company, how that process works, and the seriousness with which the nomination process is considered by a company. Further, information regarding the persons who recommended each nominee and disclosure as to whether there are third parties that receive compensation related to identifying and evaluating candidates will provide important information as to the process followed by a company.

The ability to participate in the nomination process is an important matter for security holders.[28] Accordingly, we believe that it is important for security holders to understand the specific application of the nomination processes to candidates put forward by security holders. Disclosure as to whether and how they may participate in a company's nomination process, and the manner in which their candidates are evaluated, including differences between how their candidates and how other candidates are evaluated, therefore, represents important information for security holders. Finally, an additional, specific disclosure requirement regarding the treatment of candidates put forward by large security holders or groups of security holders that have a long-term investment interest is appropriate, as it will provide investors with information that is useful in assessing the actions of the nominating committee.

2. Disclosure Requirements

The amendments we are adopting today will expand the current proxy statement disclosure regarding a company's nominating or similar committee to include:

- A statement as to whether the company has a standing nominating committee or a committee performing similar functions[29] and, if the company

[22] On May 1, 2003, we solicited public views on the Division's review of the proxy rules relating to the nomination and election of directors. *See* Release No. 34–47778 (May 1, 2003) [68 FR 24530]. In addition to receiving written comments, the Division spoke with a number of interested parties representing security holders, the business community, and the legal community. Each of the comment letters received, memoranda documenting the Division's meetings, and a summary of the comments (''Summary of Comments'') may be found in File No. S7–10–03 and on our Web site, *http://www.sec.gov.* Summary of Comments in Response to the Commission's Solicitation of Public Views Regarding Possible Changes to the Proxy Rules (July 15, 2003).

[23] *See* Summary of Comments—File No. S7–10–03.

[24] *See id.*

[25] *See id.*

[26] Prior to the effectiveness of these amendments, companies must disclose whether they have a nominating committee and, if so, whether that committee considers nominees recommended by security holders and how any such recommendations may be submitted. *See* Paragraphs (d)(1) and (d)(2) of Item 7 of Exchange Act Schedule 14A. *See also* Release No. 34–15384 (December 6, 1978) [43 FR 58522], in which the Commission adopted these disclosure standards. In the 1978 release proposing these disclosure requirements, the Commission stated generally its belief that the new disclosure requirements would facilitate improved accountability and, more specifically, that:

[I]nformation relating to nominating committees would be important to security holders because a nominating committee can, over time, have a significant impact on the composition of the board and also can improve the director selection process by increasing the range of candidates under consideration and intensifying the scrutiny given to their qualifications. Additionally, the Commission believes that the institution of nominating committees can represent a significant step in increasing security holder participation in the corporate electoral process, a subject which the Commission will consider further in connection with its continuing proxy rule re-examination.

Release No. 34–14970 (July 18, 1978) [43 FR 31945].

[27] *See* Release No. 34–48301 (August 8, 2003).

[28] *See* Release No. 34–14970 (July 18, 1978). *See also* Summary of Comments ''File No. S7–10–03 and Summary of Comments ''File No. S7–14–03.

[29] As noted earlier in this release, this disclosure currently is required under Paragraph (d)(1) of Item 7 of Exchange Act Schedule 14A.

does not have a standing nominating committee or committee performing similar functions, a statement of the basis for the view of the board of directors that it is appropriate for the company not to have such a committee and identification of each director who participates in the consideration of director nominees;[30]

• The following information regarding the company's director nomination process:[31]

• If the nominating committee has a charter, disclosure of whether a current copy of the charter is available to security holders on the company's Web site. If the nominating committee has a charter and a current copy of the charter is available to security holders on the company's Web site, disclosure of the company's Web site address. If the nominating committee has a charter and a current copy of the charter is not available to security holders on the company's Web site, inclusion of a copy of the charter as an appendix to the company's proxy statement at least once every three fiscal years. If a current copy of the charter is not available to security holders on the company's Web site, and is not included as an appendix to the company's proxy statement, identification of the prior fiscal year in which the charter was so included in satisfaction of the requirement;[32]

• If the nominating committee does not have a charter, a statement of that fact;[33]

• If the company is a listed issuer[34] whose securities are listed on a national securities exchange registered pursuant to section 6(a) of the Exchange Act[35] or in an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A(a) of the Exchange Act[36] that has independence requirements for nominating committee members, disclosure as to whether the members of the nominating committee are independent, as independence for nominating committee members is defined in the listing standards applicable to the listed issuer;[37]

• If the company is not a listed issuer,[38] disclosure as to whether each of the members of the nominating committee is independent. In determining whether a member is independent, the company must use a definition of independence of a national securities exchange registered pursuant to section 6(a) of the Exchange Act or a national securities association registered pursuant to section 15A(a) of the Exchange Act that has been approved by the Commission (as that definition may be modified or supplemented), and state which definition it used. Whatever definition the company chooses, it must apply that definition consistently to all members of the nominating committee and use the independence standards of the same national securities exchange or national securities association for purposes of nominating committee disclosure under this requirement and audit committee disclosure required under Item 7(d)(3)(iv) of Exchange Act Schedule 14A;[39]

• If the nominating committee has a policy with regard to the consideration of any director candidates recommended by security holders, a description of the material elements of that policy, which shall include, but need not be limited to, a statement as to whether the committee will consider director candidates recommended by security holders;[40]

• If the nominating committee does not have a policy with regard to the consideration of any director candidates recommended by security holders, a statement of that fact and a statement of the basis for the view of the board of directors that it is appropriate for the company not to have such a policy;[41]

• If the nominating committee will consider candidates recommended by security holders, a description of the procedures to be followed by security holders in submitting such recommendations;[42]

• A description of any specific, minimum qualifications that the nominating committee believes must be met by a nominating committee-recommended nominee for a position on the company's board of directors, and a description of any specific qualities or skills that the nominating committee believes are necessary for one or more of the company's directors to possess;[43]

• A description of the nominating committee's process for identifying and evaluating nominees for director, including nominees recommended by security holders, and any differences in the manner in which the nominating committee evaluates nominees for director based on whether the nominee is recommended by a security holder;[44]

• With regard to each nominee approved by the nominating committee for inclusion on the company's proxy card (other than nominees who are executive officers or who are directors standing for re-election), a statement as to which one or more of the following categories of persons or entities recommended that nominee: security holder, non-management director, chief executive officer, other executive

[30] *See* new Paragraph (d)(2)(i) of Item 7 of Exchange Act Schedule 14A.

[31] For the remainder of our discussion of this disclosure requirement, the term ''nominating committee'' refers to a nominating committee or similar committee or group of directors fulfilling the role of a nominating committee. That group may comprise the full board. *See* the Instruction to new Paragraph (d)(2)(ii) of Item 7 of Exchange Act Schedule 14A. If the company has a standing nominating committee or a committee fulfilling the role of a nominating committee, Item 7(d)(1) of Exchange Act Schedule 14A requires identification of the members of that committee. If the company does not have such a standing committee, new Paragraph (d)(2)(i) of Item 7 of Exchange Act Schedule 14A will require identification of each director who participates in the consideration of director nominees.

[32] *See* new Paragraph (d)(2)(ii)(A) of Item 7 of Exchange Act Schedule 14A.

[33] *See* new Paragraph (d)(2)(ii)(B) of Item 7 of Exchange Act Schedule 14A.

[34] As defined in Exchange Act Rule 10A–3 [17 CFR 240.10A–3].

[35] 15 U.S.C. 78f(a).

[36] 15 U.S.C. 78o–3(a).

[37] *See* new Paragraph (d)(2)(ii)(C) of Item 7 of Exchange Act Schedule 14A.

[38] As defined in Exchange Act Rule 10A–3.

[39] *See* new Paragraph (d)(2)(ii)(D) of Item 7 of Exchange Act Schedule 14A.

[40] *See* new Paragraph (d)(2)(ii)(E) of Item 7 of Exchange Act Schedule 14A. As adopted, this disclosure requirement specifies that the company's description of the material elements of its policy with regard to consideration of security holder candidates ''need not'' be limited to a statement as to whether the nominating committee will consider security holder-recommended candidates. This revision was made in response to a commenter's concern that the proposed requirement (that the disclosure ''shall not'' be limited to a statement as to whether the committee will consider security holder recommended candidates) implied that a company could not merely have a policy of considering security holder recommended candidates, but instead was required to put in place a more detailed policy with respect to consideration of such candidates. *See* Committee on Federal Regulation of Securities of the American Bar Association's section of Business Law (''ABA'').

[41] *See* new Paragraph (d)(2)(ii)(F) of Item 7 of Exchange Act Schedule 14A.

[42] Prior to the effectiveness of these amendments, this disclosure is required under Paragraph (d)(2) of Item 7 of Exchange Act Schedule 14A. As a result of the amendments to Item 7 of Exchange Act Schedule 14A that we are adopting today, this requirement will be moved to new Paragraph (d)(2)(ii)(G) of Item 7 of Exchange Act Schedule 14A. In addition, we are adopting a new requirement in Regulations S–B and S–K, and a new reference to that requirement in Exchange Act Forms 10–Q and 10–QSB, that will require companies to disclose any material changes to the procedures that were previously disclosed pursuant to this item. *See* new Paragraph (b) of Item 5 of Part II to Exchange Act Forms 10–Q and 10–QSB, new Paragraph (g) of Item 401 of Exchange Act Regulation S–B, and new Paragraph (j) of Item 401 of Exchange Act Regulation S–K. In those instances where a material change is implemented during the last quarter of a company's fiscal year, companies will be required to include disclosure of such change in their Exchange Act Form 10–K or 10–KSB. *See* Item 10 of Part III of Exchange Act Form 10–K, Item 9 of Part III of Exchange Act Form 10–KSB, new Paragraph (g) of Item 401 of Exchange Act Regulation S–B, and new Paragraph (j) of Item 401 of Exchange Act Regulation S–K.

[43] *See* new Paragraph (d)(2)(ii)(H) of Item 7 of Exchange Act Schedule 14A.

[44] *See* new Paragraph (d)(2)(ii)(I) of Item 7 of Exchange Act Schedule 14A.

officer, third-party search firm, or other, specified source;[45]

• If the company pays a fee to any third party or parties to identify or evaluate or assist in identifying or evaluating potential nominees, disclosure of the function performed by each such third party;[46] and

• If the company's nominating committee received, by a date not later than the 120th calendar day before the date of the company's proxy statement released to security holders in connection with the previous year's annual meeting, a recommended nominee from a security holder that beneficially owned more than 5% of the company's voting common stock for at least one year as of the date the recommendation was made, or from a group of security holders that beneficially owned, in the aggregate, more than 5% of the company's voting common stock,[47] with each of the securities used to calculate that ownership held for at least one year as of the date the recommendation was made,[48] identification of the candidate and the security holder or security holder group that recommended the candidate and disclosure as to whether the nominating committee chose to nominate the candidate, provided, however, that no such identification or disclosure is required without the written consent of both the security holder or security holder group and the candidate to be so identified.[49]

3. Comments Regarding, and Revisions to, the Proposed Disclosure Requirements

In response to our request for comment on the proposed nominating committee disclosure requirements, a majority of commenters who supported the proposed rules believed that increased disclosure about nominating committee processes would be effective in increasing security holder understanding of the nomination process,[50] board accountability,[51] board responsiveness,[52] and a company's corporate governance policies.[53] With regard to the particular components of the proposed disclosure standards, commenters provided more specific input, which we considered carefully in revising certain of the disclosure standards that we are adopting today.

a. Nominating Committee Charter

Commenters generally were of the view that summary disclosure of the material terms of the nominating committee's charter within a company's proxy statement was unnecessary and would lead to excessively lengthy proxy statements.[54] These commenters suggested that it would be adequate to identify where the charter could be found, provide the charter to security holders upon request, and/or attach the charter to the proxy statement once every three years (as is the case for audit committee charters).[55]

The disclosure standard that we are adopting today does not include the proposed requirement that companies describe the material terms of the nominating committee charter. Companies will, instead, be required to disclose whether a current copy of the charter is available to security holders on the company's Web site. Where a company does not make the charter available on its Web site, the company would be required to include a copy of the charter as an appendix to its proxy statement at least once every three fiscal years and, in those proxy statements that do not include the charter as an appendix, the company would be required to identify in which of the prior years the charter was so included. We believe that this disclosure standard will provide security holders with the information regarding a company's nominating committee that was sought in the proposal, without unduly burdening companies.

b. Independence of Nominating Committee Members

In response to the proposed disclosure requirement that listed issuers disclose any instance during the prior fiscal year in which any member of the nominating committee did not satisfy the definition of independence included in the listing standards to which the company is subject, a number of commenters suggested that we revise or delete this requirement.[56] At least one of these commenters believed that independence determinations are interpretive matters and that board members could be unaware of developments that would impact independence.[57] Another commenter suggested that we revise the disclosure requirement to conform to the recently adopted provision that requires companies to state whether members of their audit committees are independent, as defined in applicable listing standards.[58] We believe that it is appropriate to use an approach consistent with the audit committee disclosure standards. Accordingly, the disclosure standard we are adopting

[45] *See* new Paragraph (d)(2)(ii)(J) of Item 7 of Exchange Act Schedule 14A.

[46] *See* new Paragraph (d)(2)(ii)(K) of Item 7 of Exchange Act Schedule 14A.

[47] Our use of a more than 5% beneficial ownership threshold to trigger this additional disclosure obligation means that recommendations generally will be made by security holders or groups that have a reporting obligation under Exchange Act Regulation 13D [17 CFR 240.13d–240.13d–102]. Recommending security holders, like other beneficial owners, will continue to report on Exchange Act Schedule 13G [17 CFR 240.13d–102] or Exchange Act Schedule 13D [17 CFR 240.13d–101] based on their purpose or effect in acquiring or holding the company's securities. That determination is not intended to be affected by our adoption of this new disclosure obligation. In addition, we anticipate that security holders may communicate with each other in an effort to aggregate more than 5% of a company's securities before submitting a recommended candidate to a company's nominating committee. The determination as to what communications may be deemed solicitations, either subject to or exempt from the proxy rules, is based on facts and circumstances and is not intended to be affected by our adoption of this new disclosure obligation.

[48] Similar to the method used in Exchange Act Rule 14a–8 [17 CFR 240.14a–8] with regard to security holder proponents, the percentage of securities held by a recommending security holder, as well as the holding period of those securities may be determined by the company, on its own, if the security holder is the registered holder of the securities. If not, the security holder can submit one of the following to the company to evidence the required ownership and holding period:

(1) a written statement from the ''record'' holder of the securities (usually a broker or bank) verifying that, at the time the security holder made the recommendation, he or she had held the required securities for at least one year; or

(2) if the security holder has filed a Schedule 13D, Schedule 13G, Form 3 [17 CFR 249.103], Form 4 [17 CFR 249.104], and/or Form 5 [17 CFR 249.105], or amendments to those documents or updated forms, reflecting ownership of the securities as of or before the date of the recommendation, a copy of the schedule and/or form, and any subsequent amendments reporting a change in ownership level, as well as a written statement that the security holder continuously held the required securities for the one-year period as of the date of the recommendation.

See Instruction 3 to new Paragraph (d)(2)(ii)(L) of Item 7 of Item 7 of Exchange Act Schedule 14A.

[49] *See* new Paragraph (d)(2)(ii)(L) of Item 7 of Exchange Act Schedule 14A.

[50] *See, e.g.*, American Federation of State, County, and Municipal Employees (''AFSCME''); Council of Institutional Investors (''CII''); Creative Investment Research, Inc. (''CIR''); Andrew Randall; Pennsylvania State Employees' Retirement System (''SERS'').

[51] *See, e.g.*, J.A. Glynn & Co. (''J.A. Glynn''); Robert Schneeweiss.

[52] *See, e.g.*, CII; CIR.

[53] *See, e.g.*, American Community Bankers (''ACB''); California Public Employees' Retirement System (''CalPERS''); CIR; United Brotherhood of Carpenters and Joiners of America (''UBC'').

[54] *See, e.g.*, The Business Roundtable (''BRT''); Foley & Lardner (''Foley''); Independent Community Bankers Association (''ICBA''); International Paper Company (''Int'l Paper''); Jenkens & Gilchrist (''Jenkens''); McGuireWoods LLP (''McGuireWoods''); Committee on Securities Regulation of the Business Section of the New York State Bar Association (''NYSBAR''); Sullivan & Cromwell, LLP (''Sullivan''); Wells Fargo & Company (''Wells Fargo'').

[55] *See, e.g.*, ICBA; Int'l Paper; McGuireWoods; NYSBAR.

[56] *See, e.g.*, ABA; Sullivan.

[57] *See* ABA.

[58] *See* Sullivan. This disclosure requirement is set forth in Paragraph (d)(3)(iv) of Item 7 of Exchange Act Schedule 14A.

will require companies to disclose whether each member of the nominating committee is independent, as independence for nominating committee members is defined in the listing standards applicable to the listed issuer.

c. Qualifications and Skills of Candidates and Overall Board Composition

Commenters provided input with regard to the proposed requirement that companies describe the qualifications, qualities, skills, and overall composition that companies are seeking with regard to board membership. In this regard, some commenters noted that nominating committees' selection processes do not tend to be precise, and that the characteristics a nominating committee looks for may change as the composition of the board changes.[59] In consideration of these comments, the disclosure requirements we are adopting today do not include the proposed requirement that companies describe ''any specific standards for the overall structure and composition of the company's board of directors.''[60] We are adopting the remaining disclosure items substantially as proposed, as we believe that they will provide valuable information to security holders regarding the nomination process, without resulting in boilerplate disclosures.

Many commenters that supported the disclosure requirements suggested that we expand the requirements to require companies to disclose the extent to which they take into consideration diversity, in particular race and gender, in nominating candidates.[61] We have not included such a requirement in the standards we are adopting today, as we believe this particular consideration, as well as other considerations made by a company, will likely be addressed adequately by the new disclosure item requiring companies to disclose their criteria for considering board candidates. Further, we do not view it as appropriate to identify any specific criteria that a company must address in describing the qualities it looks for in board candidates.

d. Sources of Nominees

Some of the most extensive comment, particularly from the business and legal communities, arose from the proposal to require companies to identify the source of all director nominees, other than incumbent directors and executive officers.[62] Generally speaking, these commenters were of the view that, as proposed, the required disclosure would be difficult to make in a clear and accurate manner because there are multiple ''sources'' for most nominees.[63] In addition, these commenters objected to naming the specific source on the basis that this disclosure could have a ''chilling effect on the search process,''[64] would be immaterial,[65] and could imply that a nominee was unqualified to serve on the board based solely on the position held by the individual (*e.g.*, the chief executive officer) who originally recommended the nominee.[66] While some commenters recommended that we delete this provision, others recommended that we instead require disclosure of the general category of persons who recommended the nominee (*e.g.*, management or security holders).[67] Another commenter recommended that we, instead, require companies to disclose whether nominees are independent from the company and, in the case of nominees proposed by security holders, from the recommending security holders.[68]

We continue to believe that information regarding the sources of company nominees is important for security holders; however, we have revised the disclosure standard to require companies to identify the category or categories of persons or entities that recommended each nominee. In this regard, we have retained the requirement that companies specifically note those instances where a nominee was recommended by the chief executive officer of the company. In providing the required disclosure, companies should consider what category of person initially recommended, or otherwise brought to the attention of the nominating committee, each candidate. In disclosing the category of persons or entities that initially recommended a candidate to the nominating committee, companies should ensure that they identify also any person or entity that caused a particular candidate to be recommended. For example, if the chief executive officer asks a third party to evaluate a potential candidate, and that third party ultimately recommends the candidate to the nominating committee, both the chief executive officer and the third party should be identified as recommending parties in the company's disclosure. We have provided for disclosure of more than one type of source for a nominee to address the possibility of multiple sources.

e. Additional Disclosure Regarding Nominees of Large, Long-Term Security Holders

The additional disclosure requirement with regard to nominees recommended by large, long-term security holders elicited a great deal of comment from most categories of commenters. Generally, commenters from the business and legal communities recommended either deleting the disclosure requirement related to security holder recommendations altogether or increasing the beneficial ownership requirement to 5% or 10% and/or increasing the holding period to two or more years.[69] With regard to the 5% and 10% recommendations, at least one commenter noted that those recommending security holders would be required to report their beneficial ownership under Exchange Act Regulation 13D.[70]

Some of the reasons given by commenters for deleting the requirement were:

- The requirement would give special status to larger security holders;[71]
- 3% security holders could use the disclosure requirement for their own ''special interests'';[72]
- There could be more than one triggering nomination, thus resulting in complex and confusing disclosure;[73]

[59] *See, e.g.*, Foley; Jenkens; McGuireWoods; NYSBAR; Wells Fargo.

[60] Release No. 34–48301 (August 8, 2003).

[61] *See, e.g.*, Boston Common Asset Management (''Boston''); Calvert Group Ltd. (''Calvert''); Christian Brothers Investment Services (''CBIS''); Nathan Cummings Foundation (''Cummings''); Domini Social Investments LLC (''Domini''); ISIS Asset Management (''ISIS''); J.A. Glynn; James McRitchie, Editor, CorpGov.net and PERSWatch.net, Letter dated September 13, 2003 (''McRitchie2''); Mehri & Skalet PLLC (''Mehri &Skalet''); Denise L. Nappier, Connecticut State Treasurer (''Nappier''); Social Investment Forum Ltd. (''SIF''); Socially Responsible Investment Coalition (''SRIC''); William C. Thompson, Jr., Controller of the City of New York (''Thompson''); The General Board of Pension and Health Benefits of the United Methodist Church (''UMC''); Walden Asset Management (''Walden''). *See also* Jesse Smith Noyes Foundation (''Noyes''). We also received a number of letters that are substantially similar in content that supported additional disclosure describing board consideration of diversity. *See* Letter Type A (''Letter A''); Letter Type B (''Letter B'').

[62] *See, e.g.*, ABA; BRT; Intel Corporation (''Intel''); Leggett & Platt Inc. (''Leggett''); NYSBAR; Valero Energy Corporation (''Valero''); Wells Fargo.

[63] *See id.*

[64] American Society of Corporate Secretaries. *See also,* American Corporate Counsel Association (''ACCA''); Valero.

[65] *See, e.g.*, BRT.

[66] *See* Sullivan.

[67] *See* Boston; Intel; Walden.

[68] *See* ABA.

[69] *See, e.g.*, ACB; ACCA; Compass Bancshares, Inc. (''Compass''); Foley; ICBA; Intel; Int'l Paper; Jenkens; Leggett; NYSBAR; Sullivan; Wells Fargo.

[70] *See* Sullivan.

[71] *See id.*

[72] *Id. See also* ABA.

[73] *See* ABA.

• The requirement would create a bias to accept marginal director candidates;[74]

• The requirements, specifically those regarding giving the reasons for rejecting nominees, would ''chill'' nominating committee discussions;[75]

• The disclosure would not be material to security holders;[76] and

• The disclosure would raise privacy issues for the nominating security holder and candidate.[77]

Conversely, this disclosure item also received strong support from security holders, many of whom recommended that we use a lower ownership percentage trigger or a trigger no more stringent than that proposed.[78]

With regard to the requirement that the reasons for not nominating a candidate be given, many commenters believed that this requirement would be difficult to satisfy, as:

• Nominating committee determinations are not always precise in nature;

• The disclosure would expose candidates to ridicule; and/or

• The disclosure would be an invasion of privacy for all parties involved in the process, including the nominating committee members, whose deliberations would be made public as a result of the disclosure requirement.[79]

Some commenters also expressed the view that this requirement would expose the company and nominating committee members to risk of litigation and would allow security holders to ''second guess'' the nominating committee's determinations.[80] On the other hand, some commenters were of the view that we should retain the proposed disclosure standard and expand it to require companies to disclose the identity of rejected candidates, provided that the candidates consent to be so identified.[81]

After considering the comments, we continue to believe that disclosure of director recommendations made by large, long-term security holders would provide valuable information that would enable security holders to better understand the nomination process. We have re-evaluated the 3% threshold to trigger the additional disclosure requirement, however, and have determined that ownership of more than 5% is a more appropriate threshold at which to require companies to provide additional disclosure.[82] In this regard, we agree with commenters that a more than 5% ownership threshold has a significant advantage over a lesser ownership threshold, in that recommending security holders would be subject to the beneficial ownership reporting requirements of Exchange Act Regulation 13D. We anticipate that a more than 5% ownership threshold will, in many cases, simplify the process by which a company and the recommending security holder determine that the recommending security holder satisfies the ownership threshold to trigger the additional disclosure requirement and, where a security holder or group has reported its beneficial ownership prior to making a recommendation, will help to ensure that the company and its security holders have basic information about the recommending security holder. This will benefit the company by providing the nominating committee with additional information regarding the recommending security holder and, possibly, the recommended candidate. Further, security holders will benefit through having additional information upon which they can evaluate the nominating committee's response to the security holder recommendation.[83]

In addition, the new disclosure standard will require that companies make the specified disclosures, including identifying both the nominating security holder or security holder group and candidate, only in those instances where both parties have provided to the company their consent to be identified and, where the security holder or group members are not registered holders, the security holder or group members have provided proof of the required ownership and holding period to the company. A security holder or group that seeks to require a company to provide disclosure related to a recommendation would provide their written consent and proof of ownership to the company at the time of the recommendation. The company would not be obligated to request such materials where a security holder or group does not otherwise provide their consent and proof of ownership.[84]

In consideration of the concerns expressed by commenters, including those with regard to boilerplate disclosure and privacy issues, the disclosure standard that we are adopting today does not include the proposed requirement that companies disclose the specific reasons for not nominating a candidate. The requirement will, however, require that companies identify the candidate in addition to the recommending security holder or group. While not required, a company could, of course, choose to explain why it did not nominate one or all of the security holder-recommended candidates.

We also have added language to the disclosure requirement to clarify the date by which a security holder must submit a recommended nominee in order to trigger the additional disclosure requirement by the company—a security holder's recommendation would have to be received by a company's nominating committee by a date not later than the 120th calendar day before the date the company's proxy statement was released to security holders in connection with the previous year's annual meeting.[85] We have added a new instruction clarifying that, where a company has changed its meeting date by more than 30 days, a security holder must make its recommendation by a date that is a reasonable time before the company begins to print and mail its proxy statement in order to trigger the additional disclosures.[86]

In addition, we have added a new instruction that responds to commenters' suggestion that we address how the percentage of securities owned by a nominating security holder would

[74] *See* Sullivan.

[75] *See, e.g., id.*

[76] *See id.*

[77] *See id.*

[78] *See, e.g.*, American Federation of Labor and Congress of Industrial Organizations (''AFL–CIO''); CII; International Brotherhood of Teamsters (''IBT''); ISIS; McRitchie2; Nappier; SERS; Trillium Asset Management (''Trillium''); UBC. *See also* AFSCME; Association of the Bar of the City of New York's Special Committee on Mergers, Acquisitions and Corporate Control Contests (''NYCBAR'').

[79] *See, e.g.*, ABA; BRT; Foley; Jenkens; NYSBAR; Sullivan; Valero.

[80] *See, e.g.*, Compass; Foley; Jenkens.

[81] *See* CII; CIR; Cummings; SERS.

[82] On October 14, 2003, we proposed new rules regarding the inclusion of security holder nominees for director in company proxy materials. *See* Release No. 34–48626 (October 14, 2003). The issue of the appropriate ownership threshold, if any, for any such inclusion of security holder nominees for director is a separate issue from the appropriate ownership threshold for the disclosure we are adopting today and is not addressed in this release.

[83] In this regard, information available to our Office of Economic Analysis indicates that, of the companies listed on the New York Stock Exchange, Nasdaq Stock Market and American Stock Exchange as of December 31, 2002, 57% had at least one institutional security holder that beneficially owned 5% of the common equity or similar securities and 1.4% had five or more such security holders. This information was derived from filings on Exchange Act Form 13-F [17 CFR 249.325] that indicated that the filing security holder had held its securities for at least one year.

[84] *See* Instruction 4 to new Paragraph (d)(2)(ii)(L) of Item 7 of Exchange Act Schedule 14A.

[85] As is currently required in Exchange Act Rule 14a–8, this date would be calculated by determining the release date disclosed in the previous year's proxy statement, increasing the year by one, and counting back 120 calendar days.

[86] *See* Instruction 2 to new Paragraph (d)(2)(ii)(L) of Item 7 of Exchange Act Schedule 14A. The new instruction is modeled after the approach used with regard to Exchange Act Rule 14a–8 security holder proposals, as set forth in Exchange Act Rule 14a–8(e)(2) [17 CFR 240.14a–8(e)(2)].

be calculated.[87] In this regard we have clarified that the percentage of securities held by a recommending security holder may be determined by reference to the company's most recently filed quarterly or annual report (or any subsequent current report), unless the party relying on such report knows or has reason to believe that the information included in the report is inaccurate.[88]

4. Interaction of the Disclosure Requirements With Recently Revised Market Listing Standards

The New York Stock Exchange and the Nasdaq Stock Market have adopted revised listing standards that, among other requirements, require listed companies to have independent nominating committees.[89] While these listing standard changes demonstrate the importance of the nomination process and the nominating committee, and represent a strengthening of the role and independence of the nominating committee, they do not require nominating committees to consider security holder nominees or companies to make the disclosures described in this release. The disclosure requirements we are adopting today will provide useful information to security holders regarding the nomination process, the manner of evaluating nominees, and the extent to which the boards of directors of the companies in which they invest have a process for considering, and do in fact consider, security holder recommendations. Accordingly, the disclosure requirements we are adopting today will operate in conjunction with the revised listing standards regarding nominating committees.

A number of commenters from the business and legal communities recommended that we delay adoption of the proposed disclosure standards in order to allow the new listing standards regarding nominating committees to take effect.[90] We agree with these commenters that the new listing standards represent a significant strengthening of the nomination process; however, we believe that the disclosure standards that we adopt today are a necessary complement to those listing standards and, accordingly, do not believe such a delay is necessary or appropriate.

B. Disclosure Regarding the Ability of Security Holders To Communicate With Boards of Directors

1. Discussion

We are adopting new disclosure standards with regard to security holder communications with board members. These disclosure standards are intended to improve the transparency of board operations, as well as security holder understanding of the companies in which they invest.[91]

In response to our May 1, 2003 solicitation of input into the proxy process review by the Division of Corporation Finance, representatives of the business community commented that disclosure regarding the means by which security holders may communicate directly with the board of directors would address issues of accountability and responsiveness without extensive disruption or costs.[92] Comments from investors and investor advocacy groups also indicated the view that this disclosure would be helpful;[93] however, these commenters also noted that disclosure alone would not address all issues related to accountability and responsiveness.[94]

We received similar comment with regard to the proposed disclosure requirements, with no clear consensus as to whether the proposed rules would be an effective means to improve board accountability, board responsiveness, and corporate governance policies.[95] Some commenters believed the disclosure would be useful to security holders, including one commenter who expressed the view that the proposed disclosure would provide security holders with important information that provides an understanding of a company's process for communications with the board.[96] Conversely, other commenters did not believe that the proposed rules would be an effective means to improve board accountability, board responsiveness, and corporate governance policies and expressed the view that the disclosure would not be useful to security holders.[97] Overall, we continue to believe that the disclosure will provide security holders with useful information about their ability to communicate with board members. Accordingly, we are adopting, substantially as proposed, the disclosure standards related to security holder communications with board members.

2. Disclosure Requirements

We are adopting a number of specific and detailed disclosure requirements regarding communications by security holders with boards of directors because we believe that these requirements will provide security holders with a better understanding of the manner in which security holders can engage in these communications. In particular, we believe that the disclosure requirements, including whether a board has a process by which security holders can communicate with it, are necessary to give security holders a better picture of a critical component of the board's interaction with security holders. Detailed disclosure regarding that process at a company, if it exists, will be important to security holders in evaluating the nature and quality of the communications process. Further, we believe that the level of specificity in the new disclosure standards will discourage boilerplate disclosure.

Companies will be required to provide the following disclosure with regard to their processes for security holder communications with board members:

- A statement as to whether or not the company's board of directors provides a process for security holders to send communications to the board of directors and, if the company does not

[87] *See, e.g.*, ABA.

[88] *See* Instruction 1 to new Paragraph (d)(2)(ii)(L) of Item 7 of Exchange Act Schedule 14A. The new instruction is modeled after Exchange Act Rule 13d–1(j) [17 CFR 240.13d–1(j)], which specifies on what basis beneficial holders may calculate the percentage of subject securities they hold for purposes of Exchange Act Regulation 13D.

[89] *See* Release No. 34–48745 (November 4, 2003) [68 FR 64154]. While the NYSE standards include a requirement that listed companies have an independent nominating committee (NYSE section 303A(4)(a)), the Nasdaq standards provide that the nomination of directors may, alternatively, be determined by a majority of the independent directors (NASD Rule 4350(c)). In discussing the NYSE and Nasdaq standards, our references to independent nominating committees encompass this alternative under the Nasdaq standards.

[90] *See, e.g.*, ABA; ACB; ACCA; BRT; CSX Corporation; Foley; ICBA; Jenkens; Valero.

[91] In Exchange Act Release No. 34–48745 (November 4, 2003), the Commission approved a new NYSE listing standard that addresses security holder communications with board members. This standard provides that: "In order that interested parties may be able to make their concerns known to non-management directors, a company must disclose a method for such parties to communicate directly and confidentially with the presiding director [of the non-management directors] or with non-management directors as a group." *See* NYSE Section 303A(3). This method could be analogous to the method in the NYSE listing standards required by Exchange Act Rule 10A–3 regarding audit committees. *See* Commentary to NYSE Section 303A(3). Exchange Act Rule 10A–3(b)(2) requires listing standards relating to audit committees to require that "[e]ach audit committee * * * establish procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters, including procedures for the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters."

[92] *See* Summary of Comments—File No. S7–10–03.

[93] *See* id.

[94] *See* id.

[95] *See* Summary of Comments—File No. S7–14–03.

[96] *See* CIR.

[97] *See, e.g.*, ABA; BRT; Les Greenberg, Chairman, Committee of Concerned Shareholders, Letter dated August 9, 2003 ("CCS1"); Valero.

have such a process for security holders to send communications to the board of directors, a statement of the basis for the view of the board of directors that it is appropriate for the company not to have such a process;[98]

• If the company has a process for security holders to send communications to the board of directors:

• a description of the manner in which security holders can send communications to the board and, if applicable, to specified individual directors;[99] and

• If all security holder communications are not sent directly to board members, a description of the company's process for determining which communications will be relayed to board members;[100] and

• A description of the company's policy, if any, with regard to board members' attendance at annual meetings and a statement of the number of board members who attended the prior year's annual meeting.[101]

3. Comments Regarding, and Revisions to, the Proposed Disclosure Requirements

a. Scope of the Disclosure Requirement

We received a number of comments suggesting that we clarify the application of the disclosure requirements to communications with the board by officers, directors, employees, and agents of the company who also own company securities.[102] We do not believe that all communications from officers, directors, employees, and agents of the company are the types of communications that the disclosure standards should capture. We have, therefore, added a general instruction to the new disclosure requirements clarifying that:

• Communications from an officer or director of the company will not be viewed as security holder communications for purposes of the disclosure requirement;[103] and

• Communications from an employee or agent of the company will be viewed as security holder communications for purposes of the disclosure requirement only if those communications are made solely in such employee's or agent's capacity as a security holder.[104]

In response to our request for comment as to whether the new disclosure standard should apply to communications made in connection with security holder proposals submitted pursuant to Exchange Act Rule 14a–8, one commenter suggested that it would be ''inappropriate'' to exclude Exchange Act Rule 14a–8 proposals from the new disclosure standard;[105] however, other commenters suggested that Exchange Act Rule 14a–8 communications should be expressly excluded.[106] In particular, one commenter noted that, ''[b]oth the security holder proponent and the company are subject to specific, detailed requirements, conditions and deadlines, including regulation of the content of statements about the proposal * * * There is no need to impose another disclosure requirement on this process.''[107] We agree that the current disclosure requirements with regard to security holder proposals are adequate to inform security holders of how they may communicate with boards via that mechanism. Accordingly, we have expressly excluded security holder proposals submitted pursuant to Exchange Act Rule 14a–8, and communications made in connection with such proposals, from the definition of ''security holder communications'' for purposes of the new disclosure standard.[108]

b. Process for Communicating With Board Members

We proposed a standard that would have required companies to identify those directors to whom security holders could send communications. Commenters noted that they did not believe that it would be appropriate to include such a requirement on the basis that named directors could then be targeted for inappropriate correspondence and that some companies may not include specified recipients of security holder communications in their communications procedures.[109]

In consideration of these concerns, we have revised the disclosure requirement to specify that companies should describe how security holders can send communications to the board and, if applicable, to specified individual directors.[110] We also have added a new instruction providing that, in lieu of describing in the proxy statement the manner in which security holders may communicate with board members, the manner in which the company determines those communications that will be forwarded to board members, the company's policy regarding director attendance at annual meetings, and the number of directors who attended the prior year's annual meeting, such information may instead be placed on the company's Web site, provided that the company discloses in its proxy statement the Web site address where such information may be found.[111]

Commenters also expressed concern about the proposed disclosure item related to companies' policies with regard to ''filtering'' communications.[112] Some commenters suggested that extensive disclosure of a company's process for determining which communications are forwarded to board members would imply that a company was improperly blocking communications from security holders.[113] Such a filtering process is necessary, in the opinion of these commenters, because many security holder communications are related to company products and services, are solicitations, or otherwise relate to improper or irrelevant topics.[114] At least one commenter posited that the proposed disclosure item does not relate directly to company processes to facilitate communications with directors and should be deleted as unnecessary.[115] Another commenter suggested that we revise the disclosure requirement to clarify that purely ministerial activities, such as organizing and collating security holder communications, need not be disclosed.[116] Other commenters noted that, should we retain the disclosure requirement, we should not expand it to include the identity of the party that is responsible for filtering communications.[117]

In consideration of these comments, the disclosure item we are adopting today does not include the requirement that companies identify the department or other group within the company that is responsible for determining which communications are forwarded to

[98] *See* new Paragraph (h)(1) of Item 7 of Exchange Act Schedule 14A.

[99] *See* new Paragraph (h)(2)(i) of Item 7 of Exchange Act Schedule 14A.

[100] *See* new Paragraph (h)(2)(ii) of Item 7 of Exchange Act Schedule 14A.

[101] *See* new Paragraph (h)(3) of Item 7 of Exchange Act Schedule 14A.

[102] *See, e.g.,* Wells Fargo.

[103] *See* Instruction 1 to new Paragraph (h) of Item 7 of Exchange Act Schedule 14A.

[104] *See* id.

[105] AFSCME.

[106] *See* NYSBAR; Valero.

[107] NYSBAR.

[108] *See* Instruction 2 to new Paragraph (h) of Item 7 of Exchange Act Schedule 14A.

[109] *See* NYSBAR.

[110] *See* new Paragraph (h)(2)(i) of Item 7 of Exchange Act Schedule 14A.

[111] *See* the Instruction to new Paragraphs (h)(2) and (h)(3) of Item 7 of Exchange Act Schedule 14A.

[112] *See, e.g.,* ABA; BRT; Intel; NYSBAR; Sullivan.

[113] *See* Sullivan. *See also* ABA.

[114] *See, e.g.,* Wells Fargo.

[115] *See* ABA.

[116] *See* Sullivan.

[117] *See, e.g.,* NYSBAR; Wells Fargo.

directors. We also have added an instruction to clarify that a company's process for collecting and organizing security holder communications, as well as similar or related activities, need not be disclosed, provided that the company's process is approved by a majority of the independent directors.[118]

c. Material Actions Taken by the Board of Directors as a Result of Security Holder Communications

Many commenters expressed concern with regard to the proposal that would have required companies to describe any material action taken by the board of directors during the preceding fiscal year as a result of security holder communications.[119] Most of these commenters suggested deleting this disclosure requirement on the basis that it would be too difficult to tie board actions to specific security holder recommendations.[120] One commenter suggested that the disclosure requirement was too vague and companies would be unsure as to what actions must be disclosed.[121] In consideration of these concerns, the disclosure requirements we are adopting today do not include the proposed requirement related to material actions taken in response to security holder communications.

d. Director Attendance at Annual Meetings

In the proposing release, we asked whether there were alternative ways to achieve our objectives. We further solicited comment on whether we should provide guidance to companies or otherwise address appropriate procedures for companies to implement with regard to security holder communications with board members. We also noted that the term ''communications'' was meant to be broadly construed. Several commenters suggested that we require companies to disclose whether they have a policy regarding attendance by directors at annual meetings and provide information about annual meeting attendance by directors.[122] We believe that such a disclosure requirement would further our broad objective to provide investors with information about a company's communications policies and general responsiveness to investors' concerns.

Directors' attendance at annual meetings can provide investors with an opportunity to communicate with directors about issues affecting the company. We are adopting a requirement that companies disclose their policy with regard to director attendance at annual meetings and the number of directors who attend the annual meetings, as that disclosure will give security holders a more complete picture of a company's policies related to opportunities for communicating with directors.

C. Related Disclosure in Quarterly and Annual Reports

In response to our request for comment regarding whether material changes to a company's process for security holders to submit nominees for election as director to the company should be disclosed in periodic or current reports, a number of commenters indicated the need to provide security holders with more current information regarding that process.[123] These commenters expressed the concern that the procedures described in a company's proxy statement could change during the course of a fiscal year, and the absence of information regarding those changes could impair significantly security holders' opportunities to submit recommended nominees.[124] In response to these comments, we are adopting new disclosure standards that will require companies to report any material changes to the procedures for security holder nominations in the Exchange Act Form 10–Q, 10–QSB, 10–K, or 10–KSB filed for the period in which the material change occurs.[125] We also are including an instruction clarifying that, for purposes of this disclosure obligation, adoption of procedures by which security holders may recommend nominees to a company's board of directors, where the company previously disclosed that it did not have in place such procedures, will constitute a material change.[126]

D. Investment Companies

The new disclosure requirements regarding board nominating committees and security holders' communications with members of boards will apply to proxy statements of investment companies.[127] Investment companies currently are required to comply with Exchange Act Schedule 14A when soliciting proxies, including proxies relating to the election of directors.[128] Item 22(b)(14)(iv) of Exchange Act Schedule 14A requires investment companies to disclose the same information about nominating committees that currently is required for operating companies by Item 7(d)(2).[129] As with operating companies, the enhanced transparency provided by the amendments is intended to provide security holders with additional, specific information upon which to evaluate the boards of directors and nominating committees of the investment companies in which they invest. Commenters generally supported the application of the proposed

[118] *See* the Instruction to new Paragraph (h)(2)(ii) of Item 7 of Exchange Act Schedule 14A.

[119] *See, e.g.,* ABA; ACB; ACCA; Warren J. Archer (''Archer''); BRT; DKW Law Group; Domini; Foley; Intel; Int'l Paper; Jenkens; NYCBAR; NYSBAR.

[120] *See, e.g.,* ABA; BRT; Domini; Foley; Intel; Int'l Paper; Jenkens; NYCBAR; NYSBAR.

[121] *See* NYSBAR.

[122] *See* Amalgamated Bank and its Long View Funds (''Amalgamated''); Boston; CBIS; CII; Granary Foundation (''Granary''); Letter B; Maine Retirement System; McRitchie2; SERS; SIF; Walden. *See also* Connie Hansen.

[123] *See, e.g.,* AFL–CIO; AFSCME; Amalgamated; CalPERS; CII; CIR; Cummings; IBT; Int'l Paper; McRitchie2; SERS; SIF; Smith; Trillium; UBC.

[124] *See* id.

[125] *See* new Paragraph (b) of Item 5 of Part II to Exchange Act Forms 10–Q and 10–QSB, new Paragraph (g) of Item 401 of Exchange Act Regulation S–B, and new Paragraph (j) of Exchange Act Regulation S–K. In those instances where a material change is implemented during the last quarter of a company's fiscal year, companies will be required to include disclosure of the change in their Exchange Act Form 10–K or 10–KSB. *See* Item 10 of Part III of Exchange Act Form 10–K, Item 9 of Part III of Exchange Act Form 10–KSB, new Paragraph (g) of Item 401 of Exchange Act Regulation S–B, and new Paragraph (j) of Item 401 of Exchange Act Regulation S–K.

[126] *See* Instruction 2 to new Paragraph (g) of Item 401 of Exchange Act Regulation S–B and new Paragraph (j) of Item 401 of Exchange Act Regulation S–K.

[127] *See* Paragraphs (e) of Item 7 and (b) of Item 22 of Exchange Act Schedule 14A. The disclosure requirements will apply to business development companies as well as investment companies registered under the Investment Company Act of 1940 (''Investment Company Act),'' except where otherwise noted. Business development companies are a category of closed-end investment company that are not registered under the Investment Company Act, but are subject to certain provisions of that Act. *See* sections 2(a)(48) and 54–65 of the Investment Company Act [15 U.S.C. 80a–2(a)(48) and 80a–53 – 64].

[128] *See* Investment Company Act Rule 20a–1 [17 CFR 270.20a–1] (requiring investment companies to comply with Regulation 14A [17 CFR 240.14a–1—240.14a–101]), Schedule 14A, and all other rules and regulations adopted pursuant to section 14(a) of the Exchange Act [15 U.S.C. 78n] that would be applicable to a proxy solicitation if it were made in respect of a security registered pursuant to section 12 of the Exchange Act [15 U.S.C. 78l]).

[129] Investment companies are subject to Items 7 and 22(b) of Exchange Act Schedule 14A when soliciting proxies regarding the election of directors. Currently, in lieu of the disclosure required by Paragraphs (a)–(d)(2) of Item 7, investment companies must provide the information required by Paragraph (b) of Item 22. *See* Paragraph (e) of Item 7. We are amending Paragraph (e) of Item 7 to apply the disclosure requirements regarding nominating committees in Paragraph (d)(2) of Item 7 to investment companies, and deleting the current disclosure requirement regarding nominating committees in Paragraph (b)(14)(iv) of Item 22 as duplicative.

disclosure requirements to investment companies.[130]

The rules that we are adopting will require disclosure as to whether or not the members of an investment company's nominating committee are ''interested persons'' of the company as defined in section 2(a)(19) of the Investment Company Act,[131] rather than independent under the listing standards of a national securities exchange or national securities association, as in the case of operating companies.[132] We are requiring disclosure with respect to the section 2(a)(19) test for investment companies because that test is tailored to capture the broad range of affiliations with investment advisers, principal underwriters, and others that are relevant to ''independence'' in the case of investment companies. Commenters generally supported the use of this test for independence in the case of investment companies.[133] Similarly, with respect to the instruction that states that in describing a company's process for determining which communications will be relayed to board members, collecting and organizing security holder communications need not be disclosed provided that the company's process is approved by a majority of the independent directors, we are specifying in the case of investment companies that the approval required is of a majority of the directors who are not ''interested persons'' under section 2(a)(19).[134]

As with operating companies, investment companies will be required to state which one or more of certain categories of persons or entities recommended each nominee who is approved by the nominating committee for inclusion on the company's proxy card.[135] However, in recognition of the fact that investment companies are generally externally managed by an investment adviser, the categories will include the following: security holder, director, chief executive officer, other executive officer, or employee of the investment company's investment adviser, principal underwriter, or any affiliated person of the investment adviser or principal underwriter. With respect to the disclosure requirement regarding nominees recommended by large, long-term security holders, we are adopting an instruction clarifying that, for a registered investment company, the percentage of securities held by a recommending security holder may be determined by reference to the company's most recent report on Form N–CSR.[136]

Finally, as with operating companies, we are requiring a registered investment company to provide disclosure regarding material changes to the procedures for security holder nominations of directors. This information will be provided in Form N–CSR.[137]

III. Paperwork Reduction Act

A. Background

The amendments to Exchange Act Schedule 14A contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[138] We published a notice requesting comment on the collection of information requirements in the proposing release, and we submitted these requirements to the Office of Management and Budget for review in accordance with the PRA.[139] The titles for the collections of information are:

(1) ''Proxy Statements—Regulation 14A (Commission Rules 14a–1 through 14a–15 and Schedule 14A)'' (OMB Control No. 3235–0059);

(2) ''Information Statements—Regulation 14C (Commission Rules 14c–1 through 14c–7 and Schedule 14C)'' [140] (OMB Control No. 3235–0057);

(3) ''Rule 20a–1 under the Investment Company Act of 1940, Solicitations of Proxies, Consents and Authorizations'' (OMB Control No. 3235–0158); [141]

(4) ''Form 10–K'' (OMB Control No. 3235–0063);

(5) ''Form 10–KSB'' (OMB Control No. 3235–0420);

(6) ''Form 10–Q'' (OMB Control No. 3235–0070);

(7) ''Form 10–QSB'' (OMB Control No. 3235–0416);

(8) ''Regulation S–K'' (OMB Control No. 3235–0071);

(9) ''Regulation S–B'' (OMB Control No. 3235–0417); and

(10) ''Form N–CSR'' (OMB Control No. 3235–0570).[142]

These regulations, forms and schedules were adopted pursuant to the Securities Act, Exchange Act and Investment Company Act and set forth the disclosure requirements for annual and quarterly reports and proxy and information statements filed by companies to ensure that investors are informed.[143] The hours and costs associated with preparing, filing, and sending these forms and schedules constitute reporting and cost burdens imposed by each collection of 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 control number.

B. Summary of Amendments

Under the amendments, we are expanding the disclosure that currently is required in company proxy or information statements regarding the activities of a company's nominating committee. The new disclosure requirements also will require disclosure in proxy or information statements regarding the policies and procedures regarding security holder communications with boards of directors. We are adopting new requirements for disclosure of company policies with regard to board members' attendance at annual meetings and the number of board members who attended the prior year's annual meeting, as well

[130] *See, e.g.,* ABA; AFL–CIO; Investment Company Institute (''ICI'').

[131] 15 U.S.C 80a–2(a)(19).

[132] New Paragraph (b)(14)(ii) of Item 22 of Exchange Act Schedule 14A.

[133] *See, e.g.,* ABA; ICI.

[134] *See* the Instruction to new Paragraph (h)(2)(ii) of Item 7 of Exchange Act Schedule 14A.

[135] *See* new Paragraph (d)(2)(ii)(J) of Item 7 of Exchange Act Schedule 14A.

[136] *See* Instruction 1 to new Paragraph (d)(2)(ii)(L) of Item 7 of Exchange Act Schedule 14A. In the case of business development companies, which are not required to file reports on Form N–CSR, the percentage of securities would be determined by reference to the company's reports on Exchange Act Forms 10–K and 10–Q.

[137] *See* new Item 9 of Form N–CSR. We are renumbering current Items 9 and 10 as Items 10 and 11, and are adopting a conforming change to Rule 30a–2 under the Investment Company Act to reflect the renumbering of Item 10. Because business development companies file reports on Forms 10–K and 10–Q rather than Form N–CSR, they would provide the required disclosure on these forms.

[138] 44 U.S.C. 3501 *et seq.*

[139] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[140] Exchange Act Schedule 14C requires disclosure of some items of Exchange Act Schedule 14A. Therefore, while we are not amending the text of Exchange Act Schedule 14C, the amendments to Exchange Act Schedule 14A must also be reflected in the PRA burdens for Exchange Act Schedule 14C.

[141] Investment Company Act Rule 20a–1 requires registered investment companies to comply with Exchange Act Regulation 14A or 14C, as applicable. Therefore, the annual responses to Investment Company Act Rule 20a–1 reflect the number of proxy and information statements that are filed by registered investment companies.

[142] The changes to the collections of information entitled ''Regulation S–B'' and ''Regulation S–K'' are reflected in our estimates for Forms 10–Q, 10–QSB, 10–K and 10–KSB. Therefore, we are not changing the burden estimates for those titles.

[143] The proxy rules apply to domestic companies with equity securities registered under section 12 of the Exchange Act and to investment companies registered under the Investment Company Act. There is a discrepancy between the number of annual reports by reporting companies and the number of proxy and information statements filed with the Commission in any given year. This is because some companies are subject to reporting requirements by virtue of section 15(d) of the Exchange Act [15 U.S.C. 78o], and therefore are not covered by the proxy rules. In addition, companies that are not listed on a national securities exchange or the Nasdaq Stock Market may not hold annual meetings and therefore would not be required to file a proxy or information statement.

as disclosure in periodic reports of any material changes to company procedures for security holder nominations. Compliance with the disclosure requirements will be mandatory. There will be no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential.

C. Responses to Request for Comments

We requested comment on the PRA analysis contained in the proposing release. While we received only two comment letters specifically addressing our PRA analysis, we received several comment letters responding to the proposals in general.[144] Although we are adopting the disclosure amendments substantially as proposed, we have made some additions and subtractions to the disclosure requirements in the final rules that will have the net effect of reducing the amount of required disclosures. In response to comments, we are adding a requirement for companies to provide updates in periodic reports regarding material changes to the procedures for security holder nominations. We also are adding a requirement for companies to describe in proxy and information statements their policies regarding director attendance at annual meetings and the number of directors who attended the prior year's annual meeting. After considering the comments, we are not adopting certain of the proposed disclosure requirements. For example, the amendments will not require companies to describe:

- The material terms of their nominating committee charters;
- Any specific standards for the overall structure and composition of the board of directors;
- The specific reasons for the nominating committee's determination not to include a security holder candidate as a nominee; and
- Any material action taken by the board of directors as a result of communications from security holders.

The majority of commenters did not comment on the hours and cost burdens for companies that will result from the amendments; however, we received two comment letters that specifically addressed the paperwork burdens in the proposing release.[145] One commenter noted that given the number of unlisted companies, it is difficult to estimate the compliance burden.[146] One commenter believed that the proposing release underestimated the disclosure burden for the proposed rules, and that the burden could be as high as 12 hours for the first year and 4 hours for following years.[147]

The actual paperwork burden for some companies could be 5 hours per schedule; however, in devising the estimates we considered a number of factors. For example, large companies may incur a greater paperwork burden than small companies, the pre-existing disclosure requirements may enable companies to streamline the collection of information necessary for the new disclosure, and the amendments contain more simplified disclosure requirements from the proposals, which will lower the paperwork burden. After considering these factors, we do not believe that 5 hours per schedule is an accurate burden estimate. However, after considering the comments indicating that we may have underestimated slightly the burden, we are not reducing our burden estimates for proxy and information statements, even though the amendments will reduce the amount of disclosure from that which would have been required by the proposals.

D. Paperwork Burden Estimates

As a result of the changes described above, the reporting and cost burden estimates for the collections of information have changed. While we are not changing the paperwork burden estimates for proxy and information statements, we are adding collection of information requirements in periodic reports under the Exchange Act.

1. Proxy and Information Statements

For purposes of the PRA, we estimated the annual incremental paperwork burden for proxy and information statements under the new disclosure requirements to be approximately 19,557 hours of company personnel time and a cost of approximately $1,955,700 for the services of outside professionals.[148] That estimate included the time and the cost of preparing disclosure that has been appropriately reviewed by executive officers, the disclosure committee, in-house counsel, outside counsel, and members of the board of directors.[149] Because the current rules already require a company to collect and disclose information about the composition, functions, policies and procedures of its nominating committee, we factored the pre-existing burdens into our estimates for the new disclosure requirements.

We derived the paperwork burden estimates by estimating the total amount of time it will take a company to prepare and review the disclosure. We estimated that, over a three-year time period, the annual incremental disclosure burden will be an average of 3 hours per schedule. This estimate was based on two assumptions:

- Companies spend a greater amount of time preparing the disclosure in year one and will become more efficient in preparing the disclosure over the following two years; [150] and
- Not all proxy and information statements involve action to be taken with respect to the election of directors, and therefore will not require companies to provide the disclosure.[151]

This estimate represents the average burden for all companies, both large and small, that are subject to the proxy rules. We expect that the disclosure burden could be greater for larger companies and lower for smaller companies. Table 1, below, illustrates the incremental annual compliance burden of the collection of information in hours and in cost for proxy and information statements under the Exchange Act and Investment Company Act.

[144] *See* discussion of comments in Part II of this release and Summary of Comments—S7–14–03.

[145] *See* ABA; Stoecklein Law Group (''Stoecklein'').

[146] *See* ABA.

[147] *See* Stoecklein. Using those numbers as inputs into our model, the annual incremental disclosure burden over a three-year time period would be an average of 5 hours per schedule. Accordingly, using the commenter's assumptions, the annual incremental paperwork burden for all companies to prepare the disclosure would be approximately 32,595 hours of company personnel time and a cost of approximately $3,259,500 for the services of outside professionals.

[148] For convenience, the estimated PRA hour burdens have been rounded to the nearest whole number.

[149] In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $300 as the cost of outside professionals that assist companies in preparing these disclosures.

[150] We estimated that it will take 6 hours to prepare the disclosure in year one, 3.13 hours in year two, and 2.03 hours in year three.

[151] We estimate that 20% of all proxy and information statements do not include disclosure about directors, and therefore would not include the disclosure required by the amendments. This estimate is based on the proportion of preliminary proxy statements to definitive proxy statements filed in our 2002 fiscal year (2,555/8,692=29%), which has been adjusted downward by 9% to reflect the fact that some preliminary proxy statements contain disclosure about directors. This estimate is based on the rationale that preliminary proxy statements are less likely to contain disclosure about directors because registrants do not file preliminary proxy statements for security holder meetings where the matters to be acted upon involve only the election of directors or other specified matters. *See* Exchange Act Rule 14a–6 [17 CFR 240.14a–6].

TABLE 1: CALCULATION OF INCREMENTAL PRA BURDEN ESTIMATES

	Annual responses	Incremental hours/form	Incremental burden	75% company	25% professional	$300 prof. cost
	(A)	(B)	(C)=(A) × (B)	(D)=(C) × 0.75	(E)=(C) × 0.25	(F)=(E) × $300
SCH 14A	7,188	3.00	21,564.00	16,173	5,391.00	$1,617,300.00
SCH 14C	446	3.00	1,338.00	1,004	334.50	100,350.00
Rule 20a–1	1,058	3.00	3,174.00	2,381	793.50	238,050.00
Total	8,692			19,557		1,955,700.00

2. Periodic Reports

For purposes of the PRA, we estimate the annual incremental paperwork burden for Exchange Act periodic reports under the new disclosure requirements to be approximately 1,311 hours of company personnel time and a cost of approximately $131,100 for the services of outside professionals. We estimate that, over a three-year time period, the annual incremental disclosure burden would be an average of 0.01 hours per Form 10–K and Form 10–KSB, 0.04 hours per Form 10–Q and Form 10–QSB, and 0.03 hours per Form N–CSR.[152] This estimate was based on the following two assumptions:

- Each year, 20% of reporting companies will change materially the procedures by which security holders may recommend nominees to the board of directors;[153] and
- It will take .25 hours to prepare the disclosure regarding material changes to security holder nomination procedures.

Table 2, below, illustrates the incremental annual compliance burden of the collection of information in hours and in cost for periodic reports under the Exchange Act and Investment Company Act.

TABLE 2: CALCULATION OF INCREMENTAL PRA BURDEN ESTIMATES

	Annual responses	Incremental hours/form	Incremental burden	75% company	25% professional	$300 prof. cost
	(A)	(B)	(C)=(A) × (B)	(D)=(C) × 0.75	(E)=(C) × 0.25	(F)=(E) × $300
10–K	8,484	0.01	84.84	64	21.21	$6,000.00
10–KSB	3,820	0.01	38.20	29	9.55	3,000.00
10–Q	23,743	0.04	949.72	712	237.43	71,000.00
10–QSB	11,299	0.04	451.96	339	112.99	34,000.00
N–CSR	7,400	0.03	222.00	167	55.50	17,000.00
Total				1,311		$131,000.00

E. Request for Comment

We request comment in order to (a) evaluate whether the collections of information are necessary for the proper performance of our functions, including whether the information will have practical utility, (b) evaluate the accuracy of our estimate of the burden of the collections of information, (c) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected, and (d) evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology.[154]

Any member of the public may direct to us any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, with reference to File No. S7–14–03. Requests for materials submitted to the OMB by us with regard to this collection of information should be in writing, refer to File No. S7–14–03, and be submitted to the Securities and Exchange Commission, Office of Filings and Information Services, Branch of Records Management, 450 Fifth Street, NW., Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

IV. Cost-Benefit Analysis

A. Background

On August 8, 2003 we proposed new disclosure requirements intended to increase the transparency of nominating committee functions and the processes by which security holders may communicate with boards of directors of the companies in which they invest.[155] These proposals followed substantially the recommendations made by the Division of Corporation Finance in a staff report dated July 15, 2003.[156] In

[152] For example, the average burden per form for Form 10–K is calculated as follows: [(8,484 Form 10–Ks × 5% frequency of disclosure × 0.25 hours)/8,484 Form 10–Ks] = .01. The calculation for Form 10–Q is as follows: [(23,743 Form 10–Qs × 15% frequency of disclosure × 0.25 hours)/23,743 Form 10–Qs] = .04. The calculation for Form N–CSR is as follows: [(7,400 Form N–CSRs × 10% frequency of disclosure × 0.25 hours)/7,400 Form N–CSRs] = .03. The discrepancy in quotients is due to the fact that operating companies report on a quarterly basis, while registered management investment companies report on a semi-annual basis.

[153] Under our assumptions, 5% of operating companies will provide the disclosure each quarter (for a total of 20%), while 10% of registered management investment companies will provide the information semi-annually (for a total of 20%).

[154] Comments are requested pursuant to 44 U.S.C. 3506(c)(2)(B).

[155] *See* Release No. 34–48301 (August 8, 2003).

[156] *See* Staff Report: Review of the Proxy Process Regarding the Nomination and Election of Directors, Division of Corporation Finance (July 15, 2003). The Division's Staff Report, detailing the results of its review of the proxy process related to

Continued

preparing this report and developing its recommendations, the Division considered the input of members of the investing, business, legal, and academic communities.[157]

The Commission is adopting the amendments substantially as proposed. The disclosures are designed to build upon existing disclosure requirements to elicit a more detailed discussion of the policies, procedures, and activities of nominating committees as well as the means by which security holders can communicate with boards of directors. We recognize that the amendments will create costs and benefits to the economy. We are sensitive to the costs and benefits imposed by our rules, and we have identified certain costs and benefits of the amendments.

B. Benefits

The primary benefit of the amendments will be to assist security holders in better understanding the policies and procedures that companies maintain to nominate directors and to enable security holders to communicate with directors. In the proposing release, we requested comment on the potential benefits of the proposed rules and have considered the responses. Two commenters in support of the proposals indicated that the rules would provide useful information with little cost.[158] Other commenters believed that the proposed rules would provide little or no benefit.[159] Commenters also suggested that the proposed rules would not provide meaningful disclosure [160] or that the disclosure would be boilerplate.[161]

To address the commenters' concerns, the amendments are drafted in a manner designed to avoid boilerplate and to elicit meaningful disclosure. The more precise disclosure requirements will promote more transparent disclosure among a cross-section of public companies because they will have greater certainty as to the required disclosure. In addition, increasing the amount and quality of information available to investors concerning board policies and procedures also may improve investor confidence because investors may be able to identify the degree to which companies are responsive to security holder concerns. One commenter noted that the proposed disclosure would provide potential investors and potential directors with the ability to compare companies before they choose to invest or agree to be considered for directorship.[162] By providing greater transparency of board policies, we anticipate that the new requirements will allow investors to make more informed choices when deciding how to invest.

To the extent that security holders would prefer to invest in companies with boards that maintain policies and procedures that provide greater security holder oversight, companies may have incentives to adopt more meaningful policies and procedures regarding director nominations and security holder communications. The amendments also may encourage companies to consider their existing policies in relation to policies adopted by other companies and could facilitate competition among companies to adopt policies that reduce costs to security holders. For example, if security holder board nominees are given adequate consideration through the nomination process, a security holder may choose to submit its candidate to the nominating committee rather than incur the expense of soliciting proxies to support the nominee. Moreover, disclosure of the manner in which security holders can send communications to the board may encourage a less costly communications process for providing recommendations to the board than the current process embodied in Exchange Act Rule 14a–8.

C. Costs

The amendments will impose new disclosure requirements on companies subject to the proxy rules.[163] The new requirements are designed to build upon existing disclosure requirements regarding the composition, functions, policies, and procedures of company nominating committees. Thus, the task of complying with the new disclosure requirements could be performed by the same person or group of persons responsible for compliance under the current rules. One commenter believed that the costs would be different on a company-by-company basis and that the disclosure requirements would not result in substantial additional costs for companies that already disclose and have a security holder communications process.[164] For companies that do not have a system in place, the commenter believed that the proposal would burden company resources by requiring a person to administer the communications system.[165] One commenter believed that both the cost of submitting candidates to the nominating committee and the probable benefits are minimal.[166] This commenter noted that, even if a nominating committee were composed entirely of independent directors, it would not likely nominate a candidate recommended by security holders.[167]

For purposes of the PRA, we estimate the annual incremental paperwork burden for all companies to prepare the new disclosure to be approximately 20,868 hours of company personnel time (2.4 hours per company),[168] which translates into an estimated cost of $1,774,000 ($204 per company).[169] We also estimate a cost of approximately $2,086,700 for the services of outside professionals ($240 per company).[170] The figures above include the estimated burdens for investment companies. For investment companies, we estimate the incremental burden to be 2,548 hours of company personnel time (2.4 hours per company),[171] which translates into an estimated cost of $216,580 ($204 per company). We also estimate a cost for investment companies of approximately $255,050 for the services of outside professionals ($240 per company).[172]

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the nomination and election of directors, can be found on our Web site at *http://www.sec.gov.*

[157] On May 1, 2003, the Commission solicited public views on the Division's review of the proxy rules relating to the nomination and election of directors. *See* Release No. 34–47778 (May 1, 2003). In addition to receiving written comments, the Division spoke with a number of interested parties representing security holders, the business community, and the legal community. Each of the comment letters received, memoranda documenting the Division's meetings, and a summary of the comments are included on the Commission's Web site, *http://www.sec.gov,* in comment file number S7–10–03. Summary of Comments in Response to the Commission's Solicitation of Public Views Regarding Possible Changes to the Proxy Rules (July 15, 2003).

[158] *See* AFL–CIO; IBT.

[159] *See, e.g.*, CCS1; Eliot Cohen; Phillip Goldstein, Opportunity Partners L.P., Kimball & Winthrop, Inc. (''Goldstein''); James McRitchie, Editor, CorpGov.net and PERSWatch.net, Letter dated August 17, 2003 (''McRitchie1'').

[160] *See, e.g.*, J. Robert Brown, Jr., Professor, University of Denver College of Law (''Brown''); BRT; CCS1; Goldstein; Stoecklein.

[161] *See, e.g.*, ACB; Brown; Granary; Letter B; McRitchie1; Nappier; Stoecklein; Valero.

[162] *See* Eleanor Bloxham, President, The Value Alliance and Corporate Governance Alliance.

[163] The proxy rules apply to domestic companies with equity securities registered under section 12 of the Exchange Act and to investment companies registered under the Investment Company Act.

[164] *See* ABA.

[165] *See id.*

[166] *See* Robert C. Pozen.

[167] *See id.*

[168] 20,868 hours/ 8,692 companies = 2.4 hours per company.

[169] We estimate the average hourly cost of in-house personnel to be $85. This cost estimate is based on data obtained from *The SIA Report on Management and Professional Earnings in the Securities Industry* (October 2001).

[170] $2,086,700/8,692 companies = $240 per company. In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $300 as the cost of outside professionals that assist companies in preparing these disclosures.

[171] 2,548 hours/1,058 companies = 2.4 hours per company.

[172] $255,050/1,058 companies = $240 per company.

On balance, we believe these estimates are reasonable.

To the extent that the new disclosures influence corporate behavior, however, the costs would extend beyond a disclosure burden. For example, companies may incur additional costs in instituting more responsive policies and procedures regarding director nominations and security holder communications. We have not included these costs in our analysis of the additional disclosure requirement, but have sought comment regarding such costs and related matters. After considering the comments, which are summarized below, we continue to believe that the amendments provide useful information to investors. The amendments do not require a company to adopt any particular policies and procedures. To the extent that a company voluntarily incurs the expense of adopting more responsive board policies, we believe that those costs are justified by the benefits of such policies.

In response to our request for comment, one commenter noted that the initial cost of implementing and maintaining procedures would be high.[173] This commenter identified the indirect cost of the increase in the amount of time that must be spent monitoring corporate activities, which may detract from effective management of the company.[174] The commenter identified costs such as legal fees associated with structuring and reviewing policies, the cost of management time related to structuring policies, fees paid to accountants for managerial and financial statement creation and review, opportunity costs related to missed business opportunities, and other costs.[175]

One commenter believed that the rules could be ''extremely costly, time-consuming and potentially disruptive.''[176] This commenter explained that the rules could increase significantly the number of communications that are sent to board members and the more corporate directors must divide their time, the less effectively they will discharge their competing functions.[177] Two commenters believed that the disclosure requirements would increase the burden on boards and discourage service.[178]

D. Small Business Issuers

Although the new rules apply to small business issuers, we do not anticipate any disproportionate impact on small business issuers. Like other issuers, small business issuers should incur relatively minor compliance costs to fulfill their disclosure obligations, and should find it unnecessary to hire extra personnel. Several commenters supported requiring small companies to provide the disclosure.[179]

Other commenters recommended granting outright relief to small businesses or deferring application of the rules to small businesses until the Commission evaluates the impact of the rules.[180] One commenter suggested that small companies that have established procedures could comply voluntarily.[181] These commenters sought relief for small businesses for several reasons. One commenter recommended that we not apply the rules to small businesses because it will ''waste the money of small publicly held companies, create confusion * * * and provide no useful service to security holders.''[182] This commenter noted that there does not appear to be a significant number of instances where major security holders of small publicly held companies were unable to communicate with boards of directors, particularly because major security holders are in management and/or on the board.[183] Further, this commenter was of the view that, because major unaffiliated security holders potentially can impact the trading price of small business securities, management and the board ''take the views of major unaffiliated security holders very seriously.''[184] This commenter also noted that the board and security holders will not agree on every aspect of running the company and it is not clear why small businesses need to set up a procedure for every communication with security holders.[185]

One commenter noted that increasing the incremental cost to small businesses by a certain number of hours and assuming that the staff is available already is flawed.[186] One commenter believed that the benefits of increased disclosure would not outweigh a small business issuer's need to reduce expenses.[187] This commenter noted that, as regulatory requirements increase, small businesses will have to hire additional staff or reduce the number of hours spent managing the company.[188]

After reviewing these comments, we are convinced that issues relating to corporate accountability and security holder rights affect small companies as much as they affect large companies. The concerns raised by the commenters addressed primarily the cost of establishing and maintaining new board policies and procedures—not the cost of the disclosure required by the amendments. A small business issuer is not required to adopt new policies and procedures under the amendments. Thus, we do not believe that applying the rules to small business issuers would be inconsistent with the policies underlying the small business issuer disclosure system.

V. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act[189] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The amendments are intended to make information about the functions of a company's nominating committee of the board of directors, as well as the ability of security holders to communicate with the board of directors, more transparent to investors. We anticipate that the new rules will provide increased information upon which to evaluate the functioning of boards of directors and make investment decisions. The rules may affect competition because they will allow companies to consider their existing policies in relation to policies adopted by other companies. As a result, companies may compete to adopt policies that effectively balance security holder and director interests and, therefore, attract investors.

We have identified one possible area where the rules could potentially place a burden on competition. The new disclosure will enable investors to compare companies' policies and procedures for director nominations and communications with directors. To the

[173] *See* CIR.
[174] *See id.*
[175] *See id.*
[176] *See* Foley.
[177] *See id.*
[178] *See* CIR; Foley.
[179] *See* CalPERS; CII; Granary; Letter B; McRitchie2; SERS; SIF; Trillium.
[180] *See* ABA; Archer; Foley; Stoecklein.
[181] *See* ABA.
[182] *See* Archer.
[183] *See id.*
[184] *See id.*
[185] *See id.*
[186] *See id.*
[187] *See* Stoecklein.
[188] *See id.*
[189] 15 U.S.C. 78w(a)(2).

extent that investors may place a premium on a company that provides security holders with favorable director nomination and communication procedures, a company will be at a disadvantage to other companies that maintain more favorable procedures.

Section 2(b) of the Securities Act,[190] section 3(f) of the Exchange Act [191] and section 2(c) of the Investment Company Act [192] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. We believe the disclosure will make information about the operation of a company's director nomination process more transparent. In addition, disclosure regarding the means by which security holders may communicate directly with a company's board of directors may increase security holder involvement in the companies in which they invest. As a result, we believe that investors may be able to evaluate a company's board of directors more effectively and make more informed investment decisions. We believe that, as a consequence of these developments, there may be some positive impact on the efficiency of markets and capital formation. The possibility of these effects, their magnitude if they were to occur, and the extent to which they will be offset by the costs of the new rules, are difficult to quantify.

We requested comment on these matters in the proposing release. We received no comments in response to these requests.

VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis has been prepared in accordance with the Regulatory Flexibility Act.[193] This FRFA involves amendments to Items 7 and 22 of Exchange Act Schedule 14A, Item 5 of Exchange Act Forms 10–Q and 10–QSB, Form N–CSR, and Item 401 of Regulations S–B and S–K. The amendments will expand the disclosure that currently is required in company filings regarding the functions of a company's nominating committee. In addition, the amendments will require disclosure regarding the policies and procedures regarding security holder communications with boards of directors. An Initial Regulatory Flexibility Analysis was prepared in accordance with the Regulatory Flexibility Act [194] in conjunction with the proposing release. The proposing release included the IRFA and solicited comments on it.

A. Need for the Amendments

The amendments are designed to address the growing concern among security holders over the accountability of corporate directors and the lack of sufficient security holder input into decisions made by the boards of directors of the companies in which they invest. Currently, companies must state whether they have a nominating committee and, if so, must identify the members of the nominating committee, state the number of committee meetings held, and briefly describe the functions performed by such committees.[195] In addition, if a company has a nominating or similar committee, it must state whether the committee considers nominees recommended by security holders and, if so, must describe how security holders may submit recommended nominees.[196] The amendments are designed to build upon existing disclosure requirements to elicit a more detailed discussion of the policies and procedures of nominating committees as well as the means by which security holders can communicate with boards of directors.

The amended disclosure requirements are designed to enhance transparency of the policies of boards of directors, with the goal of providing security holders a better understanding of the functions and activities of the boards of the companies in which they invest. For example, the amendments relating to nominating committees will require disclosure about the source of director candidates and the level of scrutiny accorded to each candidate. The amendments relating to security holder communications with directors may strengthen the association among security holders and directors by providing security holders with a better understanding of the means by which they may communicate with board members. For example, the amended disclosure will inform security holders of the manner in which to send communications to the board. Moreover, the amendments aim to enable investors to better evaluate a company's responsiveness to security holder issues and inquiries by illuminating the degree of director involvement with security holder concerns.

B. Significant Issues Raised by Public Comment

The Initial Regulatory Flexibility Analysis appeared in the proposing release. We requested comment on any aspect of the IRFA, including the number of small entities that would be affected by the proposals, the nature of the impact, how to quantify the number of small entities that would be affected, and how to quantify the impact of the proposals. While we did not receive any comments that responded directly to the IRFA, we did receive comments addressing the impact on small business issuers. Several commenters supported requiring small companies to provide the disclosure.[197] In that regard, commenters stated, ''enhanced disclosure would be of great value to all types of investors.''[198] Other commenters recommended granting outright relief to small businesses or deferring application of the rules to small businesses until the Commission evaluates the impact of the rules.[199] One commenter suggested that small companies that have established procedures could comply voluntarily.[200]

Those commenters who sought relief for small businesses did so for several reasons. One commenter recommended that we not apply the rules to small businesses because it will ''waste the money of small publicly held companies, create confusion * * * and provide no useful service to security holders.''[201] This commenter noted that there does not appear to be a significant number of instances where major security holders of small publicly held companies were unable to communicate with boards of directors, particularly because major security holders are in management and/or on the board.[202] Further, this commenter was of the view that, because major unaffiliated security holders potentially can impact the trading price of small business securities, management and the board ''take the views of major unaffiliated security holders very seriously.''[203] This commenter also noted that the board and security holders will not agree on every aspect of running the company and it is not clear why small businesses

[190] 15 U.S.C. 77b(b).

[191] 15 U.S.C. 78c(f).

[192] 15 U.S.C. 80a–2(c).

[193] 5 U.S.C. 601.

[194] 5 U.S.C. 603.

[195] *See* Paragraph (d)(1) of Item 7 of Exchange Act Schedule 14A.

[196] *See* Paragraph (d)(2) of Item 7 of Exchange Act Schedule 14A, prior to adoption of these amendments.

[197] *See* CalPERS; CII; Granary; Letter B; McRitchie2; SERS; SIF; Trillium.

[198] *See* Letter B; McRitchie2.

[199] *See* ABA; Archer; Foley; Stoecklein.

[200] *See* ABA.

[201] *See* Archer.

[202] *See id.*

[203] *See id.*

need to set up a procedure for every communication with security holders.[204]

One commenter noted that increasing the incremental cost to small businesses by a certain number of hours and assuming that the staff is available already is flawed.[205] One commenter believed that the benefits of increased disclosure would not outweigh a small business issuer's need to reduce expenses.[206] This commenter noted that, as regulatory requirements increase, small businesses will have to hire additional staff or reduce the number of hours spent managing the company.[207]

After reviewing these comments, we are convinced that issues relating to corporate accountability and security holder rights affect small companies as much as they affect large companies. The concerns raised by the commenters addressed primarily the cost of establishing and maintaining new board policies and procedures ''not the cost of the disclosure required by the amendments. A small business issuer is not required to adopt new policies and procedures under the amendments. Thus, we do not believe that applying the rules to small business issuers would be inconsistent with the policies underlying the small business issuer disclosure system. Like other issuers, small business issuers should incur relatively minor compliance costs to fulfill their disclosure obligations, and should find it unnecessary to hire extra personnel. To the extent small businesses decide to adopt such policies, they are likely to do so because they believe the benefits justify the costs.

C. Small Entities Subject to the Amendments

The amendments will affect companies that are small entities. Exchange Act Rule 0–10(a)[208] defines a company, other than an investment company, to be a ''small business'' or ''small organization'' for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year. An investment company is considered to be a ''small business'' if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[209] As discussed below, we believe that the amendments will affect approximately 805, or 32%, of the small entities that are operating companies. We believe that the amendments also will affect approximately 50 of the small entities that are investment companies.

The Commission received 8,692 separate proxy and information statements in its 2002 fiscal year. We estimate that 6,954, or 80%, of those filings involved the election of directors, and therefore will be affected by the new disclosure requirements.[210] Furthermore, we estimate that 5,257 companies are ''listed issuers'' (as defined in Exchange Act Rule 10A–3) that are subject to the proxy rules.[211] Because the relevant listing standards of national securities exchanges and Nasdaq require that listed issuers hold annual meetings, and state law provides for the election of directors at annual meetings, we estimate that at least 5,257 proxy and information statements involve elections of directors.[212] Of these proxy and information statements, less than 225 relate to operating companies and less than 25 relate to investment companies that constitute ''small entities.''[213] Therefore, we deduced that 1,697 proxy and information statements relate to the election of directors for companies that are not ''listed issuers.''[214] We estimate that approximately 580 of the proxy and information statements for operating companies that are not ''listed issuers'' will be filed by small entities affected by the new rules.[215] We also estimate that approximately 25 of the proxy and information statements for investment companies that are not ''listed issuers'' will be filed by small entities affected by the new disclosure requirements. Therefore, we estimate that the amendments will, in total, affect approximately 855 small entities.[216]

We requested comment on the number of small entities that would be impacted by our proposals, including any available empirical data. We received no responses to this request.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The amendments are expected to result in some additional costs to comply with the disclosure requirements. Because the current rules already require a company to collect and disclose information about the composition, functions, policies and procedures of its nominating committee, the disclosure should not impose significant new costs for the collection of information. Thus, the task of complying with the nominating committee disclosure could be performed by the same person or group of persons responsible for compliance under the current rules at a minimal incremental cost. Moreover, if a small entity were to maintain a process for security holders to send communications to its board of directors, company personnel would be aware of such procedures and the disclosure burden also would be minimal. If a small entity does not maintain such a process, then the disclosure will consist of a statement that the board does not have a communications process and a statement of the specific basis for the view of the board of directors that it is appropriate for the company not to have such a communications process.

To the extent that the new rules influence corporate behavior, however, the costs will extend beyond a disclosure burden. For example, companies may incur additional costs in instituting more responsive policies and procedures regarding director nominations and security holder communications. The new disclosure

[204] *See id.*

[205] *See id.*

[206] *See* Stoecklein.

[207] *See id.*

[208] 17 CFR 240.0–10(a).

[209] *Id.*

[210] We estimate that 20% of all proxy and information statements do not include disclosure about directors, and therefore would not include the disclosure required by the amendments. This estimate is based on the proportion of preliminary proxy statements to definitive proxy statements filed in our 2002 fiscal year (2,555/8,692=29%), which has been adjusted downward by 9% to reflect the fact that some preliminary proxy statements contain disclosure about directors. This estimate is based on the rationale that preliminary proxy statements are less likely to contain disclosure about directors because registrants do not file preliminary proxy statements for security holder meetings where the matters to be acted upon involve only the election of directors or other specified matters. *See* Exchange Act Rule 14a-6.

[211] We derived this estimate from the database provided by the Center for Research in Securities Prices at the University of Chicago, the Standard & Poors Research Insight Compustat Database (''Compustat''), and SEC Form 1392.

[212] *See, e.g.*, Rule 302.00 of NYSE listing standards and Rule 4350(e) of Nasdaq listing standards.

[213] Data obtained from Compustat indicates that there are less than 225 listed operating companies that are small entities. Information compiled by the Commission staff indicates that there are less than 25 listed investment companies that are small entities.

[214] 6,536–5,257=1,697.

[215] This estimate is based on the proportion of small entities that are reporting companies (2,500) to the total domestic companies quoted on the OTCBB or the Pink Sheets (7,317). We derived the latter figure from individuals within the organization called *http://www.pinksheets.com* and from the OTCBB Web site at *http://www.otcbb.com.*

[216] The calculation for the total number of small entities is as follows: 225 listed operating companies + 25 listed investment companies + 580 non-listed operating companies + 25 non-listed investment companies = 855.

requirements, however, do not mandate any specific procedures.

For purposes of the PRA, we estimated that it will take an average of approximately 3 hours per year for companies, large and small, to comply with the new disclosure requirements. We estimated that 75% of the compliance burden will be carried by the company internally and that 25% of the compliance burden will be carried by outside professionals retained by the company. Thus, we estimate the annual incremental paperwork burden for a company subject to the proxy rules will be 2.4 hours per company, which translates into an estimated cost of $204 per company,[217] and a cost of approximately $240 per company for the services of outside professionals.[218] A cost of $444 per small entity may not, however, constitute a significant economic impact. That conclusion is based on our analysis of 1,245 small entities available on the Compustat database. We found that the average revenue of those small entities is $2.07 million per company. Therefore, on average, the estimated $444 compliance expense will constitute approximately .02% of a small entity's revenues, based on the Compustat data.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposals, we considered the following alternatives:

(a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(b) The clarification, consolidation, or simplification of disclosure for small entities;

(c) The use of performance rather than design standards; and

(d) An exemption for small entities from coverage under the proposals.

The Commission has considered a variety of reforms to achieve its regulatory objectives. As one possible approach, we considered requiring companies to include the security holder's proxy card and materials in the company mailing. Alternatively, we considered amending or reinterpreting Exchange Act Rule 14a–8(i)(8)[219] to allow security holder proposals requesting access to the company's proxy card for the purpose of making nominations. We believe that the current disclosure requirements are the most cost-effective approach to address specific concerns related to small entities because the proposals build on existing disclosure requirements.

We have drafted the new disclosure rules to require clear and straightforward disclosure of a company's policies and procedures regarding the nomination of directors and security holder communications. Separate disclosure requirements for small entities would not yield the disclosure that we believe to be necessary to achieve our objectives. In addition, the informational needs of investors in small entities are typically as great as the needs of investors in larger companies. Therefore, it did not seem appropriate to develop separate requirements for small entities involving clarification, consolidation, or simplification of the disclosure.

We have used design rather than performance standards in connection with the new requirements for two reasons. First, based on our past experience, we believe the disclosure will be more useful to investors if there are enumerated informational requirements. The mandated disclosures may be likely to result in a more focused and comprehensive discussion. Second, more precise disclosure requirements will promote more consistent disclosure among a cross-section of public companies because they will have greater certainty as to the required disclosure. In addition, more precise disclosure requirements will improve our ability to enforce the rules. Therefore, adding to the disclosure requirements in existing proxy and information statements appears to be the most effective method of eliciting the disclosure.

VII. Statutory Basis and Text of Amendments

The amendments are being adopted pursuant to sections 2,[220] 6,[221] 7,[222] 10,[223] and 19[224] of the Securities Act, sections 3(b),[225] 12, 13,[226] 14, 15, 23(a)[227] and 36[228] of the Exchange Act, as amended, and sections 8,[229] 20(a),[230] 30,[231] 31,[232] and 38[233] of the Investment Company Act, as amended.

List of Subjects

17 CFR Parts 228, 229, 240 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of the Amendments

■ In accordance with the foregoing, the Securities and Exchange Commission amends Title 17, chapter II of the Code of Federal Regulations as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

■ 1. The general authority citation for Part 228 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

■ 2. Amend § 228.401 by adding paragraph (g) to read as follows:

§ 228.401 (Item 401) Directors, Executive Officers, Promoters and Control Persons.

* * * * *

(g) Describe any material changes to the procedures by which security holders may recommend nominees to the registrant's board of directors, where those changes were implemented after the registrant last provided disclosure in response to the requirements of Item 7(d)(2)(ii)(G) of Schedule 14A (§ 240.14a–101), or this Item.

Instructions to paragraph (g) of Item 401:

1. The disclosure required in paragraph (g) need only be provided in a registrant's quarterly or annual reports.

2. For purposes of paragraph (g), adoption of procedures by which security holders may recommend nominees to the registrant's board of directors, where the registrant's most recent disclosure in response to the requirements of Item 7(d)(2)(ii)(G) of Schedule 14A (§ 240.14a–101), or this Item, indicated that the registrant did not have in place such procedures, will constitute a material change.

[217] We estimate the average hourly cost of in-house personnel to be $85. This cost estimate is based on data obtained from *The SIA Report on Management and Professional Earnings in the Securities Industry* (October 2001).

[218] In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $300 as the cost of outside professionals that assist companies in preparing these disclosures.

[219] 17 CFR 240.14a–8(i)(8).

[220] 15 U.S.C. 77b.

[221] 15 U.S.C. 77f.

[222] 15 U.S.C. 77g.

[223] 15 U.S.C. 77j.

[224] 15 U.S.C. 77s.

[225] 15 U.S.C. 78c(b).

[226] 15 U.S.C. 78m.

[227] 15 U.S.C. 78w(a).

[228] 15 U.S.C. 78mm.

[229] 15 U.S.C. 80a–8.

[230] 15 U.S.C. 80a–20(a).

[231] 15 U.S.C. 80a–29.

[232] 15 U.S.C. 80a–30.

[233] 15 U.S.C. 80a–37.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONVERVATIONS ACT OF 1975—REGULATION S–K

■ 3. The general authority citation for Part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 79e, 79j, 79n, 79t, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 4. Amend § 229.401 by adding paragraph (j) to read as follows:

§ 229.401 (Item 401) Directors, executive officers, promoters and control persons.

* * * * *

(j) Describe any material changes to the procedures by which security holders may recommend nominees to the registrant's board of directors, where those changes were implemented after the registrant last provided disclosure in response to the requirements of Item 7(d)(2)(ii)(G) of Schedule 14A (§ 240.14a–101), or this Item.

Instructions to paragraph (j) of Item 401:

1. The disclosure required in paragraph (j) need only be provided in a registrant's quarterly or annual reports.

2. For purposes of paragraph (j), adoption of procedures by which security holders may recommend nominees to the registrant's board of directors, where the registrant's most recent disclosure in response to the requirements of Item 7(d)(2)(ii)(G) of Schedule 14A (§ 240.14a–101), or this Item, indicated that the registrant did not have in place such procedures, will constitute a material change.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 5. The general authority citation for part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 6. Amend § 240.14a–101 by:

■ a. Revising paragraph (d)(2) of Item 7;

■ b. Revising the reference ''paragraphs (a) through (d)(2)'' in paragraph (e) of Item 7 to read ''paragraphs (a) through (d)(1) and (d)(2)(ii)(D)'';

■ c. Adding paragraph (h) to Item 7;

■ d. Revising the reference ''paragraphs (d)(3), (f) and (g)'' in the introductory text of paragraph (b) of Item 22 to read ''paragraphs (d)(2) (other than (d)(2)(ii)(D)), (d)(3), (f), (g), and (h)'';

■ e. Revising the last sentence of the introductory text of paragraph (b)(14) of Item 22;

■ f. Revising paragraph (b)(14)(ii) of Item 22;

■ g. Removing the semi-colon and ''and'' from the end of paragraph (b)(14)(iii) of Item 22 and in their place adding a period;

■ h. Removing paragraph (b)(14)(iv) of Item 22; and

■ i. Adding an Instruction directly after paragraph (b)(14)(iii) of Item 22.

The additions and revisions read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

Schedule 14A Information

* * * * *

Item 7. Directors and executive officers.

* * * * *

(d)(1) * * *

(2)(i) If the registrant does not have a standing nominating committee or committee performing similar functions, state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a committee and identify each director who participates in the consideration of director nominees;

(ii) Provide the following information regarding the registrant's director nomination process:

(A) If the nominating committee has a charter, disclose whether a current copy of the charter is available to security holders on the registrant's Web site. If the nominating committee has a charter and a current copy of the charter is available to security holders on the registrant's Web site, provide the registrant's Web site address. If the nominating committee has a charter and a current copy of the charter is not available to security holders on the registrant's Web site, include a copy of the charter as an appendix to the registrant's proxy statement at least once every three fiscal years. If a current copy of the charter is not available to security holders on the registrant's Web site, and is not included as an appendix to the registrant's proxy statement, identify in which of the prior fiscal years the charter was so included in satisfaction of this requirement;

(B) If the nominating committee does not have a charter, state that fact;

(C) If the registrant is a listed issuer (as defined in § 240.10A–3) whose securities are listed on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or in an automated inter-dealer quotation system of a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78o–3(a)) that has independence requirements for nominating committee members, disclose whether the members of the nominating committee are independent, as independence for nominating committee members is defined in the listing standards applicable to the listed issuer;

(D) If the registrant is not a listed issuer (as defined in § 240.10A–3), disclose whether each of the members of the nominating committee is independent. In determining whether a member is independent, the registrant must use a definition of independence of a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78o–3(a)) that has been approved by the Commission (as that definition may be modified or supplemented), and state which definition it used. Whatever definition the registrant chooses, it must apply that definition consistently to all members of the nominating committee and use the independence standards of the same national securities exchange or national securities association for purposes of nominating committee disclosure under this requirement and audit committee disclosure required under paragraph (d)(3)(iv) of Item 7 of Schedule 14A (§ 240.14a–101);

(E) If the nominating committee has a policy with regard to the consideration of any director candidates recommended by security holders, provide a description of the material elements of that policy, which shall include, but need not be limited to, a statement as to whether the committee will consider director candidates recommended by security holders;

(F) If the nominating committee does not have a policy with regard to the consideration of any director candidates recommended by security holders, state that fact and state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a policy;

(G) If the nominating committee will consider candidates recommended by security holders, describe the procedures to be followed by security holders in submitting such recommendations;

(H) Describe any specific, minimum qualifications that the nominating committee believes must be met by a nominating committee-recommended nominee for a position on the registrant's board of directors, and describe any specific qualities or skills that the nominating committee believes are necessary for one or more of the registrant's directors to possess;

(I) Describe the nominating committee's process for identifying and evaluating nominees for director, including nominees recommended by security holders, and any differences in the manner in which the nominating committee evaluates nominees for director based on whether the nominee is recommended by a security holder;

(J) With regard to each nominee approved by the nominating committee for inclusion on the registrant's proxy card (other than nominees who are executive officers or who are directors standing for re-election), state which one or more of the following categories of persons or entities recommended that nominee: security holder,

non-management director, chief executive officer, other executive officer, third-party search firm, or other, specified source. With regard to each such nominee approved by a nominating committee of an investment company, state which one or more of the following additional categories of persons or entities recommended that nominee: security holder, director, chief executive officer, other executive officer, or employee of the investment company's investment adviser, principal underwriter, or any affiliated person of the investment adviser or principal underwriter;

(K) If the registrant pays a fee to any third party or parties to identify or evaluate or assist in identifying or evaluating potential nominees, disclose the function performed by each such third party; and

(L) If the registrant's nominating committee received, by a date not later than the 120th calendar day before the date of the registrant's proxy statement released to security holders in connection with the previous year's annual meeting, a recommended nominee from a security holder that beneficially owned more than 5% of the registrant's voting common stock for at least one year as of the date the recommendation was made, or from a group of security holders that beneficially owned, in the aggregate, more than 5% of the registrant's voting common stock, with each of the securities used to calculate that ownership held for at least one year as of the date the recommendation was made, identify the candidate and the security holder or security holder group that recommended the candidate and disclose whether the nominating committee chose to nominate the candidate, provided, however, that no such identification or disclosure is required without the written consent of both the security holder or security holder group and the candidate to be so identified.

Instructions to paragraph (d)(2)(ii)(L):

1. For purposes of Item 7(d)(2)(ii)(L), the percentage of securities held by a nominating security holder may be determined using information set forth in the registrant's most recent quarterly or annual report, and any current report subsequent thereto, filed with the Commission pursuant to this Act (or, in the case of a registrant that is an investment company registered under the Investment Company Act of 1940, the registrant's most recent report on Form N–CSR (§§ 249.331 and 274.128)), unless the party relying on such report knows or has reason to believe that the information contained therein is inaccurate.

2. For purposes of the registrant's obligation to provide the disclosure specified in Item 7(d)(2)(ii)(L), where the date of the annual meeting has been changed by more than 30 days from the date of the previous year's meeting, the obligation under that Item will arise where the registrant receives the security holder recommendation a reasonable time before the registrant begins to print and mail its proxy materials.

3. For purposes of Item 7(d)(2)(ii)(L), the percentage of securities held by a recommending security holder, as well as the holding period of those securities, may be determined by the registrant if the security holder is the registered holder of the securities. If the security holder is not the registered owner of the securities, he or she can submit one of the following to the registrant to evidence the required ownership percentage and holding period:

A. A written statement from the ''record'' holder of the securities (usually a broker or bank) verifying that, at the time the security holder made the recommendation, he or she had held the required securities for at least one year; or

B. If the security holder has filed a Schedule 13D (§ 240.13d–101), Schedule 13G (§ 240.13d–102), Form 3 (§ 249.103), Form 4 (§ 249.104), and/or Form 5 (§ 249.105), or amendments to those documents or updated forms, reflecting ownership of the securities as of or before the date of the recommendation, a copy of the schedule and/or form, and any subsequent amendments reporting a change in ownership level, as well as a written statement that the security holder continuously held the securities for the one-year period as of the date of the recommendation.

4. For purposes of the registrant's obligation to provide the disclosure specified in Item 7(d)(2)(ii)(L), the security holder or group must have provided to the registrant, at the time of the recommendation, the written consent of all parties to be identified and, where the security holder or group members are not registered holders, proof that the security holder or group satisfied the required ownership percentage and holding period as of the date of the recommendation.

Instruction to paragraph (d)(2)(ii): For purposes of Item 7(d)(2)(ii), the term ''nominating committee'' refers not only to nominating committees and committees performing similar functions, but also to groups of directors fulfilling the role of a nominating committee, including the entire board of directors.

* * * * *

(h)(1) State whether or not the registrant's board of directors provides a process for security holders to send communications to the board of directors and, if the registrant does not have such a process for security holders to send communications to the board of directors, state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a process;

(2) If the registrant has a process for security holders to send communications to the board of directors:

(i) Describe the manner in which security holders can send communications to the board and, if applicable, to specified individual directors; and

(ii) If all security holder communications are not sent directly to board members, describe the registrant's process for determining which communications will be relayed to board members; and

Instruction to paragraph (h)(2)(ii): For purposes of the disclosure required by this paragraph, a registrant's process for collecting and organizing security holder communications, as well as similar or related activities, need not be disclosed provided that the registrant's process is approved by a majority of the independent directors or, in the case of a registrant that is an investment company, a majority of the directors who are not ''interested persons'' of the investment company as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)).

(3) Describe the registrant's policy, if any, with regard to board members' attendance at annual meetings and state the number of board members who attended the prior year's annual meeting.

Instruction to paragraphs (h)(2) and (h)(3): In lieu of providing the information required by paragraphs (h)(2) and (h)(3) in the proxy statement, the registrant may instead provide the registrant's Website address where such information appears.

Instructions to paragraph (h):

1. For purposes of this paragraph, communications from an officer or director of the registrant will not be viewed as ''security holder communications.'' Communications from an employee or agent of the registrant will be viewed as ''security holder communications'' for purposes of this paragraph only if those communications are made solely in such employee's or agent's capacity as a security holder.

2. For purposes of this paragraph, security holder proposals submitted pursuant to § 240.14a–8, and communications made in connection with such proposals, will not be viewed as ''security holder communications.''

* * * * *

Item 22. Information required in investment company proxy statement.

* * * * *

(b) * * *

(14) * * * Identify the other standing committees of the Fund's board of directors, and provide the following information about each committee, including any separately designated audit committee and any nominating committee:

* * * * *

(ii) The members of the committee and, in the case of a nominating committee, whether or not the members of the committee are ''interested persons'' of the Fund as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)); and

* * * * *

Instruction to paragraph (b)(14): For purposes of Item 22(b)(14), the term ''nominating committee'' refers not only to nominating committees and committees performing similar functions, but also to groups of directors fulfilling the role of a nominating committee, including the entire board of directors.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 7. The general authority citation for Part 249 is revised to read as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 8. Amend Form 10–Q (referenced in § 249.308a), Item 5 of Part II—Other Information by:
■ a. Designating the existing text in Item 5 as paragraph (a);
■ b. Removing the period at the end of newly designated paragraph (a) and in its place adding ''; and''; and
■ c. Adding paragraph (b).
The addition reads as follows:

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–Q

* * * * *

Part II—Other Information

* * * * *

Item 5. Other Information.

* * * * *

(b) Furnish the information required by Item 401(j) of Regulation S–K (§ 229.401).

* * * * *

■ 9. Amend Form 10–QSB (referenced in § 249.308b), Item 5 to Part II—Other Information by:
■ a. Designating the existing text in Item 5 as paragraph (a);
■ b. Removing the period at the end of newly designated paragraph (a) and in its place adding ''; and''; and
■ c. Adding paragraph (b).
The addition reads as follows:

Note: The text of Form 10–QSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–QSB

* * * * *

Part II—Other Information

* * * * *

Item 5. Other Information.

* * * * *

(b) Furnish the information required by Item 401(g) of Regulation S–B (§ 228.401).

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 10. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

■ 11. Amend § 270.30a–2 by:
■ a. Revising the reference ''Item 10(a)(2)'' in paragraph (a) to read ''Item 11(a)(2)''; and
■ b. Revising the reference ''Item 10(b)'' in paragraph (b) to read ''Item 11(b).''

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 12. The authority citation for Part 274 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

■ 13. Amend Form N–CSR (referenced in §§ 249.331 and 274.128) by:
■ a. Revising the reference ''10(a)(1)'' in General Instruction D and paragraphs (c) and (f)(1) of Item 2 to read ''11(a)(1)'';
■ b. Redesignating Items 9 and 10 as Items 10 and 11;
■ c. Adding new Item 9; and
■ d. Revising the reference ''Item 10'' in the heading of the Instruction to newly redesignated Item 11 to read ''Item 11.''
The addition reads as follows:

Note: The text of Form N–CSR does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N–CSR

* * * * *

Item 9. Submission of Matters to a Vote of Security Holders.

Describe any material changes to the procedures by which shareholders may recommend nominees to the registrant's board of directors, where those changes were implemented after the registrant last provided disclosure in response to the requirements of Item 7(d)(2)(ii)(G) of Schedule 14A (17 CFR 240.14a–101), or this Item.

Instruction: For purposes of this Item, adoption of procedures by which shareholders may recommend nominees to the registrant's board of directors, where the registrant's most recent disclosure in response to the requirements of Item 7(d)(2)(ii)(G) of Schedule 14A (17 CFR 240.14a–101), or this Item, indicated that the registrant did not have in place such procedures, will constitute a material change.

* * * * *

By the Commission.

Dated: November 24, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–29723 Filed 11–26–03; 8:45 am]

Editorial Note: Federal Register Rule document 03–29723 was originally published at page 66991 in the issue of Friday, November 28, 2003. In that publication text was left out. The corrected document is republished in its entirety.

[FR Doc. R3–29723 Filed 12–10–03; 8:45 am]

BILLING CODE 1505–01–P

Federal Register

Thursday,
December 11, 2003

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1, et al.

Federal Acquisition Circular 2001–18; Final Rules

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001–18; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–18. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.arnet.gov/far.*

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–18 and specific FAR case number(s). Interested parties may also visit our Web site at *http://www.arnet.gov/far.*

Item	Subject	FAR case	Analyst
I	New Consolidated Form for Selection of Architect-Engineer Contractors	2000–608	Davis.
II	Depreciation Cost Principle	2001–026	Loeb.
III	Federal Procurement Data System	2003–019	Zaffos.
IV	Increased Federal Prison Industries, Inc. Waiver Threshold	2003–001	Nelson.
V	Debarment and Suspension—Order Placement and Option Exercise	2002–010	Goral.
VI	Insurance and Pension Costs	2001–037	Loeb.
VII	Debriefing—Competitive Acquisition	2002–014	Wise.
VIII	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these

FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2001–18 amends the FAR as specified below:

Item I—New Consolidated Form for Selection of Architect-Engineer Contractors (FAR Case 2000–608)

This final rule amends the FAR to replace SF 254, Architect-Engineer and Related Services Questionnaire, and SF 255, Architect-Engineer and Related Services Questionnaire for Specific Projects, with SF 330, Architect-Engineer Qualifications. The SF 330 reflects current architect-engineer practices in a streamlined and updated format and is organized into data blocks that readily support automation. An interagency ad hoc committee developed the SF 330. It was based on the results of a joint Federal-industry survey of the existing SFs 254 and 255 conducted by the Standing Committee on Procurement and Contracting of the Federal Facilities Council (FCC) in 1995 and published in 1996 as FCC Report Number 130, entitled ''Survey on the Use of SFs 254 and 255 for Architect-Engineer Qualifications.'' The survey's purpose was to evaluate the current use of the forms, which are used for the submission of qualifications by architect-engineer (A–E) firms interested in Federal contracts, and to identify possible improvements which would enable the existing forms to better serve the needs of Federal agencies and the A–E industry.

The policies and the SF 330, Architect-Engineer Qualifications, of this final rule are effective for all agencies and their solicitations issued on or after January 12, 2004. However, agencies may delay implementation of this final rule until June 8, 2004, at which time it becomes mandatory for all agencies and their solicitations issued on or after that date. Use of the SF 330 becomes effective January 12, 2004. However, until June 8, 2004, agencies may authorize the continued use of the SFs 254 and 255 instead.

Item II—Depreciation Cost Principle (FAR Case 2001–026)

This final rule amends FAR parts 2 and 31 to revise the depreciation cost principle (FAR 31.205–11) by improving clarity and structure and removing unnecessary and duplicative language. The case was initiated at the request of the Aerospace Industries Association. The rule does not change the allowability of depreciation costs. However, changes have been made that may effect the determination of depreciable costs for tangible personal property; for example, only residual values in excess of 10 percent need be used and residual values need not be recognized when certain depreciation methods are used. This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item III—Federal Procurement Data System (FAR Case 2003–019)

This final rule amends the FAR to revise FAR 4.602 to—

- Reflect that the information in FPDS–NG is available to the general public;
- Provide the website for FPDS–NG, which must be entered as *https://www.fpds.gov;*
- Delete the physical address for the Federal Procurement Data Center;
- Allow agencies to report all transactions between $2,500 and $25,000 to FPDS–NG as either individual contract actions or summary contract actions until September 30, 2004;
- Require all contract actions over $2,500 be reported to FPDS–NG as individual contract actions after September 30, 2004;
- Require agencies to insert the provision at 52.204–6, Data Universal Numbering System (DUNS) Number, in solicitations when the expected award amount will result in the generation of an individual contract action report and the contract does not include FAR clause 52.204–7, Central Contractor Registration; and
- Eliminate the use of the SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action

Report, and the SF 281, Federal Procurement Data System (FPDS)—Summary Contract Action Report ($25,000 or Less).

Item IV—Increased Federal Prison Industries, Inc. Waiver Threshold (FAR Case 2003–001)

The interim rule published as Item V of FAC 2001–014 is adopted as final without change. The interim rule amended the FAR to increase the Federal Prison Industries, Inc.'s (FPI) clearance exception threshold at FAR 8.606(e) from $25 to $2,500, and deleted the criterion that delivery is required within 10 days. Federal agencies are not required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold. Federal agencies, however, may continue to consider and purchase products from FPI that are at or below $2,500.

Item V—Debarment and Suspension—Order Placement and Option Exercise (FAR Case 2002–010)

This final rule amends FAR part 9 to address the placement of orders under existing contracts and agreements with contractors that have been debarred, suspended, or proposed for debarment.

Item VI—Insurance and Pension Costs (FAR Case 2001–037)

This final rule amends the FAR to revise the Insurance and Indemnification cost principle (FAR 31.205–19), and the portion of the Compensation for Personal Services cost principle relating to pension costs (FAR 31.205–6(j)). The rule revises both cost principles by improving clarity and structure, and removing unnecessary and duplicative language. Changes to FAR 31.205–6(j) include: Use of terminology consistent with Cost Accounting Standard (CAS) 412, Measurement of Pension Costs, and CAS 413, Adjustment and Allocation of Pension Cost; how the Government receives pension cost adjustment amounts for CAS-covered and non-CAS-covered contracts; revision of the allowability limitation on employee stock ownership plan (ESOP) contributions; and removal of the requirement for the contracting officer to approve the ESOP contribution rate. Changes to FAR 31.205–19 include the elimination of the U.S. Treasury discount rate provision for computing actual losses. The case was initiated as a result of comments and recommendations received from industry and Government representatives during a series of public meetings. This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item VII—Debriefing—Competitive Acquisition (FAR Case 2002–014)

This rule amends the FAR to include requirements for debriefing unsuccessful offerors under competitive proposals, as required by Sections 1014 and 1064 of the Federal Acquisition Streamlining Act of 1994, as amended, 10 U.S.C. 2305(b) and 41 U.S.C. 253b, respectively. Specifically, 10 U.S.C. 2305(b)(5)(D) and 41 U.S.C. 253b(e)(4) requires each solicitation for competitive proposals to include a statement that prescribes minimal information that shall be disclosed in postaward debriefings. This rule also amends FAR 52.212–1 and 52.215–1 to implement the statutory requirements, and the past performance debriefing requirement at FAR 15.506(d)(2), by listing all the prescribed minimal information that shall be disclosed in postaward debriefings.

Item VIII—Technical Amendments

This amendment makes editorial changes at FAR 1.201–1(b)(1); 6.302–7(c)(1)(i); 13.500(d); 25.701(b); 52.204–7, Alternate I; 52.211–2(a) and (b); and 52.225–13(b).

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–18 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–18 are effective January 12, 2004, except for Items III, IV, and VIII which are effective December 11, 2003.

Dated: December 1, 2003.

Domenic C. Cipicchio,

Acting Director, Defense Procurement and Acquisition Policy.

Dated: December 1, 2003.

Joseph A. Neurauter,

Acting Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: November 24, 2003.

Tom Leudtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 03–30471 Filed 12–10–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 36, and 53

[FAC 2001–18; FAR Case 2000–608; Item I]

RIN 9000–AJ15

Federal Acquisition Regulation; New Consolidated Form for Selection of Architect-Engineer Contractors

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to replace Standard Form (SF) 254, Architect-Engineer and Related Services Questionnaire, and SF 255, Architect-Engineer and Related Services Questionnaire for Specific Projects, with SF 330, Architect-Engineer Qualifications. The SF 330 reflects current architect-engineer practices in a streamlined and updated format, and is organized into data blocks that readily support automation.

DATES: *Effective Date:* January 12, 2004.

Applicability Date: The policies and the SF 330, Architect-Engineer Qualifications, of this final rule apply for all agencies and their solicitations issued on or after January 12, 2004. However, agencies may delay implementation of this final rule until June 8, 2004, at which time it becomes mandatory for all agencies and their solicitations issued on or after that date.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–18, FAR case 2000–608.

SUPPLEMENTARY INFORMATION:

A. Background

An interagency ad hoc committee developed the SF 330. It was based on the results of a joint Federal-industry survey of the existing Standard Forms (SFs) 254 and 255 conducted by the Standing Committee on Procurement and Contracting of the Federal Facilities Council (FCC) in 1995 and published in 1996 as FCC Report Number 130, entitled ''Survey on the Use of Standard Forms 254 and 255 for Architect-Engineer Qualifications.'' The survey's purpose was to evaluate the current use of the forms which are used for the submission of qualifications by architect-engineer (A–E) firms interested in Federal contracts, and to identify possible improvements which would enable the existing forms to better serve the needs of Federal agencies and the A–E industry. The SFs 254 and 255 have changed little since their introduction in 1975, although the variety of A–E services has greatly expanded and new technologies have dramatically changed the way A–E firms do business. The report states that Federal agencies and A–E industry overwhelmingly support a structured format for submitting A–E qualifications, because the structured format saves time and effort and allows efficient and consistent evaluations. It also recommends many specific changes to the existing forms to enhance their effectiveness and simplify their use. Both Federal and A–E industry practitioners believe that the forms need streamlining as well as updating to facilitate electronic usage. The objectives of the SF 330 are to merge the SFs 254 and 255 into a single streamlined form, expand essential information about qualifications and experience, reflect current architect-engineer disciplines, experience types and technology, eliminate information of marginal value, permit limitations on submission length, and facilitate electronic usage. On October 19, 2001, a proposed FAR rule for a new Architect-Engineer Qualifications form was published in the **Federal Register** (66 FR 53314). The final rule replaces SFs 254 and 255 with SF 330, and makes related FAR revisions in 1.106, 36.603, 36.702, 53.236–2, 53.301–254, 53.301–255, and 53.301–330. SF 330 may be used beginning on January 12, 2004. However, until June 8, 2004, agencies may authorize the continued use of SFs 254 and 255 instead.

1. *Extension of Comment Period.* The FAR Council published this FAR case as a proposed rule in the **Federal Register** on October 19, 2001 (66 FR 53314), and later published an extension on December 20, 2001 (66 FR 65792). This extended the comment period from December 18, 2001, to January 8, 2002. One hundred and ten public comments were received from industry and Federal Government agencies.

2. *Summary of Public Comments.*

A. *General Comments:*

Comment: The new form for A–E qualifications is not necessary.

Response: SFs 254 and 255 were issued in 1975 and have changed little. However, there have been significant changes in the A–E industry since then, such as new technologies, changes in codes and standards, and new laws and regulations. Also, there have been substantial changes in Government contracting processes and agencies' requirements. The SF 330 reflects these changes and provides a more streamlined presentation of essential information required by agencies for selecting A–E firms.

Comment: Significant effort will be required to convert existing databases that have been developed for use with SFs 254 and 255, especially converting the profile codes.

Response: The SF 330 utilizes much of the same information as the SFs 254 and 255, which should minimize the effort required to convert existing databases for use with the new form. All of the existing experience categories that appear on the SF 254 have been retained (although a new alphanumeric system is used for the profile codes), and new experience categories have been added to reflect industry changes since the forms were first developed in 1975. Hence, firms do not have to change the current experience categories for example projects in their databases. Commercial software products for preparing the SF 330 should allow for easy conversion of the existing numeric profile codes to the new alphanumeric profile codes. The change to an alphanumeric code system allows for future profile code additions with minimal changes to the form.

Comment: The SF 330 overemphasizes branch offices, which will increase the cost of submissions and is not relevant for a large firm with a matrix organization.

Response: The A–E selection process is focused on the specific team proposed for the contract. Although a firm may have many branch offices, a specific office is typically assigned the lead role for the work, with possible support from one or more other offices. A Government A–E selection board is mainly concerned with the qualifications of the branch offices designated to perform the work, and not the entire firm. The form and instructions were changed to only require information on the branch offices having a key role in the contract, not all offices.

Comment: The SF 330 does not work well for indefinite delivery contracts (IDCs).

Response: The SF 330 requires submission of essentially the same information as SFs 254 and 255, and can be adapted for use with IDCs in the same manner as SFs 254 and 255. In fact, the language of the SF 330 emphasizes ''contracts'' instead of ''projects'' to reflect the Federal Government's current use of IDCs instead of project-specific contracts.

Comment: What is the implementation schedule for the SF 330?

Response: The SF 330 is effective January 12, 2004. However, the Councils have recommended that agencies may delay implementation of the SF 330 until June 8, 2004, at which time it becomes mandatory for all agencies and their solicitations issued on or after that date.

Comment: Can the SF 330 be expanded?

Response: The SF 330 can be expanded in the same manner as the SFs 254 and 255. Data elements have been realigned on the final form to allow vertical expansion and contraction, depending upon the amount of information inserted. Additional sheets can be attached to certain sections.

Comment: The page numbering system is burdensome and confusing.

Response: We eliminated the requirement for insertion of page numbers on the completed form.

Comment: Will the SF 330 be available electronically and in what format?

Response: The SF 330 will be posted electronically on the General Services Administration forms website in a screen-fillable format, Adobe Acrobat Portable Document Format, and possibly other formats. Also, commercial vendors will develop customized software products for preparation of the SF 330, similar to those currently available for the SFs 254

and 255. Individual agencies will specify if electronic submission is required and the specific format to use.

B. *Comments on Part I:*

Comment: The SF 330 overemphasizes the importance of previous relationships and teams, and discourages new firms and teams.

Response: The Brooks A–E Act requires that A–E firms be selected ''on the basis of demonstrated competence.'' Hence, the proven competence of project teams is an important consideration in selecting A–E firms, which is reflected in the information on previous teaming arrangements required on the SF 330. On each contract submission, an A–E firm must decide whether to team with previous partners and subcontractors or to make new alliances.

Comment: The requirement for organizational ''flowchart'' in Section D is unclear and will be burdensome to show all branch offices.

Response: We have clarified the instructions to require an organizational chart of the proposed team showing the names and roles of all key personnel listed in Section E and the firms they are associated with, as listed in Section C. Also, only those branch offices having a key role in the contract need to be shown, not every office involved.

Comment: Revise Section E to allow more than 5 relevant projects for each key person.

Response: We disagree. Five projects are sufficient to demonstrate that a person has experience in the required type of work. The SF 330 actually provides more space for the experience of key persons than the SF 255.

Comment: Need instructions on the number, size, type, labeling, attachment and page numbering of photos for Section E (Resumes of Key Personnel Proposed for This Contract) and Section F.

Response: The Councils have deleted the instructions and check boxes for photos. If an agency requires photos, it will provide specific submission instructions.

Comment: What happens if a firm has less than 10 example projects to present in Section F?

Response: The requirement for 10 projects is the same as on the SF 255. A firm should present as many relevant projects as it can, up to a total of ten.

Comment: Clarify owner versus client in Section F. The user may be a better point of contact.

Response: The term ''project owner'' was used on the SF 255 and is used in the same manner on the SF 330. As defined in the instructions, the project owner is the agency, installation, institution, corporation or private individual for whom the project was performed. The client may or may not be the project owner, depending on what organization awarded and managed the A–E contract. The point of contact may be a person associated with the project owner or the organization that contracted for the professional services, as long as the person is familiar with the project and the A–E firm's performance on that project.

Comment: The request for fee information on past projects in Section F violates the Brooks A–E Act on using price in A–E selections.

Response: We have eliminated the requirement for fee information on past projects.

Comment: The matrix in Section G, Key Personnel Participation in Example Projects, is redundant with other information on the SF 330.

Response: The matrix does include the names of the key personnel and their proposed roles from Section E and the titles of the example projects from Section F. But, repetition of this information is necessary to clearly portray which personnel have worked together before on the example projects, which is only partially shown in Section E and Section F. Also, Section E provides space for five relevant projects for each key person, which may or may not be any of the ten example projects for the team in Section F.

Comment: Is there a page limit on Section H—Additional Information? Can photos and graphics be included?

Response: Individual agencies may impose page limitations on the overall SF 330 and/or Section H. Photos and graphics may be inserted in Section H if they are requested by the agency.

C. *Comments on Part II:*

Comment: Will the Architect-Engineer Contract Administration Support System (ACASS) be changed to reflect the SF 330?

Response: Yes. ACASS, which is DoD-wide database maintained by the Portland, Oregon, District of the U.S. Army Corps of Engineers, will be changed to accommodate the SF 330, Part II, instead of the SF 254.

Comment: How are unlisted disciplines added to block 9—Employees by Discipline?

Response: The instructions indicate that any additional unlisted disciplines should be written in under column 9.b and the function code left blank. This is similar to the write-in procedure for the SF 254.

Comment: Many specific additional disciplines should be added to the List of Disciplines (Function Codes) in the instructions.

Response: Thirty commenters recommended specific additions, deletions and/or changes in the listed disciplines. Generally, we have added, deleted, and changed disciplines if suggested by three or more commenters. Specifically, we added the following disciplines: aerial photographer, archeologist, computer programmer, materials handling engineer, geographic information system specialist, hydraulic engineer, hydrographic surveyor, land surveyor, photogrammetrist, remote sensing specialist, sanitary engineer, water resources engineer, and photo interpreter. We deleted topographic surveyor, draftsperson, geospacial information systems, and information systems engineer. We changed specification engineer to specifications writer, and separated electrical/electronics engineer into separate disciplines.

Comment: Firms need to be able to expand block 9 to allow for more than 20 disciplines.

Response: We disagree. The principal competencies and expertise of a firm, which is the focus of the Brooks A–E Act, can typically be covered by its 20 most prevalent disciplines.

Comment: How are unlisted profile codes added to block 10 (Profile of Firm's Experience and Annual Average Revenue for the Last 5 Years)?

Response: The instructions indicate that any additional unlisted relevant experience categories should be written in under column 10.b and the profile codes left blank. This is similar to the write-in procedure for the SF 254.

Comment: Many specific additional experience categories (profile codes) should be added to the List of Experience Categories (Profile Codes) in the instructions.

Response: We revised the experience categories of many profile codes so that they exactly matched all of the existing profile code experience categories on the SF 254, minimizing the conversion of existing project databases to the new form. Twenty-one commenters recommended specific additions, deletions, and/or changes in the listed profile code experience categories. We added and changed the profile code experience categories if suggested by two or more commenters. Specifically, we added the following profile code experience categories: Aerial Photography, Airborne Data and Imagery Collection and Analysis; Anti-Terrorism/Force Protection; Cartography; Charting: Nautical and Aeronautical; Digital Elevation and Terrain Model Development; Digital Orthophotography; Environmental and Natural Resource Mapping;

Environmental Planning; Geodetic Surveying: Ground and Airborne; Geospatial Data Conversion: Scanning, Digitizing, Compilation, Attributing, Scribing, Drafting; Intelligent Transportation Systems; Mapping Location/Addressing Systems; Navigation Structures and Locks; and Remote Sensing. Finally, we changed the following profile code experience categories: Aerial Photogrammetry to Photogrammetry; Design-Build to Design-Build—Preparation of Requests for Proposals; Geographic Information System Development/Analysis to Geographic Information System Services: Development, Analysis, and Data Collection; Land Boundary Surveying to Land Surveying; and Topographic Mapping to Topographic Surveying and Mapping.

Comment: Firms need to be able to expand block 10 to allow for more than 20 profile codes.

Response: We disagree. The principal competencies and expertise of a firm, which is the focus of the Brooks A–E Act, can typically be covered by its 20 most prevalent profile codes.

Comment: Are individual projects illustrating each profile code listed in block 10?

Response: No. The profile code description is inserted in column 10.b. Specific example projects are not required in Part II, although they were required in the SF 254 to illustrate each profile code.

Comment: Block 10—Profile of Firm's Experience, requires data for 5 years, but block 11—Annual Average Professional Services Revenues, requires data for 3 years. The same time period should be used for both blocks.

Response: We disagree. There is no reason that the time periods for these blocks must be the same. The 3-year period for revenues in block 11 was selected to be compatible with the same period used for measuring the revenues of small businesses. A 3-year basis for computing average revenues is sufficient to determine the annual workload capacity of a firm. On the other hand, 3 years is not long enough to characterize the type of work a firm does, especially since the design phase of some large projects can last 2 to 3 years. Therefore, 5 years was selected for block 10.

Comment: Include example projects in Part II as were included in the SF 254.

Response: We disagree. Selection boards rarely refer to the example projects in block 11 of the SF 254. Instead, selection boards focus on the example relevant projects in block 8 of the SF 255, which corresponds with Section F of SF 330, Part I.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this final rule does not change the current policy on how architect-engineer contracts are awarded or administered. This change deals directly with the information collection questionnaire, which is a paperwork change. This SF 330 provides a more streamlined format that reflects the current architect-engineer practices and eliminates requesting unnecessary information as requested by the current SFs 254 and 255.

Overall, the SF 330 will request less information than the SFs 254 and 255 and will take no longer to complete than the SFs 254 and 255. There was a comment period and no comments were received from small businesses complaining of any additional burden to them as a result of the SF 330.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the final rule contains information collection requirements. The final rule replaces the current SF 254, Architect-Engineer and Related Services Questionnaire, and the current SF 255, Architect-Engineer and Related Services Questionnaire for Specific Project, with a new SF 330, Architect-Engineer Qualifications. The current SF 254 approved information collection requirement states that it takes 1 hour to complete; and the current SF 255 approved information collection requirement states that it takes 1 hour to complete. Experience has shown that these hours are substantially underestimated. The SF 330, Architect-Engineer Qualifications, has been developed by an interagency ad hoc committee, based on Federal Facilities (FCC) Council Technical Report No. 130, ''Joint Federal-Industry Survey on the use of SFs 254 and 255 for Architect-Engineer Qualifications,'' 1996.

To respond to a public comment that the reporting burden for this SF 330 is significantly underestimated, we acknowledge that additional effort will be required initially for firms to become familiar with using the new SF 330. However, after the transition, the SF 330 should take no longer to complete than SFs 254 and 255. Overall, the SF 330 requires less information than SFs 254 and 255. The following information was deleted: duplication of data on number of personnel by discipline (SF 255, block 4 and SF 254, block 8); work currently being performed for Federal agencies (SF 255, block 9); list of all offices and number of personnel in each (SF 254, block 7); revenue information for each of last 5 years (SF 254, block 9); number of projects for each profile code (SF 254, block 10); and 30 example projects (SF 254, block 11). Also, the profile of a firm's project experience is expressed in ranges on the SF 330 instead of specific dollar amounts (SF 254, block 10). The following information was added in comparison to the SF 255: organization chart of proposed team, expanded information on the firm's example projects, and matrix of key personnel participation in example projects. However, firms typically provide much or all of this information now in project submissions. Hence, there is no meaningful burden over current practices. Accordingly, the new information collection requirement for SF 330 has been submitted to the Office of Management and Budget during the proposed rule stage and has received concurrence.

List of Subjects in 48 CFR Parts 1, 36, and 53

Government procurement.

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 36, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 36, and 53 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 in the table following the introductory paragraph by—

■ a. Removing from FAR segment 36.603 its corresponding OMB Control Number ''9000–0004 and 9000–0005'' and adding ''9000–0157'' in its place;

■ b. Removing the FAR segments ''SF 254'' and ''SF 255'' and their corresponding OMB Control Numbers ''9000–0004'' and ''9000–0005'', respectively; and

■ c. Adding FAR segment ''SF 330'' and its corresponding OMB Control Number ''9000–0157''.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 3. Amend section 36.603 by—

■ a. Revising paragraph (b);

■ b. Removing ''SF's 254 and 255'' from the last sentence of the introductory text of paragraph (c) and adding ''SF 330'' in its place; and

■ c. Removing ''254'' from paragraph (d)(1) and adding ''330, Part II'' in its place; and in paragraph (d)(2) by removing ''SF's 254 and 255'' and adding ''SF 330, Part II,'' in its place.

■ The revised text reads as follows:

36.603 Collecting data on and appraising firms' qualifications.

* * * * *

(b) *Qualifications data.* To be considered for architect-engineer contracts, a firm must file with the appropriate office or board the Standard Form 330, ''Architect-Engineer Qualifications,'' Part II, and when applicable, SF 330, Part I.

* * * * *

■ 4. Amend section 36.702 by revising paragraph (b) to read as follows:

36.702 Forms for use in contracting for architect-engineer services.

* * * * *

(b) The SF 330, Architect-Engineer Qualifications, shall be used to evaluate firms before awarding a contract for architect-engineer services:

(1) Use the SF 330, Part I—Contract-Specific Qualifications, to obtain information from an architect-engineer firm about its qualifications for a specific contract when the contract amount is expected to exceed the simplified acquisition threshold. Part I may be used when the contract amount is expected to be at or below the simplified acquisition threshold, if the contracting officer determines that its use is appropriate.

(2) Use the SF 330, Part II—General Qualifications, to obtain information from an architect-engineer firm about its general professional qualifications.

* * * * *

PART 53—FORMS

■ 5. Amend section 53.236–2 by revising the section heading; removing paragraphs (b) and (c); redesignating paragraph (d) as paragraph (c); and adding a new paragraph (b) to read as follows:

53.236–2 Architect-engineer services (SF's 252, 330, and 1421).

* * * * *

(b) *SF 330 (1/04), Architect-Engineer Qualifications.* SF 330 is prescribed for use in obtaining information from architect-engineer firms regarding their professional qualifications, as specified in 36.702(b)(1) and (b)(2).

* * * * *

■ 6. Add section 53.301–330 to read as follows:

53.301–330 Architect-Engineer Qualifications.

BILLING CODE 6820–EP–P

ARCHITECT-ENGINEER QUALIFICATIONS

OMB No.: 9000-0157
Expires: 12/31/2003

Public reporting burden for this collection of information is estimated to average a total of 29 hours per response (25 hours for Part 1 and 4 hours for Part 2), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVA), Regulatory and Federal Assistance Publications Division, GSA, Washington, DC 20405.

PURPOSE

Federal agencies use this form to obtain information from architect-engineer (A-E) firms about their professional qualifications. Federal agencies select firms for A-E contracts on the basis of professional qualifications as required by the Brooks A-E Act (40 U.S.C. 1101 - 1104) and Part 36 of the Federal Acquisition Regulation (FAR).

The Brooks A-E Act requires the public announcement of requirements for A-E services (with some exceptions provided by other statutes), and the selection of at least three of the most highly qualified firms based on demonstrated competence and professional qualifications according to specific criteria published in the announcement. The Act then requires the negotiation of a contract at a fair and reasonable price starting first with the most highly qualified firm.

The information used to evaluate firms is from this form and other sources, including performance evaluations, any additional data requested by the agency, and interviews with the most highly qualified firms and their references.

GENERAL INSTRUCTIONS

Part I presents the qualifications for a specific contract.

Part II presents the general qualifications of a firm or a specific branch office of a firm. Part II has two uses:

1. An A-E firm may submit Part II to the appropriate central, regional or local office of each Federal agency to be kept on file. A public announcement is not required for certain contracts, and agencies may use Part II as a basis for selecting at least three of the most highly qualified firms for discussions prior to requesting submission of Part I. Firms are encouraged to update Part II on file with agency offices, as appropriate, according to FAR Part 36. If a firm has branch offices, submit a separate Part II for each branch office seeking work.

2. Prepare a separate Part II for each firm that will be part of the team proposed for a specific contract and submitted with Part I. If a firm has branch offices, submit a separate Part II for each branch office that has a key role on the team.

INDIVIDUAL AGENCY INSTRUCTIONS

Individual agencies may supplement these instructions. For example, they may limit the number of projects or number of pages submitted in Part I in response to a public announcement for a particular project. Carefully comply with any agency instructions when preparing and submitting this form. Be as concise as possible and provide only the information requested by the agency.

DEFINITIONS

Architect-Engineer Services: Defined in FAR 2.101.

Branch Office: A geographically distinct place of business or subsidiary office of a firm that has a key role on the team.

Discipline: Primary technical capabilities of key personnel, as evidenced by academic degree, professional registration, certification, and/or extensive experience.

Firm: Defined in FAR 36.102.

Key Personnel: Individuals who will have major contract responsibilities and/or provide unusual or unique expertise.

SPECIFIC INSTRUCTIONS

Part I - Contract-Specific Qualifications

Section A. Contract Information.

1. Title and Location. Enter the title and location of the contract for which this form is being submitted, exactly as shown in the public announcement or agency request.

2. Public Notice Date. Enter the posted date of the agency's notice on the Federal Business Opportunity website (FedBizOpps), other form of public announcement or agency request for this contract.

3. Solicitation or Project Number. Enter the agency's solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request for this contract.

Section B. Architect-Engineer Point of Contact.

4-8. Name, Title, Name of Firm, Telephone Number, Fax (Facsimile) Number and E-mail (Electronic Mail) Address. Provide information for a representative of the prime contractor or joint venture that the agency can contact for additional information.

Section C. Proposed Team.

9-11. Firm Name, Address, and Role in This Contract. Provide the contractual relationship, name, full mailing address, and a brief description of the role of each firm that will be involved in performance of this contract. List the prime contractor or joint venture partners first. If a firm has branch offices, indicate each individual branch office that will have a key role on the team. The named subcontractors and outside associates or consultants must be used, and any change must be approved by the contracting officer. (See FAR Part 52 Clause "Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)".) Attach an additional sheet in the same format as Section C if needed.

Section D. Organizational Chart of Proposed Team.

As an attachment after Section C, present an organizational chart of the proposed team showing the names and roles of all key personnel listed in Section E and the firm they are associated with as listed in Section C.

Section E. Resumes of Key Personnel Proposed for This Contract.

Complete this section for each key person who will participate in this contract. Group by firm, with personnel of the prime contractor or joint venture partner firms first. The following blocks must be completed for each resume:

12. Name. Self-explanatory.

13. Role in This Contract. Self-explanatory.

14. Years Experience. Total years of relevant experience (block 14a), and years of relevant experience with current firm, but not necessarily the same branch office (block 14b).

15. Firm Name and Location. Name, city and state of the firm where the person currently works, which must correspond with one of the firms (or branch office of a firm, if appropriate) listed in Section C.

16. Education. Provide information on the highest relevant academic degree(s) received. Indicate the area(s) of specialization for each degree.

17. Current Professional Registration. Provide information on current relevant professional registration(s) in a State or possession of the United States, Puerto Rico, or the District of Columbia according to FAR Part 36.

18. Other Professional Qualifications. Provide information on any other professional qualifications relating to this contract, such as education, professional registration, publications, organizational memberships, certifications, training, awards, and foreign language capabilities.

19. Relevant Projects. Provide information on up to five projects in which the person had a significant role that demonstrates the person's capability relevant to her/his proposed role in this contract. These projects do not necessarily have to be any of the projects presented in Section F for the project team if the person was not involved in any of those projects or the person worked on other projects that were more relevant than the team projects in Section F. Use the check box provided to indicate if the project was performed with any office of the current firm. If any of the professional services or construction projects are not complete, leave Year Completed blank and indicate the status in Brief Description and Specific Role (block (3)).

Section F. Example Projects Which Best Illustrate Proposed Team's Qualifications for This Contract.

Select projects where multiple team members worked together, if possible, that demonstrate the team's capability to perform work similar to that required for this contract. Complete one Section F for each project. Present ten projects, unless otherwise specified by the agency. Complete the following blocks for each project:

20. Example Project Key Number. Start with "1" for the first project and number consecutively.

21. Title and Location. Title and location of project or contract. For an indefinite delivery contract, the location is the geographic scope of the contract.

22. Year Completed. Enter the year completed of the professional services (such as planning, engineering study, design, or surveying), and/or the year completed of construction, if applicable. If any of the professional services or the construction projects are not complete, leave Year Completed blank and indicate the status in Brief Description of Project and Relevance to This Contract (block 24).

23a. Project Owner. Project owner or user, such as a government agency or installation, an institution, a corporation or private individual.

23b. Point of Contact Name. Provide name of a person associated with the project owner or the organization which contracted for the professional services, who is very familiar with the project and the firm's (or firms') performance.

23c. Point of Contract Telephone Number. Self-explanatory.

24. Brief Description of Project and Relevance to This Contract. Indicate scope, size, cost, principal elements and special features of the project. Discuss the relevance of the example project to this contract. Enter any other information requested by the agency for each example project.

25. Firms from Section C Involved with This Project. Indicate which firms (or branch offices, if appropriate) on the project team were involved in the example project, and their roles. List in the same order as Section C.

Section G. Key Personnel Participation in Example Projects.

This matrix is intended to graphically depict which key personnel identified in Section E worked on the example projects listed in Section F. Complete the following blocks (see example below).

26. and 27. Names of Key Personnel and Role in This Contract. List the names of the key personnel and their proposed roles in this contract in the same order as they appear in Section E.

28. Example Projects Listed in Section F. In the column under each project key number (see block 29) and for each key person, place an "X" under the project key number for participation in the same or similar role.

29. Example Projects Key. List the key numbers and titles of the example projects in the same order as they appear in Section F.

Section H. Additional Information.

30. Use this section to provide additional information specifically requested by the agency or to address selection criteria that are not covered by the information provided in Sections A-G.

Section I. Authorized Representative.

31. and 32. Signature of Authorized Representative and Date. An authorized representative of a joint venture or the prime contractor must sign and date the completed form. Signing attests that the information provided is current and factual, and that all firms on the proposed team agree to work on the project. Joint ventures selected for negotiations must make available a statement of participation by a principal of each member of the joint venture.

33. Name and Title. Self-explanatory.

SAMPLE ENTRIES FOR SECTION G (MATRIX)

26. NAMES OF KEY PERSONNEL (From Section E, Block 12)	27. ROLE IN THIS CONTRACT (From Section E, Block 13)	28. EXAMPLE PROJECTS LISTED IN SECTION F (Fill in "Example Projects Key" section below first, before completing table. Place "X" under project key number for participation in same or similar role.)									
		1	2	3	4	5	6	7	8	9	10
Jane A. Smith	Chief Architect	X		X							
Joseph B. Williams	Chief Mech. Engineer	X	X	X	X						
Tara C. Donovan	Chief Elec. Engineer	X	X		X						

29. EXAMPLE PROJECTS KEY

NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)	NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)
1	Federal Courthouse, Denver, CO	6	XYZ Corporation Headquarters, Boston, MA
2	Justin J. Wilson Federal Building, Baton Rouge, LA	7	Founder's Museum, Newport RI

Part II - General Qualifications

See the "**General Instructions**" on page 1 for firms with branch offices. Prepare Part II for the specific branch office seeking work if the firm has branch offices.

1. Solicitation Number. If Part II is submitted for a specific contract, insert the agency's solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request.

2a-2e. Firm (or Branch Office) Name and Address. Self-explanatory.

3. Year Established. Enter the year the firm (or branch office, if appropriate) was established under the current name.

4. DUNS Number. Insert the Data Universal Numbering System number issued by Dun and Bradstreet Information Services. Firms must have a DUNS number. See FAR Part 4.6.

5. Ownership.

a. Type. Enter the type of ownership or legal structure of the firm (sole proprietor, partnership, corporation, joint venture, etc.).

b. Small Business Status. Refer to the North American Industry Classification System (NAICS) code in the public announcement, and indicate if the firm is a small business according to the current size standard for that NAICS code (for example, Engineering Services (part of NAICS 541330), Architectural Services (NAICS 541310), Surveying and Mapping Services (NAICS 541370)). The small business categories and the internet website for the NAICS codes appear in FAR Part 19. Contact the requesting agency for any questions. Contact your local U.S. Small Business Administration office for any questions regarding Business Status.

6a-6c. Point of Contact. Provide this information for a representative of the firm that the agency can contact for additional information. The representative must be empowered to speak on contractual and policy matters.

7. Name of Firm. Enter the name of the firm if Part II is prepared for a branch office.

8a-8c. Former Firm Names. Indicate any other previous names for the firm (or branch office) during the last six years. Insert the year that this corporate name change was effective and the associated DUNS Number. This information is used to review past performance on Federal contracts.

9. Employees by Discipline. Use the relevant disciplines and associated function codes shown at the end of these instructions and list in the same numerical order. After the listed disciplines, write in any additional disciplines and leave the function code blank. List no more than 20 disciplines. Group remaining employees under "Other Employees" in column b. Each person can be counted only once according to his/her primary function. If Part II is prepared for a firm (including all branch offices), enter the number of employees by disciplines in column c(1). If Part II is prepared for a branch office, enter the number of employees by discipline in column c(2) and for the firm in column c(1).

10. Profile of Firm's Experience and Annual Average Revenue for Last 5 Years. Complete this block for the firm or branch office for which this Part II is prepared. Enter the experience categories which most accurately reflect the firm's technical capabilities and project experience. Use the relevant experience categories and associated profile codes shown at the end of these instructions, and list in the same numerical order. After the listed experience categories, write in any unlisted relevant project experience categories and leave the profile codes blank. For each type of experience, enter the appropriate revenue index number to reflect the professional services revenues received annually (averaged over the last 5 years) by the firm or branch office for performing that type of work. A particular project may be identified with one experience category or it may be broken into components, as best reflects the capabilities and types of work performed by the firm. However, do not double count the revenues received on a particular project.

11. Annual Average Professional Services Revenues of Firm for Last 3 Years. Complete this block for the firm or branch office for which this Part II is prepared. Enter the appropriate revenue index numbers to reflect the professional services revenues received annually (averaged over the last 3 years) by the firm or branch office. Indicate Federal work (performed directly for the Federal Government, either as the prime contractor or subcontractor), non-Federal work (all other domestic and foreign work, including Federally-assisted projects), and the total. If the firm has been in existence for less than 3 years, see the definition for "Annual Receipts" under FAR 19.101.

12. Authorized Representative. An authorized representative of the firm or branch office must sign and date the completed form. Signing attests that the information provided is current and factual. Provide the name and title of the authorized representative who signed the form.

List of Disciplines (Function Codes)

Code	Description	Code	Description
01	Acoustical Engineer	32	Hydraulic Engineer
02	Administrative	33	Hydrographic Surveyor
03	Aerial Photographer	34	Hydrologist
04	Aeronautical Engineer	35	Industrial Engineer
05	Archeologist	36	Industrial Hygienist
06	Architect	37	Interior Designer
07	Biologist	38	Land Surveyor
08	CADD Technician	39	Landscape Architect
09	Cartographer	40	Materials Engineer
10	Chemical Engineer	41	Materials Handling Engineer
11	Chemist	42	Mechanical Engineer
12	Civil Engineer	43	Mining Engineer
13	Communications Engineer	44	Oceanographer
14	Computer Programmer	45	Photo Interpreter
15	Construction Inspector	46	Photogrammetrist
16	Construction Manager	47	Planner: Urban/Regional
17	Corrosion Engineer	48	Project Manager
18	Cost Engineer/Estimator	49	Remote Sensing Specialist
19	Ecologist	50	Risk Assessor
20	Economist	51	Safety/Occupational Health Engineer
21	Electrical Engineer	52	Sanitary Engineer
22	Electronics Engineer	53	Scheduler
23	Environmental Engineer	54	Security Specialist
24	Environmental Scientist	55	Soils Engineer
25	Fire Protection Engineer	56	Specifications Writer
26	Forensic Engineer	57	Structural Engineer
27	Foundation/Geotechnical Engineer	58	Technician/Analyst
28	Geodetic Surveyor	59	Toxicologist
29	Geographic Information System Specialist	60	Transportation Engineer
30	Geologist	61	Value Engineer
31	Health Facility Planner	62	Water Resources Engineer

List of Experience Categories (Profile Codes)

Code	Description
A01	Acoustics, Noise Abatement
A02	Aerial Photography; Airborne Data and Imagery Collection and Analysis
A03	Agricultural Development; Grain Storage; Farm Mechanization
A04	Air Pollution Control
A05	Airports; Navaids; Airport Lighting; Aircraft Fueling
A06	Airports; Terminals and Hangars; Freight Handling
A07	Arctic Facilities
A08	Animal Facilities
A09	Anti-Terrorism/Force Protection
A10	Asbestos Abatement
A11	Auditoriums & Theaters
A12	Automation; Controls; Instrumentation
B01	Barracks; Dormitories
B02	Bridges
C01	Cartography
C02	Cemeteries *(Planning & Relocation)*
C03	Charting: Nautical and Aeronautical
C04	Chemical Processing & Storage
C05	Child Care/Development Facilities
C06	Churches; Chapels
C07	Coastal Engineering
C08	Codes; Standards; Ordinances
C09	Cold Storage; Refrigeration and Fast Freeze
C10	Commercial Building *(low rise)*; Shopping Centers
C11	Community Facilities
C12	Communications Systems; TV; Microwave
C13	Computer Facilities; Computer Service
C14	Conservation and Resource Management
C15	Construction Management
C16	Construction Surveying
C17	Corrosion Control; Cathodic Protection; Electrolysis
C18	Cost Estimating; Cost Engineering and Analysis; Parametric Costing; Forecasting
C19	Cryogenic Facilities
D01	Dams *(Concrete; Arch)*
D02	Dams *(Earth; Rock)*; Dikes; Levees
D03	Desalinization *(Process & Facilities)*
D04	Design-Build - Preparation of Requests for Proposals
D05	Digital Elevation and Terrain Model Development
D06	Digital Orthophotography
D07	Dining Halls; Clubs; Restaurants
D08	Dredging Studies and Design
E01	Ecological & Archeological Investigations
E02	Educational Facilities; Classrooms
E03	Electrical Studies and Design
E04	Electronics
E05	Elevators; Escalators; People-Movers
E06	Embassies and Chanceries
E07	Energy Conservation; New Energy Sources
E08	Engineering Economics
E09	Environmental Impact Studies, Assessments or Statements
E10	Environmental and Natural Resource Mapping
E11	Environmental Planning
E12	Environmental Remediation
E13	Environmental Testing and Analysis
F01	Fallout Shelters; Blast-Resistant Design
F02	Field Houses; Gyms; Stadiums
F03	Fire Protection
F04	Fisheries; Fish ladders
F05	Forensic Engineering
F06	Forestry & Forest products
G01	Garages; Vehicle Maintenance Facilities; Parking Decks
G02	Gas Systems (Propane; Natural, Etc.)
G03	Geodetic Surveying: Ground and Airborne
G04	Geographic Information System Services: Development, Analysis, and Data Collection
G05	Geospatial Data Conversion: Scanning, Digitizing, Compilation, Attributing, Scribing, Drafting
G06	Graphic Design
H01	Harbors; Jetties; Piers, Ship Terminal Facilities
H02	Hazardous Materials Handling and Storage
H03	Hazardous, Toxic, Radioactive Waste Remediation
H04	Heating; Ventilating; Air Conditioning
H05	Health Systems Planning
H06	Highrise; Air-Rights-Type Buildings
H07	Highways; Streets; Airfield Paving; Parking Lots
H08	Historical Preservation
H09	Hospital & Medical Facilities
H10	Hotels; Motels
H11	Housing *(Residential, Multi-Family; Apartments; Condominiums)*
H12	Hydraulics & Pneumatics
H13	Hydrographic Surveying

List of Experience Categories (Profile Codes)

Code	Description
I01	Industrial Buildings; Manufacturing Plants
I02	Industrial Processes; Quality Control
I03	Industrial Waste Treatment
I04	Intelligent Transportation Systems
I05	Interior Design; Space Planning
I06	Irrigation; Drainage
J01	Judicial and Courtroom Facilities
L01	Laboratories; Medical Research Facilities
L02	Land Surveying
L03	Landscape Architecture
L04	Libraries; Museums; Galleries
L05	Lighting (Interior; Display; Theater, Etc.)
L06	Lighting (Exteriors; Streets; Memorials; Athletic Fields, Etc.)
M01	Mapping Location/Addressing Systems
M02	Materials Handling Systems; Conveyors; Sorters
M03	Metallurgy
M04	Microclimatology; Tropical Engineering
M05	Military Design Standards
M06	Mining & Mineralogy
M07	Missile Facilities (Silos; Fuels; Transport)
M08	Modular Systems Design; Pre-Fabricated Structures or Components
N01	Naval Architecture; Off-Shore Platforms
N02	Navigation Structures; Locks
N03	Nuclear Facilities; Nuclear Shielding
O01	Office Buildings; Industrial Parks
O02	Oceanographic Engineering
O03	Ordnance; Munitions; Special Weapons
P01	Petroleum Exploration; Refining
P02	Petroleum and Fuel (Storage and Distribution)
P03	Photogrammetry
P04	Pipelines (Cross-Country - Liquid & Gas)
P05	Planning (Community, Regional,
P06	Areawide and State)
P07	Planning (Site, Installation, and Project)
P08	Plumbing & Piping Design
P09	Prisons & Correctional Facilities
P10	Product, Machine Equipment Design
P11	Pneumatic Structures, Air-Support Buildings
P12	Postal Facilities
P13	Power Generation, Transmission, Distribution
P14	Public Safety Facilities
R01	Radar; Sonar; Radio & Radar Telescopes
R02	Radio Frequency Systems & Shieldings
R03	Railroad; Rapid Transit
R04	Recreation Facilities (Parks, Marinas, Etc.)
R05	Refrigeration Plants/Systems
R06	Rehabilitation (Buildings; Structures; Facilities)
R07	Remote Sensing
R08	Research Facilities
R09	Resources Recovery; Recycling
R10	Risk Analysis
R11	Rivers; Canals; Waterways; Flood Control
R12	Roofing
S01	Safety Engineering; Accident Studies; OSHA Studies
S02	Security Systems; Intruder & Smoke Detection
S03	Seismic Designs & Studies
S04	Sewage Collection, Treatment and Disposal
S05	Soils & Geologic Studies; Foundations
S06	Solar Energy Utilization
S07	Solid Wastes; Incineration; Landfill
S08	Special Environments; Clean Rooms, Etc.
S09	Structural Design; Special Structures
S10	Surveying; Platting; Mapping; Flood Plain Studies
S11	Sustainable Design
S12	Swimming Pools
S13	Storm Water Handling & Facilities
T01	Telephone Systems *(Rural; Mobile; Intercom, Etc.)*
T02	Testing & Inspection Services
T03	Traffic & Transportation Engineering
T04	Topographic Surveying and Mapping
T05	Towers *(Self-Supporting & Guyed Systems)*
T06	Tunnels & Subways

List of Experience Categories (Profile Codes)

Code	Description
U01	Unexploded Ordnance Remediation
U02	Urban Renewals; Community Development
U03	Utilities (Gas and Steam)
V01	Value Analysis; Life-Cycle Costing
W01	Warehouses & Depots
W02	Water Resources; Hydrology; Ground Water
W03	Water Supply; Treatment and Distribution
W04	Wind Tunnels; Research/Testing Facilities Design
Z01	Zoning; Land Use Studies

ARCHITECT - ENGINEER QUALIFICATIONS

PART I - CONTRACT-SPECIFIC QUALIFICATIONS

A. CONTRACT INFORMATION

1. TITLE AND LOCATION *(City and State)*

2. PUBLIC NOTICE DATE	3. SOLICITATION OR PROJECT NUMBER

B. ARCHITECT-ENGINEER POINT OF CONTACT

4. NAME AND TITLE

5. NAME OF FIRM

6. TELEPHONE NUMBER	7. FAX NUMBER	8. E-MAIL ADDRESS

C. PROPOSED TEAM

(Complete this section for the prime contractor and all key subcontractors.)

	(Check) PRIME	J-V PARTNER	SUBCON-TRACTOR	9. FIRM NAME	10. ADDRESS	11. ROLE IN THIS CONTRACT
a.				☐ CHECK IF BRANCH OFFICE		
b.				☐ CHECK IF BRANCH OFFICE		
c.				☐ CHECK IF BRANCH OFFICE		
d.				☐ CHECK IF BRANCH OFFICE		
e.				☐ CHECK IF BRANCH OFFICE		
f.				☐ CHECK IF BRANCH OFFICE		

D. ORGANIZATIONAL CHART OF PROPOSED TEAM ☐ *(Attached)*

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E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT

(Complete one Section E for each key person.)

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM

15. FIRM NAME AND LOCATION *(City and State)*

16. EDUCATION *(DEGREE AND SPECIALIZATION)*	17. CURRENT PROFESSIONAL REGISTRATION *(STATE AND DISCIPLINE)*

18. OTHER PROFESSIONAL QUALIFICATIONS *(Publications, Organizations, Training, Awards, etc.)*

19. RELEVANT PROJECTS

	(1) TITLE AND LOCATION *(City and State)*	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*
a.	(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE	☐ Check if project performed with current firm	
	(1) TITLE AND LOCATION *(City and State)*	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*
b.	(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE	☐ Check if project performed with current firm	
	(1) TITLE AND LOCATION *(City and State)*	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*
c.	(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE	☐ Check if project performed with current firm	
	(1) TITLE AND LOCATION *(City and State)*	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*
d.	(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE	☐ Check if project performed with current firm	
	(1) TITLE AND LOCATION *(City and State)*	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*
e.	(3) BRIEF DESCRIPTION *(Brief scope, size, cost, etc.)* AND SPECIFIC ROLE	☐ Check if project performed with current firm	

F. EXAMPLE PROJECTS WHICH BEST ILLUSTRATE PROPOSED TEAM'S QUALIFICATIONS FOR THIS CONTRACT *(Present as many projects as requested by the agency, or 10 projects, if not specified. Complete one Section F for each project.)*		20. EXAMPLE PROJECT KEY NUMBER
21. TITLE AND LOCATION *(City and State)*	22. YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION *(If applicable)*

23. PROJECT OWNER'S INFORMATION

a. PROJECT OWNER	b. POINT OF CONTACT NAME	c. POINT OF CONTACT TELEPHONE NUMBER

24. BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT *(Include scope, size, and cost)*

25. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT

	(1) FIRM NAME	(2) FIRM LOCATION *(City and State)*	(3) ROLE
a.			
b.			
c.			
d.			
e.			
f.			

G. KEY PERSONNEL PARTICIPATION IN EXAMPLE PROJECTS

26. NAMES OF KEY PERSONNEL (From Section E, Block 12)	27. ROLE IN THIS CONTRACT (From Section E, Block 13)	28. EXAMPLE PROJECTS LISTED IN SECTION F (Fill in "Example Projects Key" section below before completing table. Place "X" under project key number for participation in same or similar role.)									
		1	2	3	4	5	6	7	8	9	10

29. EXAMPLE PROJECTS KEY

NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)	NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)
1		6	
2		7	
3		8	
4		9	
5		10	

H. ADDITIONAL INFORMATION

30. PROVIDE ANY ADDITIONAL INFORMATION REQUESTED BY THE AGENCY. ATTACH ADDITIONAL SHEETS AS NEEDED.

I. AUTHORIZED REPRESENTATIVE

The foregoing is a statement of facts.

31. SIGNATURE	32. DATE

33. NAME AND TITLE

ARCHITECT-ENGINEER QUALIFICATIONS

1. SOLICITATION NUMBER *(If any)*

PART II - GENERAL QUALIFICATIONS

(If a firm has branch offices, complete for each specific branch office seeking work.)

2a. FIRM (OR BRANCH OFFICE) NAME		3. YEAR ESTABLISHED	4. DUNS NUMBER
2b. STREET		5. OWNERSHIP	
		a. TYPE	
2c. CITY	2d. STATE / 2e. ZIP CODE	b. SMALL BUSINESS STATUS	
6a. POINT OF CONTACT NAME AND TITLE		7. NAME OF FIRM *(If block 2a is a branch office)*	
6b. TELEPHONE NUMBER	6c. E-MAIL ADDRESS		

8a. FORMER FIRM NAME(S) *(If any)*	8b. YR. ESTABLISHED	8c. DUNS NUMBER

9. EMPLOYEES BY DISCIPLINE				10. PROFILE OF FIRM'S EXPERIENCE AND ANNUAL AVERAGE REVENUE FOR LAST 5 YEARS		
a. Function Code	b. Discipline	c. No. of Employees (1) FIRM	c. No. of Employees (2) BRANCH	a. Profile Code	b. Experience	c. Revenue Index Number *(see below)*
	Other Employees					
	Total					

11. ANNUAL AVERAGE PROFESSIONAL SERVICES REVENUES OF FIRM FOR LAST 3 YEARS *(Insert revenue index number shown at right)*	
a. Federal Work	
b. Non-Federal Work	
c. Total Work	

PROFESSIONAL SERVICES REVENUE INDEX NUMBER

1. Less than $100,000
2. $100,00 to less than $250,000
3. $250,000 to less than $500,000
4. $500,000 to less than $1 million
5. $1 million to less than $2 million
6. $2 million to less than $5 million
7. $5 million to less than $10 million
8. $10 million to less than $25 million
9. $25 million to less than $50 million
10. $50 million or greater

12. AUTHORIZED REPRESENTATIVE

The foregoing is a statement of facts.

a. SIGNATURE	b. DATE
c. NAME AND TITLE	

AUTHORIZED FOR LOCAL REPRODUCTION
MANDATORY USE DATE OF FORM 6/2004

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[FR Doc. 03–30472 Filed 12–10–03; 8:45 am]
BILLING CODE 6820–EP–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2 and 31

[FAC 2001–18; FAR Case 2001–026; Item II]

RIN 9000–AJ56

Federal Acquisition Regulation; Depreciation Cost Principle

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise the depreciation cost principle to improve clarity and structure, and remove unnecessary and duplicative language.

DATES: *Effective Date:* January 12, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb, Policy Advisor, at (202) 501–0650. Please cite FAC 2001–18, FAR case 2001–026.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 4876, January 30, 2003, with request for comments. Two respondents submitted public comments; a discussion of the major comments is provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule with changes. Differences between the proposed rule and final rule are discussed below.

B. Public Comments

FAR 31.205–11, Depreciation

FAR 31.205–11(a)

Comment 1: Both respondents suggested that the cost principle should allow flexibility in the use of residual values less than 10 percent and, therefore, the word ''shall'' in the second sentence of proposed FAR 31.205–11(a) should be changed.

Councils' response: Concur. The Councils changed the word ''shall'' in sentence two of FAR 31.205–11(a) to ''need,'' which conforms with the wording of Cost Accounting Standard (CAS) 409–50(h).

Comment 2: Respondent believes that for clarification and consistency purposes in this area, language in CAS 409–50(h) should be added to the cost principle. Respondent recommended adding the statement regarding the recognition of residual values when certain depreciation methods are used, and the term ''significantly'' when referring to the allowability of depreciation costs that reduce assets below their residual value.

Councils' response: Concur. The Councils believe the FAR should not be more restrictive than the CAS in this area. Therefore, the Councils added the following sentence as the third sentence of proposed FAR 31.205–11(a): ''Where either the declining balance method of depreciation or the class life asset depreciation range system is used, the residual value need not be deducted from capitalized cost to determine depreciable costs.'' In addition, the Councils added the term ''significantly'' to the last sentence of proposed FAR 31.205–11(a).

Comment 3: Respondent suggested deleting the last sentence of FAR 31.205–11(a) since it appears to be contradictory to the previous sentence and this requirement is already covered in the definition of ''depreciation.''

Councils' response: Do not concur. The Councils believe that the sentence does not contradict the previous sentence, and the definition of ''depreciation'' does not adequately cover this requirement.

FAR 31.205–11(d)

Comment 4: Both respondents suggested deleting the entire proposed paragraph 31.205–11(d). One respondent stated, ''Depreciation, by definition, requires a 'cost.' If there is no cost, there is no depreciation. Comments on rental or use charges are already covered in Part 45 and should be covered under 31.205–36, Rental Costs, if considered necessary, and not under the Depreciation Cost Principle.''

Councils' response: Do not concur. The Councils believe that in those instances where contractors might put an asset on their books without incurring a cost, *i.e.,* a donated asset, it must be clear that any costs associated with that asset are unallowable.

FAR 31.205–11(f)

Comment 5: Both respondents suggested deleting the third sentence of the proposed FAR 31.205–11(f). They believe the requirements in the sentence are overly prescriptive and instructional. One respondent stated, ''FAR 31.109 already provides guidance on how to arrive at advance agreements.''

Councils' response: Do not concur. The Councils believe that while FAR 31.109 provides information on advance agreements, it does not address items that should be considered in determining a reasonable amount for a use charge. The Councils believe the guidance is helpful in determining a reasonable charge. However, the last sentence of proposed FAR 31.205–11(f) inappropriately limited the scope of this provision with the words, ''the contractor shall consider * * *.'' Therefore, the Councils have replaced this language with broader guidance, ''consideration shall be given to * * *.''

FAR 31.205–11(g)

Comment 6: Both respondents recommended revising proposed FAR 31.205–11(g) to more closely reflect the requirements of FAR 31.205–52, Asset valuations resulting from business combinations. They maintain that FAR 31.205–52 does not necessarily ''limit'' allowability as stated in the proposed words.

Councils' response: Partially concur. It is not necessary to characterize FAR 31.205–52 here as limiting allowability. Therefore, the Councils deleted the words ''which limit the allowability of depreciation'' from FAR 31.205–11(g). However, the proposed rule inappropriately limited the scope of this provision with the words, ''the contractor shall comply with the requirements of 31.205–52.'' Therefore, the Councils replaced this language with broader guidance, ''the requirements of 31.205–52 shall be observed.''

FAR 31.205–11(i)

Comment 7: Both respondents recommended deleting the third sentence of FAR 31.205–11(i) as redundant. They also recommended deleting the fourth sentence, as well as paragraph (i)(1), because operating leases and sale and lease back arrangements are already covered under FAR 31.205–36, Rental costs, and need not be repeated in the depreciation cost principle. Finally, they recommended deleting the fifth sentence as repetitive of the first two sentences.

Councils' response: Partially concur. The Councils agree with the

recommendation to delete the redundant third sentence: ''Capital leases under FAS 13 are subject to the requirements of 31.205–11.'' The Councils also agree that operating leases are covered in FAR 31.205–36, and, therefore, deleted the fourth sentence: ''Operating leases are subject to the requirements of 31.205–36.'' However, the Councils believe a cross-reference in this cost principle is helpful because of the interchange of the two cost principles and, therefore, inserted a cross-reference after sentence one: ''(See 31.205–36 for Operating Leases.)'' The Councils disagree with deleting the language relative to sale and leaseback in paragraph (i)(1) since this language is closely related to depreciation costs, but changed the first word from ''Rental'' to ''Lease.'' Finally, the Councils deleted most of the fifth sentence as duplicative, but changed ''except as follows:'' to ''except that:''

FAR 31.205–11(j)

Comment 8: One respondent suggested revising proposed paragraph (j) in FAR 31.205–11, and asserted that the second sentence of the proposed rule would require contractors to change their depreciation method if different. The other respondent recommended deleting the entire paragraph and stated, ''It is obsolete in that it only applies to assets acquired before the effective date of this cost principle (*i.e.,* pre-ASPR time frame).''

Councils' response: Partially concur. The Councils deleted paragraph (j) since the grandfather provision benefits industry and it is no longer needed.

FAR 31.205–36, Rental Costs

FAR 31.205–36(a)

Comment 9: Both respondents recommended deleting the second sentence of FAR 31.205–36(a) since depreciation issues are already covered under 31.205–11, Depreciation, and need not be repeated in FAR 31.205–36.

Councils' response: Concur. The Councils agree that the detailed language does not need to be repeated in FAR 31.205–36, but believe a cross-reference is useful to the users of the cost principles because of the interchange of the two cost principles. Therefore, the second sentence of FAR 31.205–36(a) is deleted and a cross-reference, ''(See 31.205–11 for Capital Leases.),'' is inserted.

FAR 31.205–36(b)(1)(iv)

Comment 9: Respondent recommended retaining the language at FAR 31.205–36(b)(1)(iv). They stated that no explanation was given for deleting the language.

Councils' response: Do not concur. The respondent appears to have misread the changes made. FAR 31.205–36(b)(4) was deleted, not FAR 31.205–36(b)(1)(iv).

C. Regulatory Planning and Review

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle discussed in this rule.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2 and 31

Government procurement.

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2 and 31 as set forth below:

■ 1. The authority citation for 48 CFR parts 2 and 31 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b) by adding, in alphabetical order, the definition ''Depreciation'' to read as follows:

2.101 Definitions.

* * * * *

Depreciation means a charge to current operations that distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life refers to the prospective period of economic usefulness in a particular contractor's operations as distinguished from physical life; it is evidenced by the actual or estimated retirement and replacement practice of the contractor.

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 3. Revise section 31.205–11 to read as follows:

31.205–11 Depreciation.

(a) Depreciation on a contractor's plant, equipment, and other capital facilities is an allowable contract cost, subject to the limitations contained in this cost principle. For tangible personal property, only estimated residual values that exceed 10 percent of the capitalized cost of the asset need be used in establishing depreciable costs. Where either the declining balance method of depreciation or the class life asset depreciation range system is used, the residual value need not be deducted from capitalized cost to determine depreciable costs. Depreciation cost that would significantly reduce the book value of a tangible capital asset below its residual value is unallowable.

(b) Contractors having contracts subject to 48 CFR 9904.409, Depreciation of Tangible Capital Assets, shall adhere to the requirement of that standard for all fully CAS-covered contracts and may elect to adopt the standard for all other contracts. All requirements of 48 CFR 9904.409 are applicable if the election is made, and contractors must continue to follow it until notification of final acceptance of all deliverable items on all open negotiated Government contracts.

(c) For contracts to which 48 CFR 9904.409 is not applied, except as indicated in paragraphs (g) and (h) of this subsection, allowable depreciation shall not exceed the amount used for financial accounting purposes, and shall be determined in a manner consistent with the depreciation policies and procedures followed in the same segment on non-Government business.

(d) Depreciation, rental, or use charges are unallowable on property acquired from the Government at no cost by the contractor or by any division, subsidiary, or affiliate of the contractor under common control.

(e) The depreciation on any item which meets the criteria for allowance at price under 31.205–26(e) may be

based on that price, provided the same policies and procedures are used for costing all business of the using division, subsidiary, or organization under common control.

(f) No depreciation or rental is allowed on property fully depreciated by the contractor or by any division, subsidiary, or affiliate of the contractor under common control. However, a reasonable charge for using fully depreciated property may be agreed upon and allowed (but, see 31.109(h)(2)). In determining the charge, consideration shall be given to cost, total estimated useful life at the time of negotiations, effect of any increased maintenance charges or decreased efficiency due to age, and the amount of depreciation previously charged to Government contracts or subcontracts.

(g) Whether or not the contract is otherwise subject to CAS, the requirements of 31.205–52 shall be observed.

(h) In the event of a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances, allowable depreciation of the impaired assets is limited to the amounts that would have been allowed had the assets not been written down (see 31.205–16(g)). However, this does not preclude a change in depreciation resulting from other causes such as permissible changes in estimates of service life, consumption of services, or residual value.

(i) A ''capital lease,'' as defined in Statement of Financial Accounting Standard No. 13 (FAS–13), Accounting for Leases, is subject to the requirements of this cost principle. (See 31.205–36 for Operating Leases.) FAS–13 requires that capital leases be treated as purchased assets, *i.e.*, be capitalized, and the capitalized value of such assets be distributed over their useful lives as depreciation charges or over the leased life as amortization charges, as appropriate, except that—

(1) Lease costs under a sale and leaseback arrangement are allowable up to the amount that would have been allowed had the contractor retained title to the asset; and

(2) If it is determined that the terms of the capital lease have been significantly affected by the fact that the lessee and lessor are related, depreciation charges are not allowable in excess of those that would have occurred if the lease contained terms consistent with those found in a lease between unrelated parties.

31.205–16 [Amended]

■ 4. Amend section 31.205–16 in the first sentence of paragraph (b) by removing ''31.205–11(m)'' and adding ''31.205–11(i)'' in its place.

■ 5. Amend section 31.205–36 by revising paragraph (a); and removing paragraph (b)(4) to read as follows:

31.205–36 Rental costs.

(a) This subsection is applicable to the cost of renting or leasing real or personal property acquired under ''operating leases'' as defined in Statement of Financial Accounting Standards No. 13 (FAS–13), Accounting for Leases. (See 31.205–11 for Capital Leases.)

* * * * *

[FR Doc. 03–30473 Filed 12–10–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4 and 53

[FAC 2001–18; FAR Case 2003–019; Item III]

RIN 9000–AJ76

Federal Acquisition Regulation; Federal Procurement Data System

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to reflect changes in contract action reporting to the Federal Procurement Data System—Next Generation (FPDS–NG).

DATES: *Effective Date:* December 11, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208–6091. Please cite FAC 2001–18, FAR case 2003–019.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Government is modernizing its procurement data collection system, the Federal Procurement Data System (FPDS). The new system, the Federal Procurement Data System—Next Generation (FPDS–NG), became operational on October 1, 2003, for transactions awarded after that date. FPDS captured data on individual contract actions over $25,000 and summary data on contract actions below $25,000. FPDS–NG allows the Government to capture data on individual transactions regardless of dollar value. As a result, FPDS–NG provides more information to agencies for managing their programs and to the public for better understanding of how taxpayer funds are spent. The capabilities of FPDS–NG provide an efficient means of satisfying the statutory requirement of 41 U.S.C. 417, that each Executive agency maintain a computer file containing the information at FAR 4.601. Consequently, submitting contract action data to FPDS–NG will be considered compliance with the requirements of FAR 4.601.

Therefore, the FAR is being amended to revise 4.602 to—

- Reflect that the information in FPDS–NG is available to the general public;
- Provide the Web site for FPDS–NG, which must be entered as *https://www.fpds.gov;*
- Delete the physical address for the Federal Procurement Data Center;
- Allow agencies to report all transactions between $2,500 and $25,000 to FPDS–NG as either individual contract actions or summary contract actions until September 30, 2004;
- Require all contract actions over $2,500 be reported to FPDS–NG as individual contract actions after September 30, 2004;
- Require agencies to insert the provision at 52.204–6, Data Universal Numbering System (DUNS) Number, in solicitations when the expected award amount will result in the generation of an individual contract action report and the contract does not include FAR clause 52.204–7, Central Contractor Registration; and
- Eliminate the use of the SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report, and the SF 281, Federal Procurement Data System (FPDS)—Summary Contract Action Report ($25,000 or Less).

This is not a significant regulatory action and, therefore, was not subject to

review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act 5 U.S.C. 601, *et seq.*, does not apply because the rule applies to the internal process of Federal agencies and is not a significant revision of the FAR. A Final Regulatory Flexibility Analysis has, therefore, not been prepared.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 4 and 53

Government procurement.

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 4 and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 4 and 53 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

■ 2. Amend section 4.601 by adding a sentence to the end of paragraph (a); and removing ''from the computer file'' from the introductory text of paragraphs (c) and (d). The added text reads as follows:

4.601 Record requirements.

(a) * * * This file shall be accessible to the public using FPDS–NG.

* * * * *

■ 3. Amend section 4.602 by revising paragraphs (a), (b), (c), and (d) to read as follows:

4.602 Federal Procurement Data System.

(a) The FPDS provides a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. Federal agencies will now report data directly to the Federal Procurement Data System—Next Generation (FPDS–NG), which collects, processes, and disseminates official statistical data on Federal contracting. The data provide—

(1) A basis for recurring and special reports to the President, the Congress, the General Accounting Office, Federal executive agencies, and the general public;

(2) A means of measuring and assessing the impact of Federal contracting on the Nation's economy and the extent to which small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business concerns are sharing in Federal contracts; and

(3) Information for other policy and management control purposes, and for public access.

(b) The FPDS Web site, *https://www.fpds.gov*, provides instructions for submitting data. It also provides a complete list of departments, agencies, and other entities that submit data to the FPDS, as well as technical and end-user guidance, and a computer-based tutorial.

(c)(1) Data collection points in each agency shall submit FPDS-required data on contract actions directly to FPDS–NG. Agencies must report all transactions over $2,500 and modifications to those transactions regardless of dollar value.

(2) Agencies participating under the Small Business Competitiveness Demonstration Program (see Subpart 19.10) shall report as an individual contract action all awards, regardless of dollar value, in the designated industry groups.

(3) Agencies may choose to report transactions at or below $2,500, including those made using the Governmentwide commercial purchase card, except as provided in paragraph (c)(2) of this section.

(4) Until September 30, 2004, agencies shall report contract actions between $2,500 and $25,000 either in individual or summary form. After September 30, 2004, agencies shall submit only individual contract action reports.

(d) The contracting officer must identify and report (if it is not pre-populated by the Central Contractor Registration (CCR) database), a Contractor Identification Number for each successful offeror. A Data Universal Numbering System (DUNS) number, which is a nine-digit number assigned by Dun and Bradstreet Information Services to an establishment, is the Contractor Identification Number for Federal contractors. The DUNS number reported must identify the successful offeror's name and address exactly as stated in the offer and resultant contract. The contracting officer must ask the offeror to provide its DUNS number by using either the provision prescribed in paragraph (a) of 4.603 or the FAR clause prescribed at 4.1104. If the successful offeror does not provide its number, the contracting officer must contact the offeror and assist them in obtaining the DUNS number.

* * * * *

■ 4. Amend section 4.603 by revising paragraph (a)(1) to read as follows:

4.603 Solicitation provisions.

(a) * * *

(1) Are expected to result in a requirement for the generation of an individual contract action report (see 4.602(c)); and

* * * * *

PART 53—FORMS

53.204–2 [Reserved]

■ 5. Remove and reserve section 53.204–2.

53.301–279 and 53.301–281 [Removed]

■ 6. Remove sections 53.301–279 and 53.301–281.

[FR Doc. 03–30474 Filed 12–10–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 8

[FAC 2001–18; FAR Case 2003–001; Item IV]

RIN 9000–AJ62

Federal Acquisition Regulation; Increased Federal Prison Industries, Inc. Waiver Threshold

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to increase the blanket waiver threshold for small dollar value purchases from Federal Prison Industries, Inc. (FPI) by Federal agencies. By increasing this threshold to $2,500, Federal agencies are not required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold.

DATES: *Effective Date:* December 11, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAC 2001–18, FAR case 2003–001.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils have agreed to a final rule increasing the FPI clearance exception threshold at FAR 8.606(e) from $25 to $2,500 and eliminating the criterion that delivery is required within 10 days. The objective of the rule is to increase the dollar threshold necessary to obtain a clearance from FPI. By increasing this threshold to $2,500, Federal agencies are not required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold. Federal agencies, however, may continue to consider and purchase products from FPI that are at or below $2,500. FPI is a mandatory acquisition program established under 18 U.S.C. 4124. Agencies are still required to purchase products on FPI's Schedule from FPI above the $2,500 threshold unless a clearance is obtained pursuant to FAR 8.605.

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 68 FR 28094, May 22, 2003. Three respondents submitted public comments. These comments are discussed below. The Councils concluded that the interim rule should be converted to a final rule without change.

Comment 1: Respondent concurred with the rule.

Comment 2: Respondent wanted assurance that there are no other conflicts with existing wording of the FAR (*e.g.,* FAR 8.603) as a result of the increase in the blanket waiver threshold to $2,500. The respondent believes that the FAR should explicitly state that agencies are not required to make purchases from FPI that are at or below $2,500, if that is the intent. In addition, the Defense FAR Supplement (DFARS) should state that the requirement for a comparability determination does not apply to purchases at or below $2,500.

Councils' response: This rule has created no conflicts with other wording of the FAR. The rule merely increased the dollar threshold for an existing exception to FPI clearance requirements. As was previously the case, Federal agencies are not required (but are permitted) to purchase products from FPI if the dollar value of the purchase is at or below the threshold specified in FAR 8.606(e). The purchase priorities specified in FAR 8.603 have not changed, and apply only in situations where FPI and JWOD agencies produce identical supplies or services.

The recommended DFARS change is outside the scope of this case. DoD published a final DFARS rule on November 14, 2003 (68 FR 64559), to address DoD-unique requirements for purchase of products from FPI.

Comment 3: Respondent stated that language should be included in the rule to make it clear that DoD activities are now governed by the changes legislated in Section 811 of Public Law 107–107 and Section 819 of Public Law 107–314, the National Defense Authorization Acts for Fiscal Years 2002 and 2003, respectively. Under these laws, the UNICOR waiver process has been effectively eliminated for DoD activities. If a DoD contracting officer determines that UNICOR products are not comparable in terms of quality, price, and delivery time, the activity is not required to seek a UNICOR waiver, regardless of the dollar amount of the acquisition. The concern is that DoD contracting officers and UNICOR private sector commissioned sales representatives may interpret this FAR change to mean that DoD must request a UNICOR waiver when the acquisition is over $2,500. To prevent such a misunderstanding, it is vital that references to the above public laws and/or the ensuring DFARS regulations be included in the language that announces this change to the waiver limit of FAR 8.606(e).

Councils' response: The Councils recognize that DoD is governed by separate statutory requirements with regard to purchase of products from FPI (UNICOR), but do not believe additional clarification is required for the FAR. Existing DoD policy on this subject can be found in DFARS Subpart 208.6 (48 CFR Chapter 2, Subpart 208.6). As stated in the response to Comment 2 above, DoD published revisions to DFARS Subpart 208.6 (48 CFR Chapter 2, Subpart 208.6) on November 14, 2003 (68 FR 64559).

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Part 8, in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001–18, FAR case 2003–001), in correspondence. No comments were received on the Regulatory Flexibility Act Statement in the interim rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 8

Government procurement.

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR part 8 which was published in the **Federal Register** at 68 FR 28094, May 22, 2003, as a final rule without change.

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 03–30475 Filed 12–10–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 9

[FAC 2001–18; FAR Case 2002–010; Item V]

RIN 9000–AJ48

Federal Acquisition Regulation; Debarment and Suspension—Order Placement and Option Exercise

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to address the placement of orders under existing contracts and agreements with contractors that have been debarred, suspended, or proposed for debarment.

DATES: *Effective Date:* January 12, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Craig R. Goral, Procurement Analyst, at (202) 501–3856. Please cite FAC 2001–18, FAR case 2002–010.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 67282, November 4, 2002, to require that discretionary actions on the part of agencies meet the same standards as agencies would have to meet in awarding new contracts. The rule prohibited agencies from placing orders exceeding the guaranteed minimum against existing contracts, placing orders against optional Federal Supply Schedule contracts, adding new work, exercising options or otherwise extending the duration of contracts with contractors that are debarred, suspended or proposed for debarment unless the agency head makes a determination that there are compelling reasons for doing so.

Two comments from two commenters were received in response to the proposed rule. The first commenter strongly supported the rule. The second commenter suggested that the rule be clarified to indicate whether it applies to credit card purchases or blanket purchase agreements (BPAs), Memorandums of Agreement (MOAs), Military Interdepartmental Purchase Requests (MIPRs), or Governmentwide acquisition contracts (GWACs). A change was made to the rule to address BPAs and Basic Ordering Agreements (BOAs) based on this recommendation. It was not appropriate to address MOAs or MIPRs because they are not entered into under the FAR. GWACs are indefinite delivery contracts and are, therefore, already covered by the rule. BPAs and BOAs are agreements rather than contracts. However, they should contain the basic clauses that will apply to orders placed under them. Therefore, the Councils revised the rule to address BPAs and BOAs. The requirement that contractors must be responsible is statutory. Contractors debarred, suspended, or proposed for debarment are excluded from doing business with the Government unless there is a compelling reason to conduct business with such a contractor.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it only affects orders placed by civilian agencies against existing contracts with contractors that are debarred, suspended or proposed for debarment. The Defense FAR Supplement already prohibits the placement of such orders.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 9

Government procurement.

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 9 as set forth below:

PART 9—CONTRACTOR QUALIFICATIONS

■ 1. The authority citation for 48 CFR part 9 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 9.405 by revising paragraph (a); and removing from paragraphs (d)(2) and (d)(3) the words ''or a designee''. The revised text reads as follows:

9.405 Effect of listing.

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head determines that there is a compelling reason for such action (*see* 9.405–1(b), 9.405–2, 9.406–1(c), 9.407–1(d), and 23.506(e)). Contractors debarred, suspended, or proposed for debarment are also excluded from conducting business with the Government as agents or representatives of other contractors.

* * * * *

■ 3. Amend section 9.405–1 by removing from the first sentence of paragraph (a) the words ''or a designee''; revising paragraph (b); and removing paragraph (c). The revised text reads as follows:

9.405–1 Continuation of current contracts.

* * * * *

(b) For contractors debarred, suspended, or proposed for debarment, unless the agency head makes a written determination of the compelling reasons for doing so, ordering activities shall not—

(1) Place orders exceeding the guaranteed minimum under indefinite quantity contracts;

(2) Place orders under optional use Federal Supply Schedule contracts, blanket purchase agreements, or basic ordering agreements; or

(3) Add new work, exercise options, or otherwise extend the duration of current contracts or orders.

9.405–2 [Amended]

■ 4. Amend section 9.405–2 by removing from the first sentence of paragraph (a) the words ''or a designee''.

[FR Doc. 03–30476 Filed 12–10–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31 and 52

[FAC 2001–18; FAR Case 2001–037; Item VI]

RIN 9000–AJ57

Federal Acquisition Regulation; Insurance and Pension Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule

amending the Federal Acquisition Regulation (FAR) to revise the insurance and indemnification cost principle, and the portion of the compensation for personal services cost principle relating to pension costs. The rule revises both cost principles by improving clarity and structure and removing unnecessary and duplicative language. The revisions are intended to revise contract cost principles and procedures, in light of the evolution of Generally Accepted Accounting Principles (GAAP), the advent of Acquisition Reform, and experience gained from implementation pertaining to contract cost principles and procedures.

DATES: *Effective Date:* January 12, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb, Policy Advisor, at (202) 501–0650. Please cite FAC 2001–18, FAR case 2001–037.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 4880, January 30, 2003, with a request for comments. Four respondents submitted comments. A discussion of the comments is provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule, with changes to the proposed rule. Differences between the proposed rule and final rule are discussed below:

B. Public Comments

General Reformatting of FAR 31.205

Comment 1: In addition to specific comments regarding the subject case, a respondent also recommended reformatting this cost principle as part of a general reformat effort of FAR Part 31, Contract Cost Principles and Procedures. The respondent advocates establishing a common format for the selected costs detailed in FAR 31.205 will increase the clarity of the cost principles and reduce misinterpretation.

Councils' response: Nonconcur. The Councils are unaware of any significant clarity problems with the current FAR cost principles and see no benefit in this recommendation. While it is true that the cost principles do not all share an identical format, it does not follow that this makes them difficult to understand. Moreover, such a comprehensive revision of the cost principles could actually increase disputes by substituting new wording for longstanding, court-tested language.

Of the 48 current FAR cost principles, 16 are only one paragraph long, and 11 more are only two or three paragraphs long. The Councils question the need to ''force-fit'' such short cost principles into a uniform format, particularly in the absence of any significant clarity problems. Not only would the recommended general reformatting of the cost principles be difficult to accomplish, but it would also offer no obvious benefit to either industry or the Government.

The Councils recommend instead that industry continue to identify those individual cost principles which it views as problematic and to provide specific proposals for appropriate revisions. It should be noted that the continuing Defense Procurement and Acquisition Policy initiative to reduce accounting and administrative burdens in the cost principles, without jeopardizing the Government's interests, has resulted in significant changes or deletions involving more than 20 different cost principles to date. The Councils continue to believe that such a case-by-case cooperative effort with industry offers the best opportunity for meaningful change in this often controversial area.

Incorporating CAS Provisions in FAR Cost Principles

Comment 2: A respondent asserted that the proposed rule incorporates substantial cost accounting standard (CAS) provisions into the FAR cost principles. The respondent believes this creates *de facto* CAS coverage when, by law, promulgations covering the measurement, assignment, and allocation of costs to cost objectives is assigned to the CAS Board, including the thresholds for which contracts will and will not include CAS provisions. The respondent further states that if the FAR includes CAS concepts, the inclusion should be done using direct quotes or references.

Councils' response: Nonconcur. The Councils considered this proposal, but believe that eliminating all CAS from the FAR would create significant problems.

It is the responsibility of the Councils, not the CAS Board, to promulgate rules for the measurement, assignment, and allocation of costs for non-CAS covered contracts. The CAS Board does not have jurisdiction over non-CAS covered contracts. For some costs, particularly deferred compensation including pension costs (CAS 412, 413, and 415), cost of money (CAS 414/417), and self-insurance (CAS 416), the Councils have chosen to use the same requirements for non-CAS covered contracts as the CAS Board has chosen to use for CAS-covered contracts. To eliminate all CAS from the FAR would require removal of these key FAR Part 31 provisions.

As for the subject rule, the issue of an alternative to CAS 412/413 for non-CAS covered contracts was discussed at the public meetings during the spring of 2001. None of the attendees proposed an alternative to the use of CAS 412/413. In fact, most of the attendees supported the application of CAS 412/413 to non-CAS covered contracts. As such, the Councils do not believe there is currently a viable alternative to applying CAS 412/413 to non-CAS covered contracts.

In regard to CAS 416, the proposed rule included the CAS requirements for self-insurance. Without this provision, insurance costs for non-CAS covered contracts would be subject to Generally Accepted Accounting Principles (GAAP), which do not permit a self-insurance charge. The Councils believe it would be inequitable to permit contractors with CAS-covered contracts to charge self-insurance costs while denying such charges for contractors with non-CAS covered contracts. In addition, a contractor with both CAS and non-CAS covered contracts would need two sets of accounting practices if it wanted to charge self-insurance for CAS-covered contracts. Such a requirement would result in an unnecessary administrative burden to both the contractor and the Government.

As for the incorporation of the CAS provisions into the FAR, the respondent did not specify any particular language that it believes has been paraphrased. Nevertheless, the Councils reviewed the proposed rule to see if any such paraphrasing existed and found that the proposed rule references the specific CAS standards (412, 413, and 416); it does not paraphrase any CAS requirements.

FAR 31.205–6—Compensation for Personal Services

FAR 31.205–6(j)—Definition of Pension Plan

Comment 3: A respondent recommends that the current language at FAR 31.205–6(j)(1) be retained and asserts that the current language includes allowability criteria that would be eliminated if the definition is removed. The language currently reads as follows:

(1) A pension plan, as defined in 31.001, is a deferred compensation plan. Additional benefits such as permanent and total disability and death payments and survivorship payments to beneficiaries of deceased employees *may be treated as*

pension costs, provided the benefits are an integral part of the pension plan and meet all the criteria pertaining to pension costs. (Emphasis added.)

Councils' response: Nonconcur. The Councils do not believe the above-italicized language provides allowability criteria. It simply states when additional benefits ''may be treated as pension costs.'' In defining a pension plan, FAR 31.001, Definitions, reads in part:

* * * Additional benefits such as permanent and total disability and death payments, and survivorship payments to beneficiaries of deceased employees, may be an integral part of a pension plan.

The Councils believe this definition, which is identical to that used in CAS 412, should not be supplemented by the language currently at FAR 31.205–6(j)(1). Under the language at FAR 31.205–6(j)(1), additional benefits that are an integral part of a pension plan ''may be treated as pension costs.'' This phrase could be misinterpreted to mean that a contractor has the right to subjectively choose when such benefits will be pension costs and when they will not. Conversely, the definition at FAR 31.001 and CAS 412 simply states that such benefits may be an integral part of the pension plan.

FAR 31.205–6(j)(3)(i)(C) and FAR Clause 52.215–15(b)(3)—Segment Closings

Comment 4: Two respondents stated that the language at FAR 31.205–6(j) regarding segment closings is more restrictive than the CAS requirements. One respondent asserts there are optional settlement methods provided for in CAS 413, specifically amortization, and that the proposed FAR language does not address underfunding as does the CAS.

Councils' response: Concur in part. Upon further review, the Councils determined that the proposed language on settlement should be deleted. The current language in CAS 413, which is incorporated into FAR 31.205–6(j) by reference, adequately addresses the issue of settlement. Thus, there is no need to include the specific language in the FAR. The Councils, therefore, deleted the proposed language at FAR 31.205–6(j)(3)(C) and the FAR clause at 52.215–5(b)(3).

FAR 31.205–6(j)(6)—Early Retirement Incentive Plans

Comment 5: A respondent asserts that current FAR language clearly states that plans based on life income settlements are not treated as early retirement incentives plans and recommends retaining that language.

Councils' response: Nonconcur. Based on a review of the original promulgation documents, it is clear that the drafters intended to include early retirement incentive payments made from within, as well as outside, the pension trust. Although the drafters believed it would be rare for a pension plan to include an early retirement incentive with a life income settlement, they intended that such amendments be included as early retirement incentives and be subject to the conditions outlined in the cost principle. There was no intention by the drafters to exclude such settlements.

The Councils believe this continues to be an appropriate policy. Early retirement incentive plans include any incentive given to an employee to retire early, regardless of whether payment is made in the form of a life income settlement or a lump sum. The method of payment should not determine whether the cost is allowable. The limitation should apply regardless of whether the contractor decides to make the payment over a period of years or in a single payment.

FAR 31.205–6(q)—Defer Revision to Employee Stock Ownership Plans (ESOPs)

Comment 6: Two respondents recommend that further FAR action be deferred until the CAS Board proposal on ESOPs can be reviewed for consistency.

Councils' response: Nonconcur. The proposed rule does not add any new measurement, assignment, or allocation provisions for ESOPs. Under both the existing and proposed rules, ESOPs that meet the definition of a pension plan are covered by CAS 412, and those that do not are covered by CAS 415. While the proposed rule consolidates the allowability requirements for ESOP costs into a single provision, it does not change the measurement, assignment, or allocability requirements for such costs. Since this FAR provision does not revise existing measurement, assignment, or allocation requirements, the Councils do not believe it should be delayed in anticipation of actions by the CAS Board. The Councils recognize that this FAR provision may require further modification as a result of the current ESOP project being pursued by the CAS Board.

FAR 31.205–6(q)(2)(iii)—Allowability Limitation on ESOP Contributions

Comment 7: A respondent asserts that the proposed provision that limits ESOP contributions in any one year to 25 percent of compensation is inconsistent with the IRS Code and should be revised accordingly.

Councils' response: Concur in part. The fact that the cost is deductible by the IRS does not necessarily mean that it is reasonable or allowable for Government contract costing purposes. Nevertheless, since ESOP costs are included in determining the overall reasonableness of compensation costs, the Councils revised the specific allowability ceiling for ESOP costs to only require that they be deductible under the IRS Code.

FAR 31.205–6(q)(2)(v)—ESOP Stock in Excess of Fair Market Value.

Comment 8: A respondent expressed concern regarding the ''new'' provision that disallows purchases in excess of fair market value. The respondent believes that this provision could be interpreted as either (a) requiring that valuation be based on the value of the stock immediately after a leveraged ESOP transaction occurs (the ''Farnum Theory'', which the respondent states has been discredited), or (b) measurement of the value of the stock based on its annual value, rather than the value at the time the shares were acquired by the ESOP trust

Councils' response: Nonconcur. The Councils have not added a new provision. The provision in the proposed rule currently exists in FAR 31.205–6(j)(8)(i)(E), which applies to ESOPs that meet the definition of a pension plan. The proposed rule merely extends the application of that provision to all ESOPs. The Councils believe that purchases in excess of fair market value should not be allowable costs. The words in the proposed FAR 31.205–6(q) are identical to those currently at FAR 31.205–6(j)(8). As such, the Councils do not agree that this change could be interpreted as an endorsement of any new valuation technique.

FAR 31.205–6(q)(2)(iv)—Valuation of ESOP Stock Using IRS Guidelines

Comment 9: A respondent expressed concern regarding the new language that requires valuation of ESOP stock using IRS guidelines on a ''case-by-case basis.'' The respondent recommends that, if the valuation has been done by a competent independent valuation expert, there is no need for the auditing agency to start with a valuation from ''scratch.''

Councils' response: Nonconcur. The Councils have not added a new provision. The provision in the proposed rule currently exists in FAR 31.205–6(j)(8)(i)(E), which applies to ESOPs that meet the definition of a pension plan. The proposed rule merely extends the application of that provision to all ESOPs. In addition, the Councils believe that deleting the words ''case-by-case basis'' would cause potential

confusion. The IRS guidelines must be applied based on the particular facts and circumstances of each case, *i.e.*, on a ''case-by-case basis.'' Furthermore, the concerns of the respondent focus on the extent to which the auditor is required to rely upon the work of others, in this case the valuation expert. An independent audit requires that the auditor determine the scope of the audit, including the extent of reliance on the work of others. This issue is properly addressed in Generally Accepted Government Auditing Standards. It is not something that should be addressed in the FAR.

FAR 31.205–19—Insurance and Indemnification

FAR 31.205–19(c)(4)—Definition of Catastrophic Losses

Comment 10: One respondent asserts that self-insurance charges for catastrophic losses should be allowable, and that the definition in the proposed rule could be interpreted to include deductibles or over ceiling amounts for property insurance policies and other high dollar policies. Another respondent states that the new definition of catastrophic losses may cause contention and uncertainty in the field because it does not account for the relatively large losses among different sized contractors. The respondent also believes ''very low frequency of loss'' adds confusion. The respondent further contends that the definition should be deleted and existing practices that rely upon individual circumstances and general reasonableness should continue to be used.

Councils' response: Concur in part. Upon further review, the Councils deleted the definition of catastrophic losses from the final rule. The Councils continue to believe that the proposed definition is consistent with the intent of the promulgators of the current language, as evidenced by the March 19, 1979, report underlying DAR case 78–400–7.

The intent of the proposed coverage was to distinguish catastrophic losses as used in the cost principle from the type of catastrophic loss anticipated by the illustration at CAS 416.60(h). In that illustration, motor vehicle liability losses in excess of a specified amount were absorbed by the home office and reallocated to all segments. In the particular case described, the specified amount was too low based on loss experience to be considered catastrophic under the provisions of CAS 416. However, the illustration appears to anticipate losses that may be catastrophic to a particular segment of a company but not necessarily catastrophic in a more general sense. The Councils do not believe the drafters of the cost principle intended to disallow self-insurance charges for the type of loss anticipated by the CAS illustration. However, since CAS does not include a definition of catastrophic loss, defining the term in the FAR could cause confusion by the users of these regulations.

As to the respondent's recommendation that self-insurance charges for catastrophic losses should be allowable, the Councils disagree. As was noted in the report on DAR case 78–400–7, the Government should not allow self-insurance charges for catastrophic losses, such as earthquakes, which have a very small likelihood of occurring for any particular contractor.

C. Regulatory Planning and Review

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle discussed in this rule.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 31 and 52

Government procurement.

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 31 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 31 and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 2. Amend section 31.205–6 by—

■ a. Removing from the second sentence of paragraph (g)(1) ''(j)(7)'' and adding ''(j)(6)'' in its place;

■ b. Revising paragraph (j);

■ c. Removing from the second parenthetical in paragraph (p)(2)(i) ''paragraphs (j)(5) and (j)(8)'' and adding ''paragraphs (j)(4) and (q)'' in its place; and

■ d. Adding paragraph (q) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(j) *Pension costs.* (1) Pension plans are normally segregated into two types of plans: defined-benefit and defined-contribution pension plans. The contractor shall measure, assign, and allocate the costs of all defined-benefit pension plans and the costs of all defined-contribution pension plans in compliance with 48 CFR 9904.412—Cost Accounting Standard for Composition and Measurement of Pension Cost, and 48 CFR 9904.413—Adjustment and Allocation of Pension Cost. Pension costs are allowable subject to the referenced standards and the cost limitations and exclusions set forth in paragraph (j)(1)(i) and in paragraphs (j)(2) through (j)(6) of this subsection.

(i) Except for nonqualified pension plans using the pay-as-you-go cost method, to be allowable in the current year, the contractor shall fund pension costs by the time set for filing of the Federal income tax return or any extension. Pension costs assigned to the current year, but not funded by the tax return time, are not allowable in any subsequent year. For nonqualified pension plans using the pay-as-you-go method, to be allowable in the current year, the contractor shall allocate pension costs in the cost accounting period that the pension costs are assigned.

(ii) Pension payments must be paid pursuant to an agreement entered into in good faith between the contractor and employees before the work or services are performed and to the terms and conditions of the established plan. The cost of changes in pension plans are not allowable if the changes are discriminatory to the Government or are not intended to be applied consistently for all employees under similar circumstances in the future.

(iii) Except as provided for early retirement benefits in paragraph (j)(6) of

this subsection, one-time-only pension supplements not available to all participants of the basic plan are not allowable as pension costs, unless the supplemental benefits represent a separate pension plan and the benefits are payable for life at the option of the employee.

(iv) Increases in payments to previously retired plan participants covering cost-of-living adjustments are allowable if paid in accordance with a policy or practice consistently followed.

(2) *Defined-benefit pension plans.* The cost limitations and exclusions pertaining to defined-benefit plans are as follows:

(i)(A) Except for nonqualified pension plans, pension costs (see 48 CFR 9904.412–40(a)(1)) assigned to the current accounting period, but not funded during it, are not allowable in subsequent years (except that a payment made to a fund by the time set for filing the Federal income tax return or any extension thereof is considered to have been made during such taxable year). However, any portion of pension cost computed for a cost accounting period, that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), will be allowable in those future accounting periods in which the funding of such excess amounts occurs (see 48 CFR 9904.412–50(c)(5)).

(B) For nonqualified pension plans, except those using the pay-as-you-go cost method, allowable costs are limited to the amount allocable in accordance with 48 CFR 9904.412–50(d)(2).

(C) For nonqualified pension plans using the pay-as-you-go cost method, allowable costs are limited to the amounts allocable in accordance with 48 CFR 9904.412–50(d)(3).

(ii) Any amount funded in excess of the pension cost assigned to a cost accounting period is not allowable in that period and shall be accounted for as set forth at 48 CFR 9904.412–50(a)(4). The excess amount is allowable in the future period to which it is assigned, to the extent it is not otherwise unallowable.

(iii) Increased pension costs are unallowable if the increase is caused by a delay in funding beyond 30 days after each quarter of the year to which they are assignable. If a composite rate is used for allocating pension costs between the segments of a company and if, because of differences in the timing of the funding by the segments, an inequity exists, allowable pension costs for each segment will be limited to that particular segment's calculation of pension costs as provided for in 48 CFR 9904.413–50(c). The contractor shall make determinations of unallowable costs in accordance with the actuarial method used in calculating pension costs.

(iv) The contracting officer will consider the allowability of the cost of indemnifying the Pension Benefit Guaranty Corporation (PBGC) under ERISA section 4062 or 4064 arising from terminating an employee deferred compensation plan on a case-by-case basis, provided that if insurance was required by the PBGC under ERISA section 4023, it was so obtained and the indemnification payment is not recoverable under the insurance. Consideration under the foregoing circumstances will be primarily for the purpose of appraising the extent to which the indemnification payment is allocable to Government work. If a beneficial or other equitable relationship exists, the Government will participate, despite the requirements of 31.205–19(c)(3) and (d)(3), in the indemnification payment to the extent of its fair share.

(v) Increased pension costs resulting from the withdrawal of assets from a pension fund and transfer to another employee benefit plan fund, or transfer of assets to another account within the same fund, are unallowable except to the extent authorized by an advance agreement. If the withdrawal of assets from a pension fund is a plan termination under ERISA, the provisions of paragraph (j)(3) of this subsection apply. The advance agreement shall—

(A) State the amount of the Government's equitable share in the gross amount withdrawn or transferred; and

(B) Provide that the Government receives a credit equal to the amount of the Government's equitable share of the gross withdrawal or transfer.

(3) *Pension adjustments and asset reversions.* (i) For segment closings, pension plan terminations, or curtailment of benefits, the amount of the adjustment shall be—

(A) For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413–50(c)(12); and

(B) For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413–50(c)(12), except the numerator of the fraction at 48 CFR 9904.413–50(c)(12)(vi) is the sum of the pension plan costs allocated to all non-CAS-covered contracts and subcontracts that are subject to Subpart 31.2 or for which cost or pricing data were submitted.

(ii) For all other situations where assets revert to the contractor, or such assets are constructively received by it for any reason, the contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to Subpart 31.2. Excise taxes on pension plan asset reversions or withdrawals under this paragraph (j)(3)(ii) are unallowable in accordance with 31.205–41(b)(6).

(4) *Defined-contribution pension plans.* In addition to defined-contribution pension plans, this paragraph also covers profit sharing, savings plans, and other such plans, provided the plans fall within the definition of a pension plan at 31.001.

(i) Allowable pension cost is limited to the net contribution required to be made for a cost accounting period after taking into account dividends and other credits, where applicable. However, any portion of pension cost computed for a cost accounting period that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of ERISA will be allowable in those future accounting periods in which the funding of such excess amounts occurs (see 48 CFR 9904.412–50(c)(5)).

(ii) The provisions of paragraphs (j)(2)(ii) and (iv) of this subsection apply to defined-contribution plans.

(5) *Pension plans using the pay-as-you-go cost method.* When using the pay-as-you-go cost method, the contractor shall measure, assign, and allocate the cost of pension plans in accordance with 48 CFR 9904.412 and 9904.413. Pension costs for a pension plan using the pay-as-you-go cost method are allowable to the extent they are not otherwise unallowable.

(6) *Early retirement incentives.* An early retirement incentive is an incentive given to an employee to retire early. For contract costing purposes, costs of early retirement incentives are allowable subject to the pension cost criteria contained in paragraphs (j)(2)(i) through (iv) of this subsection provided—

(i) The contractor measures, assigns, and allocates the costs in accordance with the contractor's accounting practices for pension costs;

(ii) The incentives are in accordance with the terms and conditions of an early retirement incentive plan;

(iii) The contractor applies the plan only to active employees. The cost of extending the plan to employees who retired or were terminated before the adoption of the plan is unallowable; and

(iv) The present value of the total incentives given to any employee in excess of the amount of the employee's annual salary for the previous fiscal year before the employee's retirement is unallowable. The contractor shall compute the present value in accordance with its accounting practices for pension costs. The contractor shall account for any unallowable costs in accordance with 48 CFR 9904.412–50(a)(2).

* * * * *

(q) *Employee stock ownership plans (ESOP).* (1) An ESOP is a stock bonus plan designed to invest primarily in the stock of the employer corporation. The contractor's contributions to an Employee Stock Ownership Trust (ESOT) may be in the form of cash, stock, or property.

(2) Costs of ESOPs are allowable subject to the following conditions:

(i) For ESOPs that meet the definition of a pension plan at 31.001, the contractor—

(A) Measures, assigns, and allocates the costs in accordance with 48 CFR 9904.412;

(B) Funds the pension costs by the time set for filing of the Federal income tax return or any extension. Pension costs assigned to the current year, but not funded by the tax return time, are not allowable in any subsequent year; and

(C) Meets the requirements of paragraph (j)(2)(ii) of this subsection.

(ii) For ESOPs that do not meet the definition of a pension plan at 31.001, the contractor measures, assigns, and allocates costs in accordance with 48 CFR 9904.415.

(iii) Contributions by the contractor in any one year that exceed the deductibility limits of the Internal Revenue Code for that year are unallowable.

(iv) When the contribution is in the form of stock, the value of the stock contribution is limited to the fair market value of the stock on the date that title is effectively transferred to the trust.

(v) When the contribution is in the form of cash—

(A) Stock purchases by the ESOT in excess of fair market value are unallowable; and

(B) When stock purchases are in excess of fair market value, the contractor shall credit the amount of the excess to the same indirect cost pools that were charged for the ESOP contributions in the year in which the stock purchase occurs. However, when the trust purchases the stock with borrowed funds which will be repaid over a period of years by cash contributions from the contractor to the trust, the contractor shall credit the excess price over fair market value to the indirect cost pools pro rata over the period of years during which the contractor contributes the cash used by the trust to repay the loan.

(vi) When the fair market value of unissued stock or stock of a closely held corporation is not readily determinable, the valuation will be made on a case-by-case basis taking into consideration the guidelines for valuation used by the IRS.

* * * * *

■ 3. Revise section 31.205–19 to read as follows:

31.205–19 Insurance and indemnification.

(a) Insurance by purchase or by self-insuring includes—

(1) Coverage the contractor is required to carry or to have approved, under the terms of the contract; and

(2) Any other coverage the contractor maintains in connection with the general conduct of its business.

(b) For purposes of applying the provisions of this subsection, the Government considers insurance provided by captive insurers (insurers owned by or under control of the contractor) as self-insurance, and charges for it shall comply with the provisions applicable to self-insurance costs in this subsection. However, if the captive insurer also sells insurance to the general public in substantial quantities and it can be demonstrated that the charge to the contractor is based on competitive market forces, the Government will consider the insurance as purchased insurance.

(c) Whether or not the contract is subject to CAS, self-insurance charges are allowable subject to paragraph (e) of this subsection and the following limitations:

(1) The contractor shall measure, assign, and allocate costs in accordance with 48 CFR 9904.416, Accounting for Insurance Costs.

(2) The contractor shall comply with (48 CFR) part 28. However, approval of a contractor's insurance program in accordance with part 28 does not constitute a determination as to the allowability of the program's cost.

(3) If purchased insurance is available, any self-insurance charge plus insurance administration expenses in excess of the cost of comparable purchased insurance plus associated insurance administration expenses is unallowable.

(4) Self-insurance charges for risks of catastrophic losses are unallowable (*see* 28.308(e)).

(d) Purchased insurance costs are allowable, subject to paragraph (e) of this subsection and the following limitations:

(1) For contracts subject to full CAS coverage, the contractor shall measure, assign, and allocate costs in accordance with 48 CFR 9904.416.

(2) For all contracts, premiums for insurance purchased from fronting insurance companies (insurance companies not related to the contractor but who reinsure with a captive insurer of the contractor) are unallowable to the extent they exceed the sum of—

(i) The amount that would have been allowed had the contractor insured directly with the captive insurer; and

(ii) Reasonable fronting company charges for services rendered.

(3) Actual losses are unallowable unless expressly provided for in the contract, except—

(i) Losses incurred under the nominal deductible provisions of purchased insurance, in keeping with sound business practice, are allowable; and

(ii) Minor losses, such as spoilage, breakage, and disappearance of small hand tools that occur in the ordinary course of business and that are not covered by insurance, are allowable.

(e) Self-insurance and purchased insurance costs are subject to the cost limitations in the following paragraphs:

(1) Costs of insurance required or approved pursuant to the contract are allowable.

(2) Costs of insurance maintained by the contractor in connection with the general conduct of its business are allowable subject to the following limitations:

(i) Types and extent of coverage shall follow sound business practice, and the rates and premiums shall be reasonable.

(ii) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of profit.

(iii) The cost of property insurance premiums for insurance coverage in excess of the acquisition cost of the insured assets is allowable only when the contractor has a formal written policy assuring that in the event the insured property is involuntarily converted, the new asset shall be valued at the book value of the replaced asset plus or minus adjustments for differences between insurance proceeds and actual replacement cost. If the

contractor does not have such a formal written policy, the cost of premiums for insurance coverage in excess of the acquisition cost of the insured asset is unallowable.

(iv) Costs of insurance for the risk of loss of, or damage to, Government property are allowable only to the extent that the contractor is liable for such loss or damage and such insurance does not cover loss or damage which results from willful misconduct or lack of good faith on the part of any of the contractor's directors or officers, or other equivalent representatives.

(v) Costs of insurance on the lives of officers, partners, proprietors, or employees are allowable only to the extent that the insurance represents additional compensation (*see* 31.205–6).

(3) The cost of insurance to protect the contractor against the costs of correcting its own defects in materials and workmanship is unallowable. However, insurance costs to cover fortuitous or casualty losses resulting from defects in materials or workmanship are allowable as a normal business expense.

(4) Premiums for retroactive or backdated insurance written to cover losses that have occurred and are known are unallowable.

(5) The Government is obligated to indemnify the contractor only to the extent authorized by law, as expressly provided for in the contract, except as provided in paragraph (d)(3) of this subsection.

(6) Late premium payment charges related to employee deferred compensation plan insurance incurred pursuant to section 4007 (29 U.S.C. 1307) or section 4023 (29 U.S.C. 1323) of the Employee Retirement Income Security Act of 1974 are unallowable.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.215–15 by revising the date of the clause and paragraph (b) to read as follows:

52.215–15 Pension Adjustments and Asset Reversions.

* * * * *

Pension Adjustments and Asset Reversions (Jan 2004)

* * * * *

(b) For segment closings, pension plan terminations, or curtailment of benefits, the amount of the adjustment shall be—

(1) For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99), the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413–50(c)(12); and

(2) For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413–50(c)(12), except the numerator of the fraction at 48 CFR 904.413–50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.

* * * * *

(End of clause)

[FR Doc. 03–30477 Filed 12–10–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2001–18; FAR Case 2002–014; Item VII]

RIN 9000–AJ59

Federal Acquisition Regulation; Debriefing—Competitive Acquisition

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement sections 1014 and 1064 of the Federal Acquisition Streamlining Act of 1994 on requirements for debriefing unsuccessful offerors under competitive proposals.

DATES: *Effective Date:* January 12, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Julia Wise, Procurement Analyst, at (202) 208–1168. Please cite FAC 2001–18, FAR case 2002–014.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends the FAR to include requirements for debriefing unsuccessful offerors under competitive proposals, as required by sections 1014 and 1064 of the Federal Acquisition Streamlining Act of 1994 which amended 10 U.S.C. 2305(b) and 41 U.S.C. 253b, respectively. Specifically, 10 U.S.C. 2305(b)(5)(D) and 41 U.S.C. 253b(e)(4) require each solicitation for competitive proposals to include a statement that prescribes minimal information that shall be disclosed in postaward debriefings. Some of the requirements were already incorporated into the clause at FAR 52.215–1, Instructions to Offerors—Competitive Acquisitions, but the notification for debriefings was overlooked during the drafting of the clause at 52.212–1, Instruction to Offerors—Commercial Items. This rule amends FAR 52.212–1 and 52.215–1 to implement the statutory requirements, and the past performance debriefing requirement at FAR 15.506(d)(2), by listing all the prescribed minimal information that shall be disclosed in postaward debriefings.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 5778, February 4, 2003. Two respondents submitted public comments. The Councils considered the comments before agreeing to publish the proposed rule as final without change. A summary of the comments and their disposition follows:

Comment: The revised FAR clauses should include a debriefing requirement to reveal the number of ''points'' an offeror received under the evaluation of its past performance.

Response: The Councils do not concur. The clauses, as revised by this final rule, establish a clear requirement for agencies to provide the results of its evaluation of an offeror's past performance. However, agencies successfully use different methods (*e.g.*, adjectival, color coding, and point scoring) to evaluate proposals. Specifying a particular method would limit agency discretion with no apparent associated benefit.

Comment: The revised FAR clauses should include a debriefing requirement to reveal the sources, other than the offeror, of any past performance information received.

Response: The Councils do not concur. FAR 15.506(e) prohibits the identification of individuals providing reference information about an offeror's past performance.

Comment: The rule should be revised to address the requirement to release unit price information clearly and consistently within the FAR.

Response: The Councils appreciate that, as a result of recent court cases, especially *MCI WorldCom* v. *GSA,* 163 F. Supp. 2d 28, the treatment of unit prices under exemption no. 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)) is in a state of flux which may

ultimately require that FAR 15.503(b)(1)(iv) addressing the release of unit prices be clarified. The Councils will continue to evaluate this issue and will consider whether a case needs to be opened to address this issue.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory FlexibilityAct, 5 U.S.C. 601, *et seq.*, because the rule primarily clarifies language pertaining to disclosure of information in post-award debriefings currently authorized by statute and does not change existing policy.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATIONS PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 52.212–1 by revising the date of the provision; and adding paragraph (l) to read as follows:

52.212–1 Instructions to Offerors—Commercial Items.

* * * * *

Instructions to Offerors—Commercial Items (JAN 2004)

* * * * *

(l) *Debriefing.* If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(1) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.

(2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(4) A summary of the rationale for award;

(5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

■ 3. Amend section 52.215–1 by revising the date of the provision and paragraph (f)(11) to read as follows:

52.215–1 Instructions to Offerors—Competitive Acquisition.

* * * * *

Instructions to Offerors—Competitive Acquisition (Jan 2004)

* * * * *

(f) * * *

(11) If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(i) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.

(ii) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(iii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(iv) A summary of the rationale for award.

(v) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(vi) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

* * * * *

[FR Doc. 03–30478 Filed 12–10–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 6, 13, 25, and 52

[FAC 2001–18; Item VIII]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to update references and make editorial changes.

DATES: *Effective Date:* December 11, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2001–18, Technical Amendments.

List of Subjects in 48 CFR Parts 1, 6, 13, 25, and 52

Government procurement.

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 6, 13, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 6, 13, 25, and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.201–1 [Amended]

■ 2. Amend section 1.201–1 in paragraph (b)(1) by adding ''Homeland Security,'' after ''Health and Human Services,''.

PART 6—COMPETITION REQUIREMENTS

6.302–7 [Amended]

■ 3. Amend section 6.302–7 in paragraph (c)(1)(i) by removing ''Transportation'' and adding ''Homeland Security'' in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.500 [Amended]

■ 4. Amend section 13.500 in the first sentence of paragraph (d) by removing ''2004'' and adding ''2006'' in its place.

PART 25—FOREIGN ACQUISITION

25.701 [Amended]

■ 5. Amend section 25.701 in the second sentence of paragraph (b) by removing ''*http://www.epls.gov/Terlist1.html*'' and adding ''*http://www.epls.gov/TerList1.html*'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.204–7 [Amended]

■ 6. Amend section 52.204–7 in Alternate I by removing ''4.1104(a)'' and adding ''4.1104'' in its place.

52.211–2 [Amended]

■ 7. Amend section 52.211–2 in the provision heading by removing ''(Dec 1999)'' and adding ''(Jan 2004)'' in its place; in paragraph (a) by removing ''*http://assist.daps.mil*'' and adding ''*http://assist.daps.dla.mil*'' in its place; and in paragraph (b) by removing ''(215) 697–2667/2179'' and adding ''(215) 697–2179'' in its place.

52.225–13 [Amended]

■ 8. Amend section 52.225–13 in the clause heading by removing ''(Oct 2003)'' and adding ''(Jan 2004)'' in its place; and in the second sentence of paragraph (b) of the clause by removing ''*http://www.epls.gov/Terlist1.html*'' and adding ''*http://www.epls.gov/TerList1.html*'' in its place.

[FR Doc. 03–30479 Filed 12–10–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001–18 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2001–18 which precedes this document. These documents are also available via the Internet at *http://www.arnet.gov/far.*

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2001–18

Item	Subject	FAR case	Analyst
I	New Consolidated Form for Selection of Architect-Engineer Contractors	2000–608	Davis.
II	Depreciation Cost Principle	2001–026	Loeb.
III	Federal Procurement Data System	2003–019	Zaffos.
IV	Increased Federal Prison Industries, Inc. Waiver Threshold	2003–001	Nelson.
V	Debarment and Suspension—Order Placement and Option Exercise	2002–010	Goral.
VI	Insurance and Pension Costs	2001–037	Loeb.
VII	Debriefing—Competitive Acquisition	2002–014	Wise.
VIII	Technical Amendments.		

Item I—New Consolidated Form for Selection of Architect-Engineer Contractors (FAR Case 2000–608)

This final rule amends the FAR to replace SF 254, Architect-Engineer and Related Services Questionnaire, and SF 255, Architect-Engineer and Related Services Questionnaire for Specific Projects, with SF 330, Architect-Engineer Qualifications. The SF 330 reflects current architect-engineer practices in a streamlined and updated format and is organized into data blocks that readily support automation. An interagency *ad hoc* committee developed the SF 330. It was based on the results of a joint Federal-industry survey of the existing SFs 254 and 255 conducted by the Standing Committee on Procurement and Contracting of the Federal Facilities Council (FCC) in 1995 and published in 1996 as FCC Report Number 130, entitled ''Survey on the Use of SFs 254 and 255 for Architect-Engineer Qualifications.'' The survey's purpose was to evaluate the current use of the forms, which are used for the submission of qualifications by architect-engineer (A–E) firms interested in Federal contracts, and to identify possible improvements which would enable the existing forms to better serve the needs of Federal agencies and the A–E industry.

The policies and the SF 330, Architect-Engineer Qualifications, of this final rule are effective for all agencies and their solicitations issued on or after January 12, 2004. However, agencies may delay implementation of this final rule until June 8, 2004, at which time it becomes mandatory for all agencies and their solicitations issued on or after that date. Use of the SF 330 becomes effective January 12, 2004. However, until June 8, 2004, agencies may authorize the continued use of the SFs 254 and 255 instead.

Item II—Depreciation Cost Principle (FAR Case 2001–026)

This final rule amends FAR parts 2 and 31 to revise the depreciation cost principle (FAR 31.205–11) by improving clarity and structure and removing unnecessary and duplicative language. The case was initiated at the request of the Aerospace Industries Association. The rule does not change the allowability of depreciation costs. However, changes have been made that may effect the determination of depreciable costs for tangible personal property; for example, only residual values in excess of 10 percent need be used and residual values need not be recognized when certain depreciation methods are used. This rule is of particular interest to contractors and contracting officers who use cost

analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item III—Federal Procurement Data System (FAR Case 2003–019)

This final rule amends the FAR to revise FAR 4.602 to—

- Reflect that the information in FPDS–NG is available to the general public;
- Provide the Web site for FPDS–NG, which must be entered as *https://www.fpds.gov*;
- Delete the physical address for the Federal Procurement Data Center;
- Allow agencies to report all transactions between $2,500 and $25,000 to FPDS–NG as either individual contract actions or summary contract actions until September 30, 2004;
- Require all contract actions over $2,500 be reported to FPDS–NG as individual contract actions after September 30, 2004;
- Require agencies to insert the provision at 52.204–6, Data Universal Numbering System (DUNS) Number, in solicitations when the expected award amount will result in the generation of an individual contract action report and the contract does not include FAR clause 52.204–7, Central Contractor Registration; and
- Eliminate the use of the SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report, and the SF 281, Federal Procurement Data System (FPDS)—Summary Contract Action Report ($25,000 or Less).

Item IV—Increased Federal Prison Industries, Inc. Waiver Threshold (FAR Case 2003–001)

The interim rule published as Item V of FAC 2001–014 is adopted as final without change. The interim rule amended the FAR to increase the Federal Prison Industries, Inc.'s (FPI) clearance exception threshold at FAR 8.606(e) from $25 to $2,500, and deleted the criterion that delivery is required within 10 days. Federal agencies are not required to make purchases from FPI of products on FPI's Schedule that are at or below this threshold. Federal agencies, however, may continue to consider and purchase products from FPI that are at or below $2,500.

Item V—Debarment and Suspension—Order Placement and Option Exercise (FAR Case 2002–010)

This final rule amends FAR part 9 to address the placement of orders under existing contracts and agreements with contractors that have been debarred, suspended, or proposed for debarment.

Item VI—Insurance and Pension Costs (FAR Case 2001–037)

This final rule amends the FAR to revise the Insurance and Indemnification cost principle (FAR 31.205–19), and the portion of the Compensation for Personal Services cost principle relating to pension costs (FAR 31.205–6(j)). The rule revises both cost principles by improving clarity and structure, and removing unnecessary and duplicative language. Changes to FAR 31.205–6(j) include: Use of terminology consistent with Cost Accounting Standard (CAS) 412, Measurement of Pension Costs, and CAS 413, Adjustment and Allocation of Pension Cost; how the government receives pension cost adjustment amounts for CAS-covered and non-CAS-covered contracts; revision of the allowability limitation on employee stock ownership plan (ESOP) contributions; and removal of the requirement for the contracting officer to approve the ESOP contribution rate. Changes to FAR 31.205–19 include the elimination of the U.S. Treasury discount rate provision for computing actual losses. The case was initiated as a result of comments and recommendations received from industry and government representatives during a series of public meetings. This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item VII—Debriefing—Competitive Acquisition (FAR Case 2002–014)

This rule amends the FAR to include requirements for debriefing unsuccessful offerors under competitive proposals, as required by sections 1014 and 1064 of the Federal Acquisition Streamlining Act of 1994, as amended, 10 U.S.C. 2305(b) and 41 U.S.C. 253b, respectively. Specifically, 10 U.S.C. 2305(b)(5)(D) and 41 U.S.C. 253b(e)(4) requires each solicitation for competitive proposals to include a statement that prescribes minimal information that shall be disclosed in postaward debriefings. This rule also amends FAR 52.212–1 and 52.215–1 to implement the statutory requirements, and the past performance debriefing requirement at FAR 15.506(d)(2), by listing all the prescribed minimal information that shall be disclosed in postaward debriefings.

Item VIII—Technical Amendments

This amendment makes editorial changes at FAR 1.201–1(b)(1); 6.302–7(c)(1)(i); 13.500(d); 25.701(b); 52.204–7, Alternate I; 52.211–2(a) and (b); and 52.225–13(b).

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–30480 Filed 12–10–03; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Thursday,
December 11, 2003

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 8

Federal Acquisition Regulation; Procurement List; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 8

[FAR Case 2003–013]

RIN 9000–AJ82

Federal Acquisition Regulation; Procurement List

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and SpaceAdministration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to clarify the point that the Javits-Wagner O'Day (JWOD) program becomes a mandatory source of supplies and services and to update the address for the Committee for Purchase from People Who Are Blind or Severely Disabled.

DATES: Interested parties should submit comments in writing on or before January 12, 2004 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2003–013@gsa.gov.*

Please submit comments only and cite FAR case 2003–013 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAR case 2003–013.

SUPPLEMENTARY INFORMATION:

A. Background

The rule amends the FAR to clarify that the Javits-Wagner O'Day (JWOD) program becomes a mandatory source of supplies and services when the supplies or services have been added to the Procurement List maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled (''the Committee''). A Web site for the ''Procurement List'' is added and the address for the Committee has also been updated. These changes are necessary to correct confusion and avoid misuse of mandatory source authority.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* While we have made changes to clarify when a supply or service becomes a mandatory JWOD source, we have not substantively changed procedures for award and administration of contracts. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 8 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2003–013), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 8

Government procurement.

Dated: December 3, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 8 as set forth below:

1. The authority citation for 48 CFR part 8 is revised to read as follows:

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 8.002 by revising paragraphs (a)(1)(iv) and (a)(2)(i) to read as follows:

8.002 Priorities for use of Government supply sources.

(a) * * *

(1) * * *

(iv) Supplies which are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled (see Subpart 8.7);

* * * * *

(2) *Services.* (i) Services, which are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled (see Subpart 8.7);

* * * * *

8.004 [Amended].

3. Amend section 8.004 by removing ''available from'' and adding ''on the Procurement List maintained by'' in its place.

4. Amend section 8.703 by revising the first paragraph to read as follows:

8.703 Procurement list.

The Committee maintains a Procurement List of all supplies and services required to be purchased from JWOD participating nonprofit agencies. The Procurement List may be accessed at: *http://www.jwod.gov/procurementlist.* Questions concerning whether a supply item or service is on the Procurement List may be submitted at Internet e-mail address: *info@jwod.gov* or referred to the Committee offices at the following address and telephone number: Committee for Purchase from People, Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, VA 22202–3259, (703) 603–7740.

* * * * *

[FR Doc. 03–30694 Filed 12–10–03; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Thursday,
December 11, 2003

Part VII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulation; Reimbursement of Relocation Costs on a Lump-Sum Basis; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 2003–002]

RIN 9000–AJ81

Federal Acquisition Regulation; Reimbursement of Relocation Costs on a Lump-Sum Basis

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to revise the relocation cost principle to expand the use of reimbursement on a lump-sum basis to certain types of employee relocation costs.

EFFECTIVE DATES: Interested parties should submit comments in writing on or before February 9, 2004 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to-General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2003–002@gsa.gov.*

Please submit comments only and cite FAR case 2003–002 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb, Policy Adviser, at (202) 501–0650. Please cite FAR case 2003–002.

SUPPLEMENTARY INFORMATION:

A. Background

The relocation cost principle at FAR 31.205–35 permits the Government to reimburse contractors for certain types of relocation costs, with the exception of miscellaneous costs, up to the employee's actual expenses. For miscellaneous costs that are described at FAR 31.205–35(a)(5), the Government may reimburse the contractor a flat or lump-sum amount up to $5,000, in lieu of actual costs. The cost principle has no ceiling for miscellaneous expenses when reimbursement is based on actual expenses.

In order to help the Councils decide whether to expand the use of reimbursement on a lump-sum basis, DoD, GSA, and NASA published a notice requesting public comments in the **Federal Register** at 67 FR 65468, October 24, 2002, and invited interested parties to provide information to help assess the potential costs and benefits of the lump-sum reimbursement approach. Nine respondents submitted public comments. After reviewing the public comments that were submitted, the Councils decided to explore further the views of interested parties. Accordingly, DoD, GSA, and NASA published a notice of public meeting in the **Federal Register** at 68 FR 4054, January 27, 2003, and invited interested parties to attend a public meeting held on February 6, 2003, at the Department of the Interior, Washington, DC, to present their views on the subject. Representatives from an industry association, a travel and relocation management firm, and a defense contractor presented their views.

It is apparent from the public comments submitted and the discussions at the public meeting that, in addition to the miscellaneous relocation costs for which lump-sum reimbursements are already permitted by FAR 31.205–35(b)(4), it is now common commercial practice to reimburse relocating employees on a lump-sum basis for their house-hunting, final move, and temporary lodging expenses. Accordingly, the Councils are proposing to amend the relocation cost principle to permit contractors the option of being reimbursed on a lump-sum basis for three types of employee relocation costs, namely, (1) costs of finding a new home, (2) costs of travel to the new location, and (3) costs of temporary lodging. These three types of costs are in addition to the miscellaneous relocations costs for which lump-sum reimbursements are already permitted. While individual receipts are not required with a lump-sum approach, contractors would still have to demonstrate that amounts paid are reasonable and appropriate for the circumstances of each relocating employee.

The proposed rule is expected to reduce the accounting and administrative burden of the relocation cost principle on contractors and lead to faster relocations. Costs to the Government are not expected to increase significantly as a result of this revision.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principles and procedures discussed in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 31 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2003–002), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 8, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 31 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 31.205–35 by revising paragraph (b)(4) to read as follows:

31.205–35 Relocation costs.

* * * * *

(b) * * *

(4) Amounts to be reimbursed shall not exceed the employee's actual expenses, except that reimbursement on an appropriate lump-sum basis to the individual employee may be allowed for any of the following relocation costs:

(i) Costs of finding a new home, as discussed in paragraph (a)(2) of this subsection.

(ii) Costs of travel to the new location, as discussed in paragraph (a)(1) of this subsection (but not costs for the transportation of household goods).

(iii) Costs of temporary lodging, as discussed in paragraph (a)(2) of this subsection.

(iv) Miscellaneous costs of the type discussed in paragraph (a)(5) of this subsection, not to exceed a maximum lump-sum amount of $5,000.

* * * * *

[FR Doc. 03–30695 Filed 12–10–03; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Thursday,
December 11, 2003

Part VIII

Department of the Interior

National Park Service

36 CFR Part 7

Special Regulations; Areas of the National Park System; Final Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD11

Special Regulations; Areas of the National Park System

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service is promulgating this rule to more effectively manage winter visitation and recreational use in Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway. This rule is issued in conjunction with the Winter Use Plans Final Environmental Impact Statement and the Final Supplemental Environmental Impact Statement and is necessary to mitigate impacts resulting from oversnow motorized recreation in the parks and to implement the Record of Decision of March 25, 2003. The rule implements an adaptive management strategy. In order to minimize impacts the rule requires that most recreational snowmobiles and snowcoaches operating in the parks meet certain air and sound emissions requirements, be accompanied by a trained guide, and comply with established daily entry limits on the numbers of snowmobiles that may enter the parks. Cross-country routes will continue to remain closed to oversnow motorized vehicles.

DATES: This regulation is effective December 11, 2003.

FOR FURTHER INFORMATION CONTACT: John Sacklin, Planning Office, Yellowstone National Park, 307–344–2021.

SUPPLEMENTARY INFORMATION: The National Park Service (NPS) has been managing winter use issues in Yellowstone National Park (YNP), Grand Teton National Park (GTNP), and the John D. Rockefeller, Jr., Memorial Parkway (the Parkway) for several decades. In 1997, the Fund for Animals and others filed suit, alleging that the NPS failed to: Consult with the U.S. Fish and Wildlife Service on impacts of winter use on threatened and endangered species; prepare an EIS concerning winter use; and evaluate the effects of grooming on wildlife and other park resources. The suit was resolved with a settlement agreement in October 1997 which, among other things, required the NPS to prepare a new winter use plan for the three park units. On October 10, 2000, a Winter Use Plans Final Environmental Impact Statement (FEIS) was published for YNP, GTNP, and the Parkway. A Record of Decision (ROD) was signed by Intermountain Regional Director Karen Wade on November 22, 2000, and subsequently distributed to interested and affected parties. The ROD selected FEIS Alternative G, which eliminated both snowmobile and snowplane use from the parks by the winter of 2003–2004, and provided access via an NPS-managed, mass-transit snowcoach system. This decision was based on a finding that the snowmobile and snowplane use existing at that time, and the snowmobile use analyzed in the FEIS alternatives, impaired park resources and values, thus violating the statutory mandate of the NPS.

Implementing aspects of this decision required a special regulation for each park unit in question. Following publication of a proposed rule and the subsequent public comment period, a final rule was published in the **Federal Register** on January 22, 2001 (66 FR 7260). The rule became effective on April 22, 2001.

On December 6, 2000, the Secretary of the Interior, the Director of the National Park Service and others in the Department of the Interior and the NPS were named as defendants in a lawsuit brought by the International Snowmobile Manufacturers' Association and several groups and individuals. The State of Wyoming subsequently intervened on behalf of the plaintiffs. Following promulgation of final regulations, the original complaint was amended to also challenge the regulations. The lawsuit asked for the decision contained in the ROD be set aside. The lawsuit alleged that NPS failed to give legally mandated consideration to all of the alternatives, made political decisions outside the public process and contrary to evidence and data, failed to give the public appropriate notice and participation, failed to adequately consider and use the proposals and expertise of the cooperating agencies, failed to properly interpret and implement the parks' purpose, discriminated against disabled visitors, and improperly adopted implementing regulations. A procedural settlement was reached on June 29, 2001, under which, NPS prepared a Supplemental Environmental Impact Statement (SEIS). In accordance with the settlement, the SEIS incorporated ''any significant new or additional information or data submitted with respect to a winter use plan.'' Additionally, the NPS provided the opportunity for additional public participation pursuant to NEPA. A Notice of Intent to prepare a Supplemental Environmental Impact Statement was published in the **Federal Register** on July 27, 2001 (66 FR 39197).

A draft SEIS was published on March 29, 2002, and distributed to interested and affected parties. NPS accepted public comments on the draft for 60 days, and 357,405 pieces of correspondence were received. The draft SEIS examined four additional alternatives: Two alternatives that would allow some form of snowmobile access to continue; a no-action alternative, that would implement the November 2000 ROD; and another alternative that would implement the no-action alternative one year later to allow additional time for phasing in snowcoach-only travel. The SEIS focused its analysis only on the issues relevant to allowing recreational snowmobile and snowcoach use in the parks. These impact topics included: Air quality and air quality related values, employee health and safety, natural soundscapes, public health and safety, socioeconomics, wildlife—bison and elk, and visitor experience. The SEIS did not include re-evaluating the decision to ban snowplane use on Jackson Lake because this had not been an issue in the lawsuit, and was not an aspect of the resulting settlement.

On November 18, 2002, the NPS published a final rule (67 FR 69473) based on the FEIS, which generally postponed for one year implementation of the phase-out of snowmobiles in the parks under the January 2001 regulation. This rule allowed for additional time to plan and implement the NPS-managed mass-transit, snowcoach-only system outlined in the FEIS as well as time for completion of the SEIS. The rule delayed the implementation of the daily entry limits on snowmobiles until the winter of 2003–2004 and the complete prohibition on snowmobiles until 2004–2005. The transitional requirement under the 2001 regulation that snowmobile parties use an NPS-permitted guide was also delayed until the 2003–2004 winter use season.

Other provisions under the January 2001 regulation concerning licensing requirements, limits on hours of operation, and the ban on snowplane use remained effective for the winter use season of 2002–2003. The rule also closed to snowmobiles 14 miles of roads that had been previously opened to snowmobile use.

The Notice of Availability for the Final SEIS was published on February 24, 2003 (68 FR 8618). The Final SEIS included a new alternative, alternative 4, consisting of elements which fell within the scope of the analyses contained in the Draft SEIS and which

was identified as the preferred alternative. In addition, the final SEIS included changes to the alternatives, changes in modeling assumptions and analysis, and it incorporated additional new information. Intermountain Regional Director Karen Wade signed a Record of Decision for the SEIS, which became effective on March 25, 2003. In the ROD she stated: ''[that there is] broad discretion afforded under the applicable laws and policies to the Service in the operation of these units'' * * * [T]here is no single decision mandated by these laws and policies. This is reflected in my ROD from November 2000 * * * and the decision I made herein today * * *''' The Regional Director selected Final SEIS alternative 4 for implementation, and enumerated specific modifications to that alternative. The Final SEIS and ROD each concluded that implementation of Final SEIS alternatives 1a, 1b, 3, or 4 would not be likely to impair park resources or values resulting from motorized oversnow recreation. Promulgation of this rule is necessary to implement the March 25, 2003, ROD. Absent the promulgation of these new regulations, the existing regulations which reduce the numbers of snowmobiles that may be used in the parks during the winter of 2003–2004, but without air and sound emissions requirements, will continue to apply. A detailed description of the background of this regulation is contained in the proposed regulation.

Summary of and Responses to Comments

The NPS published a proposed rule on August 27, 2003 (68 FR 51526) and took comment for 49 days. The NPS received 104,802 documents commenting on the proposed rule, including 90,624 in electronic form, 12,584 in hard copy, and 1,594 in other formats. The comments were categorized into one of four possible positions on the proposed regulations: (1) *Pro Rule*—the commentor generally supports the proposed rule; (2) *Anti Rule, Too Strong*—commentor generally objects to the proposed rule because it places too much of a burden on snowmobilers; (3) *Anti Rule, Weak*—commentor generally objects to the proposed rule because it does not adequately protect park resources due to the presence of snowmobiles; (4) *Unclear*—general position concerning the proposed rule is unclear.

Approximately 91% of all commentors believed the proposed regulation does not adequately protect park resources due to the presence of snowmobiles. These commentors generally believe that the National Park Service should not implement this proposed rule and instead allow the current regulations to take effect, which would eliminate snowmobiles in favor of mass transit snowcoaches. About 8% of all commentors generally supported the proposed regulation, arguing that the NPS has correctly balanced visitor use with preserving park resources. Nearly 2% of commentors offered comments within the scope of the rulemaking, but they were generally unclear as to their position. Less than 1% of commentors generally believed the rule imposed too great of a burden on snowmobilers due to the restrictions associated with the regulation.

The following is a summary of substantive comments on the proposed rule and our responses to them.

Snowmobile BAT

Issue: Many commentors raised concerns that 2004 snowmobile models are more polluting than 2002 model-year machines, despite the NPS' expectations that snowmobile technology will continue to improve. They asserted that the snowmobile industry cannot be relied upon to provide innovative clean and quiet machines in a market that seeks faster and more powerful snowmobiles.

NPS Response: NPS analysis indicates that some snowmobiles' emissions in the 2004 model year have increased slightly since the 2002 model year. 2004 snowmobile models that have been certified as Best Available Technology (BAT) have slightly increased carbon monoxide emissions, relative to the tests on the 2002 models. This is likely due to an increase in horsepower. For hydrocarbon emissions, one manufacturer has slightly decreased emissions since 2002, but another manufacturer has slightly increased emissions. This increase is likely the result of the 2002 snowmobile being a prototype machine, which was significantly altered. In any event, these snowmobiles are still better than the BAT requirement of 90% reduction of hydrocarbons and 70% reduction of carbon monoxide. Sound emissions have been relatively level between 2002–2004 model years. The BAT requirements of this rule may encourage a niche market for a handful of snowmobile models. This may also provide incentives for some manufacturers to design snowmobiles that are cleaner and quieter than our BAT requirements, as future adaptive management decisions will be based in part on noise and air emissions.

Issue: The rule does not recognize permeation emissions from snowmobile fuel systems. Permeation losses from snowmobiles stand to be a source of significant air pollution under the current rule, yet there is no proposed means for testing or regulating this form of pollution.

NPS Response: We agree that permeation emissions could be a source of pollution in the parks. However, the EPA has promulgated regulations that will govern permeation emissions from snowmobile tanks. This is primarily a summer issue when temperatures are higher (as the report cited by the commentor indicates). We feel it is more appropriate to rely on these regulations for controlling permeation emissions. We will monitor air quality in the parks, and continue to evaluate this issue. Should we detect that permeation emissions lead to unacceptable air quality impacts, we will take action under the adaptive management provisions of this regulation.

Issue: Several individuals believe the rule should require that snowmobiles produce the same emissions per passenger as snowcoaches. They recommended that snowmobiles would have to emit, at most, one-sixth the amount of pollution and noise as the cleanest and quietest snowcoaches.

NPS Response: We are trying to provide a range of appropriate activities in the parks, while protecting park resources and values. Use of snowcoaches has definite emissions benefits, relative to snowmobiles, because of their overall lower emissions and their ability to carry as many as seven times the number of passengers. However, we believe it is more appropriate to require that all snowmobiles in the park utilize BAT, which is demonstrably cleaner and quieter than conventional snowmobiles and allows for a range of activities in a manner that ensures protection of park resources and values.

Issue: One commentor recommended including a new section requiring BAT-certified snowmobiles to be visually marked with a sticker or stamp demonstrating BAT compliance. Another commentor questioned how NPS will ensure that each snowmobile has not been modified by the owner in such a way that would increase emissions.

NPS Response: Entrance station personnel will be given information to identify BAT compliant snowmobiles. The requirements that 80 percent of all snowmobilers be accompanied by commercial guides operating under a concessions contract will also provide further assurances that BAT snowmobiles are used. Further, snowmobile engines will already be

labeled with emissions information in compliance with the EPA's snowmobile regulation. NPS will evaluate the need for additional measures as this rule is implemented. If NPS determines that additional measures are necessary, these could be required through the adaptive management framework of this rule. We also considered suggestions of installing remote sensing devices at each entrance, which would detect snowmobile emissions and indicate if they exceed the 15 and 120 g/kW-hr requirements. However, we believe instituting this system as it currently exists is impractical because of the burden on visitors and cost. The final regulation has also been clarified to include language that using a snowmobile or snowcoach which has been modified in such a way as to increase air or sound emissions is prohibited. This provision will provide NPS with sufficient assurance that snowmobiles will not be modified in ways that increase emissions.

Issue: There should be a date by which the park will identify makes, models and year of manufacture of snowmobiles meeting BAT.

NPS Response: The NPS wishes to be as flexible as possible and not have an arbitrary date for determining which snowmobiles are BAT compliant. We will certify snowmobiles as BAT when we have received sufficient information from snowmobile manufacturers concerning the emissions of machines. We recognize that potential customers want to know if a machine is BAT compliant before they order that machine for the upcoming winter season. Consumer demand may provide incentives to the snowmobile manufacturers to disclose emissions information early in the year, so potential customers will know which machines will be BAT and can make appropriate choices in determining which machines to purchase. We strongly encourage anyone who wishes to purchase a snowmobile for the parks to check with the manufacturer to insure it is BAT compliant.

BAT Snowmobile Sound Emissions

Issue: One commentor noted that the proposed rule sets BAT for snowmobiles at 73 dB(A) and the SAE J192 test procedures allows a +2 decibel error range. They claimed this represented no improvement over two-stroke snowmobiles, which typically perform at 75–78 dB(A). Another commentor suggested that we change the BAT requirement to 75 dB(A), since we already allow the 2 dB(A) error range.

NPS Response: The BAT sound requirements established by this rule are noticeably quieter than conventional two stroke-snowmobiles; a 3–5 dB difference represents a doubling of sound emissions. Monitoring will provide NPS with additional data concerning noise impacts, and we may make changes under adaptive management. In addition, if improved technology becomes available, BAT sound requirements could be adjusted accordingly. We are continuing to use 73 dB(A) as our BAT requirement, as we wish to base it on SAE test procedures. If we changed this to 75 dB(A), we would need to eliminate the 2 dB(A) margin of error provided in the SAE J192 testing procedures.

Issue: Several commentors noted that the data NPS relied on to establish the proposed BAT sound requirement was not in full accordance with SAE J192 (March 1985) test method cited in the proposed regulation. Specifically, the atmospheric pressure during the test runs was outside the range specified in the test method. One commentor suggested that final BAT limits should be based on test data that fully complies with the applicable test method and that the test method be a standard SAE procedure. Another commentor recommended revising part 7.13 (l)(4)(ii) to disclose that the J192 test procedure was modified using Yellowstone elevations/barometric pressure.

NPS Response: We recognize that the test procedures used, in part, to determine the BAT sound requirement were based on testing done at Yellowstone National Park, where the atmospheric pressure is lower than the SAE J192 requirements due to the park's elevation. Initial testing data indicates that snowmobiles may test quieter at high elevation, and likewise be able to pass our BAT requirements at higher elevations but fail our requirements near sea level. Therefore, the NPS is initially allowing testing to be performed at reduced barometric pressure, recognizing that snowmobiles will be used in these conditions. The regulatory text has been clarified to note that snowmobile manufacturers may test at any barometric pressure above or equal to 23.4 inches Hg (uncorrected). We are interested in transitioning to the standard SAE J192 test as sufficient test data becomes available.

Issue: The test specified in the proposed rule (SAE J192, 1985 revision) was revised in March 2003. The BAT requirement should be based on this newer test.

NPS Response: We are continuing to use the SAE J192 test, 1985 revision, for several reasons. Most importantly, our BAT requirement was established using the 1985 test procedures along with industry information and modeling. At the time this testing occurred, the J192 testing procedures that were used were the most up to date (revised 1985). However, after that initial testing and after the SEIS was finalized, the SAE updated J192 test procedures in March 2003. The changes from the 1985 procedures to the 2003 procedures could alter the results. For instance, because of technical changes to sound meter settings, snowmobiles may yield slightly quieter test results using the 2003 test procedures. In addition, the rolling start called for in the new procedure may also generate higher sound levels due to increased speed. Therefore, to be consistent with our BAT requirements, we must continue to use the 1985 test. We are interested in transitioning to the March 2003 J192 test because it is a more current procedure, and we will continue to evaluate this issue after these regulations are implemented.

Issue: One commentor recommended that the BAT sound requirement should be adjusted upward by 3 dB(A) to reflect the effects of different atmospheric pressures between Yellowstone and the SAE J192 test procedures.

NPS Response: We believe the BAT sound requirement of 73 dB(A) is appropriate and should not be altered. As noted above, we are allowing manufacturers to test at any barometric pressure above 23.4 inches Hg (uncorrected). Currently, there are two snowmobile manufacturers that have demonstrated compliance with this BAT requirement. Testing for one of these snowmobiles indicates that it is well within our BAT requirement even when tested in the Midwest at approximately 1,000 feet in elevation. This snowmobile yields sound emissions of 71.75 dB(A), well below our BAT requirements. If tested at higher elevation in Yellowstone National Park, we believe this snowmobile would yield sound emissions even below 71 dB(A). If the BAT requirement was increased by 3 dB(A), to 76 dB(A), it would only be 2 dB(A) quieter than the maximum snowmobile sound emissions allowed for any snowmobile. A BAT requirement of 76 dB(A) would be far too high to achieve our goal of insuring that soundscapes are protected.

Issue: One commentor suggested the SAE J2567 test be used for snowmobile sound.

NPS Response: We have no information at this time about the comparability of this test to the SAE J192 test, and the commentor does not provide any further data or information about this test. Accordingly, we have not made this change in the regulation.

BAT Snowmobile Air Emissions

Issue: One commentor was concerned that the 5-mode engine dynamometer is not reasonable since it includes a full throttle measurement while snowmobiles are not allowed to operate at full throttle because of speed limits. Another commentor suggested that we use this test since it is the industry standard.

NPS Response: The 5-mode engine dynamometer is the industry standard test for measuring emissions. It is also the test used by snowmobile manufacturers in determining compliance with the EPA's regulation on snowmobile emissions. Relying on the same testing will simplify compliance procedures for snowmobile manufacturers, as the manufacturers will be able to provide NPS with a copy of their emissions data generated to comply with EPA's rule. Further, snowmobiles used in the park are often operated by users at full throttle during acceleration, even though speed limits are in place. Many four-stroke machines also operate near full throttle when going 45 mph, especially when they are going up hills, weighted with two riders or luggage or other gear, or pulling a tow sled. Eliminating the full throttle mode within the 5-mode test would also amount to a de facto increase in total emissions in the parks.

Issue: One commentor provided a report by an independent firm reviewing the SEIS air quality analysis, which alleged that the SEIS overestimated the air quality impacts resulting from snowmobiles. They requested that NPS re-analyze the air quality impacts of snowmobiles and factor in the new analysis to the final regulation.

NPS Response: The NPS believes the SEIS conclusions concerning air quality impacts resulting from snowmobiles are accurate. While the modeling may have overestimated one emissions factor, others were underestimated. However, specific questions related to the SEIS analysis are beyond the scope of this rule. Further, it would be impossible to re-analyze the air quality impacts of snowmobiles and still publish this final rule prior to the start of the 2003–2004 winter season. The NPS will conduct ongoing monitoring to determine the accuracy of the SEIS analysis.

Issue: One commentor recommended harmonization of the NPS BAT program with EPA's November 2002 regulation. The commentor also suggested that NPS use the EPA's 2012 snowmobile emissions limits as the BAT requirements.

NPS Response: We wish to make the administrative burden for complying with our BAT requirements as simple as possible. Therefore, we are requiring through the final regulation that manufacturers submit to the NPS their Family Emissions Limit (FEL) application, which complies with EPA's regulations. This should minimize the need for snowmobile manufacturers to conduct any additional testing or analysis to demonstrate their compliance with the NPS'' air emissions requirements. Generally, engine families contain only a single engine, which are then used in a variety of snowmobile body styles or models. Snowmobile engines that have significant emissions related modifications are categorized as a different engine family. For instance, a four-stroke with a turbo charger would constitute a separate engine family, and require a separate FEL, than the same engine without a turbo charger.

Using FELs will harmonize the process for determining BAT compliance with EPA's regulation. However, we do not believe EPA's Tier 3 emissions limits, which reduce hydrocarbons and carbon monoxide by 50%, will sufficiently protect air quality in the parks, where snowmobile use is highly concentrated. Therefore, the final regulation relies on the proposed BAT requirements of a 90% reduction in hydrocarbons and a 70% reduction in carbon monoxide.

Issue: BAT limits as proposed should only be applied to the average emissions of individual snowmobile models. Thus, BAT limits in the proposed regulation should be compared to Official Test Results (OTR).

NPS Response: When initially contemplated, the NPS intended for the BAT requirements to represent the maximum emissions a snowmobile could emit while still being allowed to enter the parks. Several statements regarding BAT in the ROD and SEIS indicate that ''any recreational snowmobile entering YNP must achieve emissions below 15 g/kW-hr for hydrocarbons and 120 g/kW-hr for carbon monoxide.'' (ROD p. 14) We believe that we can use FEL to demonstrate compliance with BAT and achieve this purpose. If we instead relied on Official Test Results to determine compliance with BAT, some snowmobiles could have emissions greater than our BAT requirements, which could result in an overall increase in emissions in the parks.

Issue: One commentor said the use of OTR as an emission standards basis is not as reliable as the use of FELs, nor is it consistent with EPA's current practice for developing emission standards. They concluded that NPS should base its numerical limits on the use of FEL values.

NPS Response: We agree with these comments and we are adopting the FEL method of demonstrating compliance with BAT in the final regulation. The use of FEL has several advantages. First, use of FEL will ensure that all individual snowmobiles entering the parks achieve our emissions requirements, unless modified or damaged (under the final regulation, snowmobiles which are modified in such a way as to increase air or sound emissions will not be in compliance with BAT and not permitted to enter the parks). For this reason, FEL is the best mechanism to protect park air quality. Use of FEL will also represent the least amount of administrative burden on the snowmobile manufacturers to demonstrate compliance with NPS BAT requirements. Further, the EPA has the authority to insure that manufacturers' claims on their FEL applications are valid. EPA also requires that manufacturers conduct production line testing (PLT) to demonstrate that machines being manufactured actually meet the certification levels. If PLT indicates that emissions exceed the FEL levels, then the manufacturer is required to take corrective action. Through EPA's ability to audit manufacturers' emissions claims, NPS will have sufficient assurance that emissions information and documentation will be reviewed and enforced by the EPA. FEL also takes into account other factors, such as the deterioration rate of snowmobiles (some snowmobiles may produce more emissions as they age), lab-to-lab variability, test-to-test variability, and production line variance. In addition, under the EPA's regulations, all snowmobiles manufactured must be labeled with FEL air emissions information. This will help to ensure that our emissions requirements are consistent with these labels and the use of FEL will avoid potential confusion for consumers.

Issue: One commentor stated that the EPA baseline emissions assumptions for conventional two-stroke snowmobiles (400 g/kW-hr for CO; 150 g/kW-hr for HC) were determined based on the average test results of several snowmobile models. They were not intended to reflect the FEL. Therefore, NPS should rely on OTR.

NPS Response: NPS recognizes that the EPA baseline assumptions represent the emissions of an ''average'' snowmobile. However, EPA ties this assumption to their FEL requirements. For instance, the EPA regulation requires that all snowmobiles achieve a

50 percent reduction for hydrocarbons and carbon monoxide by 2012 . This reduction is demonstrated with the manufacturer's FEL and is a reduction from the baseline snowmobile assumption. This is the purpose of the FEL ''to ensure that snowmobiles are consistently under the certification values, with the difference in emissions benefiting the environment in the form of further emission reductions.

Issue: One commentor said that in developing the appropriate FEL, NPS should not use the current BAT values, which were based on OTR. These do not account for test variability, durability effects, and other inherent sources of variability. When these effects are accounted for (*i.e.*, with a 15–20 percent margin), the BAT values should be adjusted to 18 g/kW-hr for HC and 144 g/kW-hr for CO.

NPS Response: We believe that the BAT requirements identified in the proposed rule are appropriate. As noted elsewhere, these were intended to represent the maximum emissions a snowmobile would be allowed to produce. For instance, one snowmobile manufacturer is currently producing a snowmobile that is certified by EPA at a FEL of 10 g/kW-hr for hydrocarbons and 115 g/kW-hr for carbon monoxide. This is 33.3% better than our hydrocarbon requirements and 4.2% better than our carbon monoxide requirements. Thus, it is clear the industry is currently able to meet our BAT requirements given technology presently used in snowmobiles.

Issue: Snowmobile manufacturers and the public must have significant advance notice before changes are made to BAT requirements. Significant changes in emissions performance require modifications to basic engine and chassis design features. NPS should allow 4 years leadtime before BAT requirements are changed, which is the amount of time EPA generally allows before modifying emissions requirements.

NPS Response: We agree that snowmobile manufacturers must have sufficient advance notice before changes to BAT requirements are enacted. Therefore, the final rule will require that any changes to the BAT requirements will be published in the **Federal Register** and the public will be notified in accordance with 36 CFR 1.7(a). Through this process, snowmobile manufacturers and the public will be notified on the timeframe for changes to BAT requirements in light of the technology that is available at the time, environmental needs, and whatever changes might be proposed. Additional details about the adaptive management process are contained in the response to comments in the adaptive management section. The BAT requirements are not a restriction on what snowmobile manufacturers may produce, but an end-use restriction on which commercially produced snowmobiles may be used in the parks.

BAT Certification Issues

Issue: One commentor noted that the certification process is the responsibility of the snowmobile manufacturers, not the guides and outfitters. Another commentor stated that manufacturers should be allowed to use existing documentation and test methods to certify snowmobiles as BAT compliant. For emissions certification, relevant sections of the current EPA certification template for snowmobiles should be used. The relevant sections include the family information form, the test results form, and the certified models form. This information on the EPA template is subject to audit by EPA and the manufacturer certifies it is correct when submitted to EPA. Production line testing, required by EPA, ensures the units being produced exhibit emission characteristics consistent with the certification values.

NPS Response: We agree that the snowmobile manufacturers have the primary responsibility for documenting compliance with BAT, although guides and outfitters have a responsibility to insure their snowmobiles are BAT compliant and are well-maintained. We also agree that manufacturers should be permitted to use information submitted in accordance with EPA's regulation to document compliance with the NPS BAT requirements. We will accept this application information from manufacturers in support of conditionally certifying a snowmobile as BAT, pending ultimate review and certification by EPA at the same emissions levels identified in the application. Should EPA certify the snowmobile at a level that would no longer meet BAT requirements, this snowmobile would no longer be considered to be BAT compliant and would be phased-out according to a schedule determined by the NPS to be appropriate.

Issue: For sound testing, NPS should confirm compliance with the BAT requirements by using the existing Snowmobile Safety and Certification Committee (SSCC) sound level certification form. Under the SSCC machine safety standards program, snowmobiles are certified by an independent testing company as complying with all SSCC safety standards, including sound standards.

NPS Response: We agree that snowmobile manufacturers should be allowed to use the existing SSCC sound level certification form to demonstrate compliance with NPS BAT requirements. Our regulation does not require this form specifically, as there could be other acceptable documentation in the future. The NPS will work cooperatively with the snowmobile manufacturers on appropriate documentation.

Issue: One commentor suggested that NPS should develop an alternative test method in addition to the manufacturer certification process should a BAT snowmobile be modified.

NPS Response: The primary method for documenting compliance with BAT is the FEL method. All recreational snowmobiles used in the park that are 2005 or later model years must be certified by EPA with an FEL at or below the NPS BAT requirement. However, an individual may modify a snowmobile already approved by the NPS as a BAT machine, so long as these modifications do not increase air or sound emissions. The responsibility to demonstrate that such modifications did not increase emissions would be on the owner. Thus, if after-market emissions reduction equipment became available, a snowmobile owner could install it only on machines already BAT approved.

Snowcoach BAT

Issue: Many commentors said that snowcoaches should be treated the same as snowmobiles for determining compliance with BAT. Snowcoaches should be BAT compliant at the same time snowmobiles are required to be BAT compliant. Many of these individuals do not feel it is fair to exempt historic snowcoaches. Many also said that snowcoaches should not be allowed to operate at 2 dB higher than snowmobiles with speed measured at 25 mph as opposed to full throttle.

NPS Response: The SEIS and EIS air quality analyses indicate that the vast majority of air pollution generated in the parks results from the historic use levels and types of snowmobiles. Little pollution is generated by snowcoaches as a whole, partly because their numbers are far fewer relative to snowmobiles, and also because they are far cleaner on both grams of CO and particulate matter emissions per mile and greater passenger capacity relative to snowmobiles. For sound emissions, the SEIS soundscape analysis noted that a group of 4 BAT snowmobiles, carrying up to 8 people total, has a distance to audibility of 5,810 feet in open terrain under average background conditions. A

comparable BAT snowcoach, potentially carrying even more passengers, is audible for only 2,630 feet under the same conditions. Therefore, it is appropriate to allow snowcoaches to be somewhat louder individually, because they can carry many more passengers than a single snowmobile. In addition, the NPS is allowing additional time to phase-in BAT requirements for snowcoaches because of the substantial investment required to upgrade snowcoach technology. Historic snowcoaches are being initially exempted because the NPS wishes to provide incentives to continue operation of these machines to maintain the character of winter touring, as they add to the overall winter experience. Further, there are not very many of these vehicles operating in the parks, (approximately 29) and they provide additional options for visitors.

Issue: One commentor recommended that 2004 engine technology should be required as it becomes phased-in. They stated that replacement of original equipment manufacturer (OEM) equipment on older snowcoaches does not necessarily result in reduced emissions due to open-loop operation of emission control technology.

NPS Response: The NPS intends to work with operators to better understand snowcoach emissions and how they can be reduced. This recommendation could be part of adaptive management, recognizing a phase-in requirement due to the potentially significant investment.

Issue: A commentor asked the NPS to elaborate on how EPA's Tier 2 standards will significantly reduce the open loop mode of operation for snowcoaches.

NPS Response: New 2004 and later medium and heavy duty vehicles (or snowcoaches) will be cleaner and operate more often in closed-loop mode because of the new EPA rules in effect for 2004 and beyond. Manufacturers now have equipment and engine controls that will keep their engines operating in closed loop for more of their power curve, cutting down on the area where these engines would operate in a period of ''enrichment'' (open loop). Because the engine controls have not been implemented yet, there is some uncertainty about how much the open loop mode will be reduced.

General BAT

Issue: One commentor recommended that part 7.13 (l)(1) include a term defining BAT.

NPS Response: The regulatory text does not use the term ''BAT''. Therefore we have not defined it in the regulation.

Adaptive Management

Issue: Several commentors suggested there should be a written plan of what monitoring will be done at the minimum, and how, where, and when it will be conducted.

NPS Response: The Final SEIS and ROD included information (Table 12 and Appendix A, respectively) related to monitoring and adaptive management. We will periodically report to the public on the results of monitoring and adaptive management. Administrative details of monitoring are beyond the scope of this rule. We will continue to work with state regulatory agencies in our monitoring programs.

Issue: Several commentors expressed concerns regarding the timeframe for changes under adaptive management. One commentor recommended taking management actions for future winters in August or September, as opposed to July 1 as specified in the preamble of the proposed rule. Adequate time for appropriate analyses of monitoring results must occur. They suggested that a July 1 date does not allow sufficient time for collecting and reporting environmental monitoring data or for the installation of any updated vehicle equipment.

NPS Response: NPS recognizes that monitoring data can take several months to fully analyze. The winter season ends approximately the first week of March. This provides for over 3 months to complete data analysis and provide results to the NPS. At the same time, gateway communities, concessioners, and the public should have adequate notice before any changes are made to the management of winter use. Thus, it is our goal to notify the public of changes in winter use management by July 1. However, if monitoring results are not available by that time, notice could come at a later time.

Issue: One commentor noted that the adaptive management provisions of this rule will not allow for the public to comment on changes in management of winter use. Another commentor requested that in implementing adaptive management, the NPS consult with the cooperating agencies involved in the SEIS process. Another commentor questioned how substantive changes that might have impacts to the human environment can be accomplished through the adaptive management process. Several commentors suggested that the final regulation be more specific in outlining specific procedures entailed in the Parks' adaptive management process.

NPS Response: The public will be notified of all changes under adaptive management, and the regulation has been clarified to reflect the process we will use to provide the public with notice. Some changes to winter use under adaptive management will be published in the **Federal Register** to provide notice to the public. Specifically, we will provide notice in the **Federal Register** and through one or more of the methods identified in 36 CFR 1.7(a) for changes to BAT air and sound emissions requirements, the commercial: non-commercial guiding ratio, new snowcoach-only routes, and the daily entry limits. The public will be notified of changes to other elements of this regulation, such as group size requirements, and hours of park operation, through one or more of the methods in 36 CFR 1.7(a). New snowmobile routes would be promulgated as a special regulation in accordance with 36 CFR 2.18(c). This is in keeping with the philosophy of adaptive management and will provide park managers with the flexibility necessary to respond quickly to changing circumstances and conditions. We will involve our partners, gateway communities, former cooperating agencies, and the public, as appropriate throughout the adaptive management process.

Issue: One commentor stated that if the adaptive management thresholds identified in the ROD are not violated, there will be significant pressure on NPS to relax the daily entry limits, BAT requirements, or guiding requirements. Another commentor stated that the proposed rule does not define what ''unacceptable impacts'' are under the adaptive management provisions, and it avoids establishing any criteria which would, if met or exceeded, require the Superintendent to impose new management strategies.

NPS Response: NPS will only take action under adaptive management when it is warranted based on resource conditions and visitor experience. Preliminary thresholds, and what constitutes ''unacceptable impacts'' were established in the SEIS and ROD (Table 12 and Appendix A, respectively) to protect park resources. The thresholds are not intended to necessarily automatically trigger action. Instead, these thresholds would be used by park managers, as would other factors, in a larger context of determining when adjustments in winter use management are appropriate.

Issue: The SEIS demonstrated that impacts of this rule already exceed the thresholds set for air quality, visibility, human health, natural soundscapes, wildlife, and visitor experience.

NPS Response: While NPS does not agree with this blanket statement, actual monitoring will tell the NPS if the thresholds are exceeded. It is not possible to exceed the thresholds set by the ROD until the rule is actually implemented. Further, the SEIS impact analysis was based on models, projections, and expert judgements. While each of these have inherent limitations, they provide the best estimate of impacts. The models' fundamental purpose is to allow comparisons to be made among the alternatives.

Issue: One commentor said it is unacceptable to wait until a ''future winter season'' to make changes based on adaptive management. They said it should not take a full year to remedy health problems.

NPS Response: Existing regulations ensure that the Superintendent may take emergency action for safety (including health problems), resource protection, or other reasons under the authority of 36 CFR 1.5. For non-emergency adaptive management actions, we would ordinarily announce changes by July 1. These changes would be implemented in a future winter season. For some changes, this could be the following winter season, beginning that December (six months after the announcement). Other changes, which might require a phase-in, could be implemented in December of the following year (an 18-month phase-in).

Daily Entry Limits

Issue: There is no emissions-related basis for the specific limits on snowmobiles proposed in the regulations. The Final SEIS air quality analysis indicates the modeled levels of CO and PM10 will be well below the NAAQS limits. The Prevention of Significant Deterioration increment consumptions under these alternatives were below that permitted under the Clean Air Act. Emissions from snowmobiles do not result in a situation inconsistent with the NPS mission.

NPS Response: The parks are designated as Class I airsheds under the Clean Air Act, which requires that their air quality be the most pristine in the nation. The BAT requirements and daily entry limits are a necessary alternative to eliminating all snowmobile use in the parks.

Issue: One commentor requested that the NPS reconsider the requirement to count commercial guides towards the daily entry limits.

NPS Response: Exempting commercial guides from the daily entry limits would cause a substantial increase in the number of snowmobiles operating in the parks. This increase would not be supported by the SEIS' analysis of impacts. Through adaptive management, daily entry limits could be subject to review and change.

Issue: One commentor questioned how the 40 snowmobiles allowed per day on Jackson Lake will be monitored, and if they would need a reservation.

NPS Response: The NPS will monitor the amount of snowmobile use on Jackson Lake through ranger patrols and visual observation by park staff. Entry to the lake is only at two locations, which may be readily monitored. Snowmobiles will have to be trailered to these two locations as there is no direct access to the lake from points where snowmobiles are otherwise permitted. The operational details of the monitoring are beyond the scope of this rule. If monitoring shows that the number of snowmobiles using Jackson Lake is sufficient to warrant a more stringent monitoring and/or reservation system, a reservation system will be developed as needed (in accordance with 36 CFR 1.5(d) and 1.6).

Issue: Several commentors stated the proposed restrictions on the number of snowmobiles allowed into YNP each day will increase, not decrease, the total number of snowmobiles permitted in the parks throughout a winter season.

NPS Response: This is the first time there has been a limit on snowmobiles in the parks. Therefore, it is inappropriate to compare daily entry limits with historic averages. Additionally, the limits are set below peak usage in the Parks, so they may reduce visitation on particular days. The daily entry limits do not automatically constitute an ''increase'' from historic visitation. First, it is uncertain at best if visitors will redistribute themselves to other entrances or to other days of the week because their preferred entrance and/or day are already fully utilized. Second, snowmobile visitation numbers for the past 10 years have not exhibited significant growth, nor are there any factors that lead NPS to conclude this trend will change (EIS 184 and SEIS 132).

Guiding

Issue: Some commentors suggested that NPS should not require that all snowombilers travel in groups of at least two snowmobiles. These commentors believed photographers and other individuals wishing to travel alone should be permitted to do so.

NPS Response: We have removed group size limitations from the final regulation. This will allow the Superintendent the flexibility to determine group size requirements based on adaptive management. Changes to group size requirements would be announced using one or more of the methods identified in 1.7 of this section. Initially, we will allow groups of 1–11 snowmobiles, which will permit individuals traveling by themselves to do so. The goal of establishing a minimum group size of two snowmobiles was to concentrate snowmobilers into groups, thus reducing the overall number of snowmobile-wildlife encounters. However, after taking into account public comments and further assessing visitor use patterns, we believe our interest in concentrating snowmobiles will be best achieved by other means. First, the requirement that 80% of all visitors travel with a commercial guide will concentrate groups together, because it is more economical for a guide to offer services with more snowmobiles in the group. Past practice in Yellowstone indicates that most commercially guided groups contain 8–11 snowmobiles. We believe this practice will continue. Further, only a very small number of snowmobile visitors travel by themselves (about 2% according to a 2002–2003 visitor survey). NPS believes this small number of additional groups would have negligible impacts to wildlife. Finally, visitor experience will be enhanced by allowing visitors the opportunity to have a solitary experience on snowmobiles.

Issue: Some commentors suggested that the NPS should adopt different ratios of commercial and non-commercial guides.

NPS Response: We are initially requiring that 80% of all entries be accompanied by a commercial guide, and 20% be accompanied by a non-commercial guide. Through adaptive management, we may alter this ratio. However, at this time we believe it to be prudent to maintain the 80/20 ratio, which was analyzed in the SEIS, selected in the ROD, and specified in the proposed rule in order to retain some opportunity for the public to view the park outside of a commercial group.

Issue: One commentor suggested that the non-commercial guide training should not be too cumbersome, and should be offered through the Internet or by mail. Another commentor suggested that the NPS invest the time and resources into making the non-commercial training program work and give it 2–3 years to work out any issues before making any changes.

NPS Response: NPS is currently developing the non-commercial guide training program. We have previously stated a goal to have the training be

partially off-site (*i.e.*, through the mail or Internet). Details of the implementation of this program are outside the scope of this regulation. NPS agrees that elements of this regulation, including the non-commercial guiding program, will likely require at least two seasons of monitoring to determine their effectiveness before changes are made.

Issue: If some of the daily commercially guided entries are not fully utilized on a given day, they should be re-allocated for non-commercially guided use. The reverse should also be true.

NPS Response: Guiding requirements are in place primarily to protect wildlife and visitor health and safety. Professional, commercial guides typically have greater snowmobiling expertise than non-commercial guides. Therefore, this final rule caps the number of non-commercial guides at 20 percent of the daily entries in Yellowstone, and we will not allow unused commercially guided entries to be re-allocated to non-commercial entries. In addition, it would be impractical at this time to fairly reallocate unused non-commercial entries to commercial guides given the number of concessionaires that we may potentially have operating in the parks. Further, this potentially would prevent visitors from obtaining same-day non-commercially guided reservations. Through adaptive management, however, these details could be changed to enhance visitor experience or protect park resources.

Issue: One commentor asserted that stretching a group of 10 snowmobiles over ⅓ mile (about 160 feet between snowmobiles) is very difficult to monitor. They suggested requiring each snowmobiler to keep a distance of 75–100 feet between machines.

NPS Response: This comment is consistent with the regulation. Outfitters may suggest or require clients to keep a distance of 75–100 feet between machines as appropriate, as long as all the group members stay within a maximum distance of ⅓ mile of the first snowmobile in the group. We want to insure that snowmobilers maintain a safe following distance and that guides have suitable control over (and actually accompany) their parties. The ⅓ mile requirement provides both.

Issue: A commentor said NPS should allow commercial guides to operate on the CDST and Jackson Lake and should offer a prospectus for commercial guiding purposes.

NPS Response: The issue of whether or not the NPS should offer a prospectus for commercial guiding operations on the CDST is outside the scope of this rule. However, the rule does not prohibit commercial guiding on the CDST or Jackson Lake, and the Superintendent of Grand Teton National Park could issue a prospectus for such commercial activities.

Licensing, Registration

Issue: Several commentors did not agree with the requirement that only people with valid driver's licenses be allowed to operate a snowmobile in the parks. There is no evidence that children with a learner's permit cause problems driving snowmobiles.

NPS Response: In ordinary circumstances with automobiles, individuals possessing learner's permits are required to be accompanied by a fully licensed driver. Learner's permits are intended to allow student drivers the opportunity to safely learn positive driving habits while in the presence of an adult. However, operation of snowmobiles in Yellowstone is a totally different environment. Even if an adult was a passenger on the same sled as the learner it is very difficult if not impossible to communicate with the driver over the noise of the snowmobile. Most riders wear helmets and many wear ear plugs. In fact, past experience is that children with learner's permits often will ride on a sled by themselves, with adults on other snowmobiles that would be out of earshot and potentially out of sight. The park and visitors will be safer by requiring that all snowmobile operators have driver's licenses.

Issue: The proposed rule requires that snowmobilers display a State registration sticker from any State in the U.S. This is a change from existing language. What registration is acceptable for Canadian visitors?

NPS Response: We have updated the final regulations to allow visitors to operate snowmobiles registered in Canada in the parks. Otherwise these regulations clarify prior regulations concerning registration.

Entry Passes

Issue: Many commentors said that only allowing one snowmobile to enter the park with an annual pass discriminates against families.

NPS Response: No provision in this final regulation affects this issue, as it is contained in 36 CFR Part 71. NPS is attempting to clarify, not change, existing regulation with regard to entrance passes. The intent in the passes is to admit for free or at a reduced rate, only those persons occupying the same motor vehicle as the pass holder. In the case of snowmobiles, we are allowing the rider of the snowmobile with the pass holder, and the pass holder's immediate family, to enter at the fee rate of the pass holder. Thus, several snowmobiles could qualify for entry under the pass holder's fee rate, so long as it was immediate family only (spouse, parents, and children under the age of 21).

Side Roads

Issue: Many commentors required that NPS re-open the Firehole Canyon Drive, North Canyon Rim Drive, and Riverside Drive to snowmobile use.

NPS Response: NPS believes it to be important to allow for some spatial separation of use and user groups. The side roads will be open to snowcoach riders, skiers, and snowshoers to offer areas of increased quiet and solitude. These road segments amount to approximately 14 miles, while there are still over 180 miles of park roads open to both snowmobile and snowcoach use. In addition, there are thousands of miles of snowmobile trails outside the parks, none of which are open to snowcoaches.

Reservations

Issue: Several commentors said the reservation fee is too expensive.

NPS Response: This issue is beyond the scope of this regulation. However, NPS is working to keep fees reasonable and recover only the costs of administering the reservation system.

Issue: Several commentors stated that people obtaining an entrance reservation under the 20 percent of non-commercially guided daily snowmobile entries should not be allowed to re-sell their entrance reservations for profit, *i.e.*, ''scalping'' should not be allowed.

NPS Response: NPS agrees with these comments. The passes are not transferable without NPS authorization, and the Superintendent will determine procedures for transfer and publicize them appropriately. Passes that have been transferred without prior authorization are invalid.

Issue: It should be illegal for individuals or groups to purchase snowmobile entrance reservations without the intent to use them.

NPS Response: It would be difficult if not impossible to know if individuals intended to actually use their snowmobile entrance reservations. Further, we have no evidence to date to indicate that this is a problem. Therefore, we are not attempting to regulate this issue through this final rule, but we will address it in the future if needed.

Alcohol Restrictions

Issue: Several commentors noted that the policy of preventing anyone who

has ever received a DUI from being a guide is discriminatory. It would be impossible for concessionaires to know if one of their guides had ever received a DUI and could create undue liability for these concessionaires. In addition, people should not be penalized for mistakes made far in their past. This would also be difficult to enforce and manage.

NPS Response: We have eliminated this stipulation from these regulations.

Issue: One commentor said the term snowcoach ''operator'' is unclear in the regulation as it pertains to alcohol restrictions for individuals driving a snowcoach, as concessionaires are sometimes referred to as ''operators.'' Concessionaires should not lose their licenses to operate in the parks because of an infraction by an employee, which this language implies. They suggested that NPS change the language to snowcoach ''driver.''

NPS Response: We have made this change in the regulatory text.

Issue: The Blood Alcohol Content (BAC) requirements for guides should parallel the requirements for commercial drivers. Federal and State rules pertaining to BAC threshold for someone with a Commercial Drivers License (CDL) is .04. If .04 is appropriate for someone with a CDL (semi trucks over 26,000 pounds, buses, etc.), then .02 seems to be an unreasonable standard for a snowmobile guide or coach operator when compared to vehicles being operated by bus or truck drivers.

NPS Response: The NPS agrees and we have changed the BAC maximum for guides to be .04 grams of alcohol per 100 ml of blood or .04 grams of alcohol per 210 liters of breath.

Cross Country Skiing, Etc.

Issue: One commentor questioned the validity of the assertion that 20% of the winter visitors use cross country skis.

NPS Response: As discussed on page 135 of the final SEIS, visitor surveys indicate that 20% of visitors participate in cross country skiing while visiting Yellowstone, although they may enter the park by other means, including snowmobile, snowcoach, or automobile.

Issue: One commentor stated that the NPS should promote human-powered activities in winter, such as skiing and snowshoeing, in order to satisfy the June 20, 2002, Executive Order signed by President Bush to promote personal fitness, and not allow snowmobiling.

NPS Response: The management of the parks in winter provides ample opportunity for people to pursue physical fitness goals by skiing or snowshoeing. The parks groom ski trails, lead snowshoe walks, and there are hundreds of miles of ungroomed trails available for visitors. Grand Teton National Park's Inner Park Road was also closed in 2002–2003 to snowmobiles and is now groomed for cross country skiing.

Natural Soundscapes Issues

Issue: To protect natural soundscapes, one commentor suggested concentrating the departure times from motorized tour groups, so there are significant periods during each day when visitors are likely to be free of noise impacts.

NPS Response: This could be considered under adaptive management if necessary and if evidence indicated it would be effective in improving the natural soundscape. This action would do little to protect the natural soundscape for visitors riding snowmobiles if they were part of a group that was departing at a concentrated time with many other snowmobile groups. However, as the commentor notes, it could result in more periods of quiet for visitors seeking a non-motorized experience.

Issue: Getting away from crowds, peace and tranquility, and quiet are perhaps expectations that cannot be totally met with a destination as popular as Yellowstone. NPS is not obligated to ensure the existence of natural soundscapes along and proximate to road systems.

NPS Response: The NPS is required by law to protect the values of Yellowstone National Park, which include these attributes. These are among the fundamental purposes for the existence of the parks. The natural soundscapes are one of the intrinsic elements of the environment that are associated both with the purpose of the parks and with their natural ecological functioning. The soundscape is an inherent component of the ''scenery and the natural and historic objects and the wildlife'' protected by the NPS Organic Act. The NPS policy is to facilitate, to the fullest extent practicable, the protection, maintenance, or restoration of the natural soundscape in a condition unimpaired by inappropriate noise sources. Visitors seeking wilderness-dependent experiences have expectations for natural quiet. Visitors viewing wildlife or scenery along park roads also have an expectation for natural quiet that must be accommodated, although perhaps to a lesser degree than visitors in the backcountry. The adaptive management thresholds identified in Table 12 of the SEIS and Appendix A of the ROD recognize these distinctions by instituting different thresholds for different zones. We will be monitoring the soundscape conditions along park roads and in the backcountry to ensure the desired conditions and thresholds identified in the SEIS are being achieved.

Snowcoaches

Issue: Several commentors stated that snowcoaches must offset any declines in total snowmobile use.

NPS Response: NPS agrees that snowcoaches are a critical part of the winter experience and may increase opportunities for access to the parks in winter. We are working to develop a new generation snowcoach, which will substantially improve touring in the parks.

Laws, Policies, Executive Orders

Issue: Many commentors believe the rule is inconsistent with the NPS Organic Act, the General Authorities Act as amended by the Redwood Act, the Clean Air Act, the NPS general snowmobiling regulations (36 CFR 2.18), executive orders, NPS Management Policies, and OSHA regulations to protect employee and visitor health.

NPS Response: The NPS disagrees. This rule will protect park resources and values in an unimpaired condition through adaptive management, daily entry limits, guiding, and BAT requirements. This regulation reflects the NPS' commitment to: provide protection of park resources and values; allowing appropriate levels of visitor use, while recognizing that winter in the parks is a unique experience; and work closely and cooperatively with gateway communities. The NPS believes there is no single decision mandated by the laws and policies governing the national parks, and that these laws and policies provide broad discretion to the NPS in the operation of the parks. Requirements for BAT and snowmobile daily entry limits will substantially improve air quality conditions relative to the current situation of unregulated snowmobile use. This rule will protect public health by establishing air and sound emissions requirements, daily entry limits, and requirements for guides. Finally, the provisions for adaptive management will allow park managers to make adjustments in winter operations to protect park resources and values.

Consistency With Other Regulations

Issue: Some letters stated that the NPS has exempted snowmobiling in the parks from 36 CFR 2.18 through the proposed regulation. They stated that this provision, among other things, prohibits snowmobiling in national

parks except where designated and only when their use is consistent with the park's natural, cultural, scenic and aesthetic values, safety considerations, park management objectives, and will not disturb wildlife or damage park resources. The routes designated by this rule are not subject to 36 CFR 2.18(c), and hence exempt from disturbing wildlife. However, new routes would be subject to the language in 36 CFR 2.18(c). This can only be interpreted as an admonition by NPS that snowmobiling cannot coexist in Yellowstone without causing disturbance to wildlife. The NPS should retain the prohibition of wildlife disturbance by snowmobiles in the final rule.

NPS Response: The intent of the proposed rule was to incorporate the appropriate language of 2.18 (including 2.18(c)), and have all the applicable snowmobile regulations in one location. We have clarified the rule to insure the language in question applies to both existing and proposed oversnow routes. Specifically, this regulation no longer supercedes 36 CFR 2.18(c).

Road Grooming

Issue: The proposed rule fails to address road packing and grooming. Habitat degradation may be occurring in conjunction with the changes in bison numbers and distribution. The proposed rule will do nothing to alleviate the ecosystem change generated by changes in bison distribution and numbers.

NPS Response: This rule allows for the Superintendent to take management action should unacceptable impacts to park resources and values, including wildlife, occur. Currently, the NPS believes the evidence of whether or not road grooming is affecting bison distribution and abundance is inconclusive. Thus taking dramatic actions, such as ceasing grooming, appears unwarranted based on the evidence currently available.

Economics

Issue: Several commentors stated that the economic impact of the proposed rule is going to be devastating. Another commentor believed the 2002–2003 visitor survey was flawed because it did not adequately represent a sample of visitors entering through the West Entrance.

NPS Response: An economic impact analysis has been prepared in support of this rulemaking. It found that there will be negligible impacts on the economies surrounding the parks. Further details are contained in this report, which is available at *www.nps.gov/yell.* The study used statistically valid sampling to arrive at its conclusions. This means that only a certain number of visitors at each entrance were surveyed, based on the percent of total visitors that enter through each entrance.

Issue: Banning snowmobiles in Yellowstone will result in a more diverse, sustainable economy for West Yellowstone and attract new winter visitors, especially since snowmobiling is allowed on the adjacent national forest lands.

NPS Response: This rule allows the gateway communities opportunities to benefit economically, as would almost any alternative which maintains winter-time visitation. The purpose for implementing this rule is not related directly to diversifying local economies, however.

Issue: This rule places a tremendous administrative burden on the staffs of the parks, due to the reservation system, monitoring, guiding requirements, etc.

NPS Response: NPS recognizes that there are often substantial costs associated with properly operating and maintaining national parks and will strive to effectively manage these costs.

Consistency With the SEIS and EIS

Issue: Many commentors stated the proposed rule runs counter to the conclusions of the FSEIS.

NPS Response: This regulation is based on the Final SEIS and ROD and is necessary to implement these documents. The NPS believes this rule is consistent with the Final SEIS and ROD, as these documents concluded that park resources will be protected in an unimpaired condition through adaptive management and requirements related to the daily entry limits, guiding, and BAT. Specifically, conclusions regarding impairment are on pages 242–246 of the Final SEIS.

Issue: In the 2001 rule phasing-out snowmobile use, the NPS considered ''strict limitations'' to mean caps so stringent they would result in ''drastically reducing'' visitation. In contrast, the 2003 ROD does not anticipate reduced visitation.

NPS Response: This regulation substantially reduces peak-day use of snowmobiles and imposes several types of limitations, beyond daily entry limits to protect park resources and values in an unimpaired condition. These limitations represent a suite of management actions, including BAT and guiding requirements, in addition to the daily entry limits. Further, we could take action under adaptive management if desired resource conditions are not met.

Misc.

Issue: One commentor suggested that the term ''recreational snowmobile'' be replaced with ''snowmobile transportation.''

NPS Response: NPS wishes to make a distinction between snowmobiling by visitors for recreational purposes versus snowmobiling by NPS, contractors, researchers, concessioners, or others for administrative or non-administrative snowmobile travel. The term snowmobile transportation does not adequately capture this distinction.

Issue: Several commentors said there are no statistics to back up the claim that towing people is a potential safety hazard and that prohibiting this discourages family participation in snowmobiling. They urged NPS to remove this provision.

NPS Response: NPS believes that towing people on sleds or sliding devices is unacceptable for several reasons, especially in the conditions associated with snowmobiling in the parks. First, this places riders in direct exposure to snowmobile exhaust, including carbon monoxide and air toxics. Although four-stroke snowmobiles are far cleaner than traditional two-strokes, they still produce air pollution. Generally, visitors spend several hours snowmobiling in the parks, which substantially increases exposure risks to those riding in the towing unit. In the case of children, such long-term and direct exposure to these chemicals is especially dangerous. In addition, towing people could present a special hazard if the snowmobile was involved in an accident, or if the towing device did not have lights and was not adequately visible to other drivers. Therefore, to adequately provide for the safety of our visitors we are prohibiting this activity.

Changes to Final Rule

After taking the public comments into consideration, and after additional internal review, several changes were made to the final rule. Those changes are as follows:

A paragraph was added to each park's section to define the scope of the regulations. These regulations address recreational and commercial snowmobile use and are not applicable to the provisions for air and sound emissions, guiding and daily entry limits for the use of snowmobiles by NPS or concessioner employees who live or work in the interior of the park. There are daily circumstances where a person who resides in the interior of the park must exit or transit the park to

retrieve groceries, attend medical appointments, or conduct other types of daily activities which are neither recreational nor commercial in nature. These uses are not intended to count towards daily entry limits or similar types of regulated activities. The parks will be working to produce a directive that addresses this kind of use and manages it appropriately but similar to an administrative use.

Changes were made to paragraph (4) and language added to the new paragraph (6) based on input from the EPA regarding air emissions. EPA provided language on pollution control equipment for snowcoaches as well as language to clarify compliance with the FEL for snowmobiles.

A new paragraph (6) was added to each section to define how the makes, models and years of manufacture for snowmobiles will be approved for use in the parks. Specifically it introduced using the Family Emissions Limits (FEL) as the standard for demonstrating compliance with the hydrocarbon and carbon monoxide emission limits. Additional details on FEL are contained in the Summary of and Response to Comments. In general, after demonstrating compliance with BAT requirements particular snowmobile models will be approved for entry into the parks for six winter use seasons. However, the length of approval may be longer or shorter under the adaptive management framework. For example, technologies may begin to improve so rapidly that a shorter approval period could be warranted. In the future, the period of the approval for each snowmobile will be stated when published as an approved model. The period of approval will not be decreased once published. As of the 2003–2004 winter season, the following models of snowmobiles are approved for entry into the parks:

2002 Arctic Cat 4-Stroke Touring, 2002 Arctic Cat 4-Stroke Trail, 2002 Polaris Frontier Touring, 2003 Arctic Cat 4-Stroke Touring, 2003 Arctic Cat 4-Stroke Trail, 2003 Polaris Frontier Classic, 2003 Polaris Frontier Touring, 2004 Arctic Cat T660 Touring, 2004 Polaris Frontier Classic, and 2004 Polaris Frontier Touring. These snowmobiles are approved for entry into the parks through the 2008–2009 winter season.

Under paragraph (6) there are several references to a certain ''model year'' snowmobile. For the purposes of this paragraph, the model year refers to the calendar year the snowmobile is intended for use but the snowmobile generally becomes available for commercial sale during the previous calendar year. For example, a model year 2005 snowmobile would generally become available for sale to the public during the fall of 2004.

Also under paragraph (6) a provision was added to specify the minimum barometric pressure at which snowmobiles could be tested to determine compliance with sound emission requirements. Many snowmobiles are tested at the place of manufacture or nearby which can be at a significantly different elevation than Yellowstone or Grand Teton National Parks. In order to make it clear what conditions are allowed for sound testing, a minimum barometric pressure was specified. Additional details on barometric pressure are contained in the Summary of and Response to Comments. Different emission reporting procedures are allowed for 2004 and prior model years because the EPA snowmobile emission regulations implementing FEL were not in effect.

Finally, under paragraph (6) a sentence was added to prohibit the entry of snowmobiles that have been modified in a manner that could affect air or sound emissions. There was a concern that a snowmobile model previously approved for entry could have after-market equipment added or mechanisms adjusted that could increase the decibel level of that model or increase the previously certified air emissions. Besides the possibility of increased air or sound emissions, it was necessary to prohibit these modifications in order to avoid the need for individual snowmobile testing. Modifications of snowmobiles approved under FEL that decrease air or sound emissions could be permitted.

In paragraph (7) language was added to clearly state that oversnow routes are designated in accordance with § 2.18(c). Although it was the intent of the proposed rule to comply with 2.18(c) when designating oversnow routes, it was not clearly stated and thus caused concern to some commentors. The final regulations also remove the language from the proposed rule that could have allowed the Superintendents to designate additional oversnow routes without going through rulemaking.

In paragraph (10) of Yellowstone and the Parkway, the specific group size numbers were removed from the rule. The Superintendents are establishing a maximum group size of 11 initially but will notify the public of this requirement or changes to the requirement through local methods. Had a specific number remained in the regulatory text, a notice in the **Federal Register** would have been required to change it. The final regulations also eliminate the requirement for a minimum group size of 2 as explained in the response to comments. Nonetheless, single snowmobile operators are still required to be certified as a snowmobile guide before operating in the park.

Similarly, the specific hours of operation for snowmobiles or snowcoaches are removed from the regulatory text for each of the parks. Initially, the hours of operation will be from 7 a.m. to 9 p.m. Had a specific number remained in the regulatory text, a notice in the **Federal Register** would have been required to change it. Changes to operating hours will be advertised through local methods.

Paragraph (11) for the Parkway was amended by modifying Table 1 to include a maximum number of snowmobiles on the road segment from Flagg Ranch to the South Entrance of Yellowstone. That road segment can only be accessed from inside the Parkway and the daily entry limit at the South Entrance of Yellowstone (only two miles north of Flagg Ranch) limits the number of snowmobiles that could proceed any further north. However, the park felt it was necessary to clarify that snowmobile use is permitted on that roadway and the daily limit is the same as the South Entrance of Yellowstone.

Paragraph (12) for Yellowstone was added to discuss the ways in which the daily entry limits will be applied and enforced. No reservation system exists for Grand Teton or the Parkway thus no similar regulations exist in those sections. First, a reservation system, managed by a contractor, has been set up to allocate all non-commercial daily entries. Commercial entries are allocated to local guiding businesses through a concessions contract. If you choose to use a commercial guiding service to enter the park, you will not need a separate reservation since this is already allocated to the commercial guiding service through their contract to operate inside the national park. Second, each snowmobile entering the park must have an entrance pass in addition to a reservation. Lastly, the Superintendent has prohibited the use of transferred reservations and entrance passes. This is intended to curtail the resale of these items for profit since there are a limited number of non-commercial reservations for each day. Additionally, the NPS is requiring that the person who holds the reservation must accompany the snowmobile group into the park in order to further discourage the mass purchase and resale of reservations. The NPS acknowledges the limitations of our ability to enforce such a requirement but will make every

effort to discourage such activities. The Superintendent has the authority to allow the use of transferred entrance passes for legitimate purposes (a trip cancelled due to illness, or some similar circumstance) through procedures established with the reservation contractor.

A minor change was made to the operating conditions in paragraph (14) for Yellowstone, (13) for the Parkway and (11) for Grand Teton. So as not to exclude Canadian or other foreign visitors, language was changed to allow for all types of motor vehicle operator's licenses, including international driver's licenses, and registration stickers on snowmobiles from the United States and Canada.

Changes were made to paragraph (15) for Yellowstone, (14) for the Parkway and (12) for Grand Teton and the conditions associated with alcohol use and operating a snowmobile or snowcoach. Paragraph (ii) proposed a maximum blood alcohol level of .02 when operating or being in physical control of a snowcoach or serving as a snowmobile guide. The maximum blood alcohol level has been changed to .04 to be consistent with most State commercial drivers' license requirements. Also, the NPS proposed to make any driving under the influence of alcohol or drug violations a disqualifier for being a snowmobile guide or driving a snowcoach. Many commenters felt this was an unreasonably strict requirement and the NPS agreed. If a person is properly and legally licensed by a state to operate a motor vehicle, they will be allowed to operate as a snowmobile guide or snowcoach driver. The requirement to be properly licensed is addressed in paragraph (14) for Yellowstone, (13) for the Parkway and (11) for Grand Teton. Finally, the term snowcoach operator was changed to snowcoach driver. Generally, the term operator refers to the business owner or contract holder, not the person actually driving the vehicle. To be clear, the prohibitions about alcohol consumption apply to the person actually driving the snowcoach, not the person(s) who operate the snowcoach business.

In paragraph (16) for Yellowstone, (15) for the Parkway and (13) for Grand Teton of the proposed regulations oversnow vehicles from the requirements of 36 CFR 2.18 and part of § 2.19. The exemption was proposed so that the existing regulations on such things as maximum operating decibels, operating hours, and operator age would be governed by the new regulations in part 7 for each park unit. However, the inadvertent result was the exclusion of the requirements in § 2.18(c) for designating new snowmobile routes and what factors must be taken into consideration when designating such routes. As a result, only specific paragraphs in section 2.18 have been excluded from applying to the use of oversnow vehicles in the parks since those paragraphs conflict with the Winter Use Management Record of Decision. However, Yellowstone is exempt from paragraph (b) while the Parkway and Grand Teton are not. The use of oversnow vehicles in Grand Teton and the Parkway is subject to paragraph (b) due to the existing concurrent jurisdiction in both park areas. These two units are solely within the boundaries of the State of Wyoming and national park rangers work concurrently with state and county officers enforcing the laws of the State of Wyoming.

Throughout the document there are references to giving notice to the public of changes to the regulations through publication in the **Federal Register** and/or through one of the methods in § 1.7(a). Some changes, which are considered more significant, such as changes to air and sound emissions requirements, daily entry limits, or guiding requirements, will be published as both a change in the **Federal Register** and advertised through other local methods. Less significant changes, like hours of operation, group size or road closures and reopenings, will be advertised only through local methods, a less formal process. The parks will also make every effort to keep current information available on their Web sites including a list of the currently approved snowmobile makes, models, and years of manufacture and monitoring reports (*www.nps.gov/yell* or *www.nps.gov/grte*).

It is the intent of this regulation to have the Superintendents of the three park units work collaboratively when making future winter use management decisions under the adaptive management framework. Although some changes to oversnow vehicle use could be made to one park unit and not affect the other, it is expected that the Superintendents would engage in regular consultation with each other to make decisions that would be in the best interest of all three parks, the visiting public, and local businesses and communities.

Summary of Economic Analysis

The preferred alternative (Alternative 4) and two other alternatives (Alternatives 2 and 3) are analyzed to examine the effect of allowing the use of snowmobile in the Yellowstone National Park, Grand Teton National Park, and the John D. Rockefeller, Jr., Memorial Parkway. Alternative 1b, the delay rule, represents the baseline for this analysis. Under that alternative, most snowmobile use would be prohibited in the parks by the 2004–2005 winter season, with restrictions on snowmobile use phased in during the 2003–2004 winter season. Alternatives 2, 3, and 4 allow for continued recreational snowmobile use subject to daily limits on the number of snowmobiles that can enter the parks. The daily limits on snowmobile use vary across these three alternatives, with Alternatives 2 and 4 allowing the greatest number of snowmobiles in the parks each day. Alternatives 3 and 4 also require snowmobiles to meet air and sound emission requirements and to be part of a guided tour. Alternative 4 allows for at least 20 percent of the tours to be led by non-commercial guides.

The primary beneficiaries of Alternatives 2, 3, and 4 are the park visitors who ride snowmobiles in the parks and the businesses that serve them. Alternative 2 is expected to provide the greatest benefits to snowmobile visitors and businesses, followed by Alternatives 4 and 3 in order of decreasing benefits. The primary group that would incur costs under Alternatives 2, 3, and 4 are the park visitors who do not ride snowmobiles. Alternatives 3 and 4 are expected to impose the least costs on non-snowmobile visitors.

The total present value of net benefits expected from Alternatives 2, 3, and 4 are calculated over a 10-year horizon from the 2003–2004 winter season through the 2012–2013 winter season. A range of net benefits is calculated to acknowledge uncertainty in the benefit and cost estimates. Given the uncertainties of this analysis and acknowledging the range of net benefits presented, the selection of Alternative 4 as the preferred alternative is considered reasonable because it provides increased benefits for snowmobile visitors while containing provisions that should help mitigate the costs imposed on those visitors who are negatively impacted by snowmobile use.

Table 1 presents the total present value of net benefits for Yellowstone National Park only. The amortized net benefits per year over the 10-year timeframe of the analysis for this valuation case are presented in Table 2. To calculate the net benefits to the Yellowstone National Park only, we assumed that the non-snowmobile visitors to Grand Teton are relatively unaffected by snowmobiles as compared

to the non-snowmobile visitors to Yellowstone, thereby effectively assigning zero cost impact to this group. These net benefit estimates therefore may understate the cost estimate. The total present value of net benefits ranges from negative to positive for Alternatives 2 and 4 in this valuation case, and are entirely negative for Alternative 3.

TABLE 1.—TOTAL PRESENT VALUE OF NET BENEFITS FOR YELLOWSTONE NATIONAL PARK ONLY, 2003–2004 TO 2012–2013

	Total present value of net benefits [a]
Alternative 2:	
Discounted at 3% [b]	−$89,310,000 to +$9,660,000
Discounted at 7% [c]	−$73,470,000 to +$6,880,000
Alternative 3:	
Discounted at 3% [b]	−$70,360,000 to −$25,130,000
Discounted at 7% [c]	−$57,920,000 to −$21,750,000
Alternative 4:	
Discounted at 3% [b]	−$56,750,000 to +$5,430,000
Discounted at 7% [c]	−$46,730,000 to +$3,470,000

[a] The range in net benefits reflects the different values obtained for snowmobile visitors using the estimates from two economic valuation models, and the different scenarios analyzed for impacts to businesses.
[b] The economics literature supports a 3% annual discount rate in the valuation of public goods (*e.g.*, Freeman 1993). Federal rulemakings also support a 3% annual discount rate in the valuation of lost natural resource use (61 FR 453; 61 FR 20584).
[c] Office of Management and Budget Circular A–94 (revised January 2003).

TABLE 2.—AMORTIZED NET BENEFITS PER YEAR FOR YELLOWSTONE NATIONAL PARK ONLY, 2003–2004 TO 2012–2013

	Amortized net benefits per year [a]
Alternative 2:	
Discounted at 3% [b]	−$10,470,000 to +$1,130,000
Discounted at 7% [c]	−$10,460,000 to +$979,000
Alternative 3:	
Discounted at 3% [b]	−$8,249,000 to −$2,946,000
Discounted at 7% [c]	−$8,247,000 to −$3,096,000
Alternative 4:	
Discounted at 3% [b]	−$6,653,000 to +$637,000
Discounted at 7% [c]	−$6,653,000 to +$493,000

[a] This is the total present value of net benefits reported in Table 1 amortized over the ten-year analysis timeframe at the indicated discount rate.
[b] The economics literature supports a 3% annual discount rate in the valuation of public goods (*e.g.*, Freeman 1993). Federal rulemakings also support a 3% annual discount rate in the valuation of lost natural resource use (61 FR 453; 61 FR 20584).
[c] Office of Management and Budget Circular A–94 (revised January 2003).

Table 3 presents the total present value of net benefits for both Yellowstone and Grand Teton National Parks. In this valuation case, the non-snowmobile visitors to Grand Teton National Park are assigned the same unit costs as non-snowmobile visitors to Yellowstone National Park. This valuation case may overstate the cost impacts to non-snowmobile visitors to Grand Teton National Park since they are believed to be less than the costs imposed on non-snowmobile visitors to Yellowstone. The amortized net benefits per year over the 10-year timeframe of the analysis for this valuation case are presented in Table 4.

TABLE 3.—TOTAL PRESENT VALUE OF NET BENEFITS FOR YELLOWSTONE AND GRAND TETON NATIONAL PARKS, 2003–2004 TO 2012–2013

	Total present value of net benefits [a]
Alternative 2:	
Discounted at 3% [b]	−$254,717,000 to −$140,490,000
Discounted at 7% [c]	−$208,342,000 to −$116,011,000
Alternative 3:	
Discounted at 3% [b]	−$164,143,000 to −$120,253,000
Discounted at 7% [c]	−$134,319,000 to −$99,504,000
Alternative 4:	
Discounted at 3% [b]	−$141,679,000 to −$64,572,000
Discounted at 7% [c]	−$116,060,000 to −$54,211,000

[a] The range in net benefits reflects the different values obtained for snowmobile visitors using the estimates from two economic valuation models, and the different scenarios analyzed for impacts to businesses.
[b] The economics literature supports a 3% annual discount rate in the valuation of public goods (*e.g.*, Freeman 1993). Federal rulemakings also support a 3% annual discount rate in the valuation of lost natural resource use (61 FR 453; 61 FR 20584).
[c] Office of Management and Budget Circular A–94 (revised January 2003).

TABLE 4.—AMORTIZED NET BENEFITS PER YEAR FOR YELLOWSTONE AND GRAND TETON NATIONAL PARKS, 2003–2004 TO 2012–2013

	Amortized net benefits per year [a]
Alternative 2:	
Discounted at 3% [b]	−$29,860,000 to −$16,470,000
Discounted at 7% [c]	−$29,663,000 to −$16,517,000
Alternative 3:	
Discounted at 3% [b]	−$19,242,000 to −$14,097,000
Discounted at 7% [c]	−$19,124,069 to −$14,167,000
Alternative 4:	
Discounted at 3% [b]	−$16,609,000 to −$7,570,000
Discounted at 7% [c]	−$16,524,000 to −$7,718,000

[a] This is the total present value of net benefits reported in Table 3 amortized over the ten-year analysis timeframe at the indicated discount rate.
[b] The economics literature supports a 3% annual discount rate in the valuation of public goods (*e.g.*, Freeman 1993). Federal rulemakings also support a 3% annual discount rate in the valuation of lost natural resource use (61 FR 453; 61 FR 20584).
[c] Office of Management and Budget Circular A–94 (revised January 2003).

The range of net benefits for the valuation case represented by Tables 3 and 4 is entirely negative for Alternatives 2, 3, and 4.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These conclusions are based on the analysis contained in the Final SEIS and a report entitled ''Economic Analysis of Regulations on Snowmobile Use in the Greater Yellowstone Area'' (MACTEC Engineering and Consulting, Inc., November 2003).

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Implementing actions under this rule will not interfere with plans by other agencies or local government plans, policies, or controls since this is an agency specific change.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. It only affects the use of over-snow machines within specific national parks. No grants or other forms of monetary supplement are involved.

(4) This rule may raise novel legal or policy issues. The issue has generated local as well as national interest on the subject in the Greater Yellowstone Area. The NPS received nearly 360,000 public comment letters on the draft SEIS and over 105,000 comments on the proposed rule. Additionally, this is only the second NPS regulation to use an adaptive management strategy for managing visitor use levels. That concept, coupled with new provisions for Best Available Technology engine requirements, make this proposed rule unique to the NPS.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on information contained in the report entitled ''Economic Analysis of Regulations on Snowmobile Use in the Greater Yellowstone Area'' (MACTEC Engineering and Consulting, Inc. November 2003). This report is available on the Yellowstone website.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rulemaking has no effect on methods of manufacturing or production and specifically affects the Montana, Idaho and Wyoming region near the parks, not national or U.S. based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. Access to private property located within or adjacent to the parks will still be afforded the same access during winter as before this rule. No other property is affected.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. It addresses public use of national park lands, and imposes no requirements on other agencies or governments.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

National Environmental Policy Act

A Final Supplemental Environmental Impact Statement has been completed and a Record of Decision issued. The Final SEIS and ROD are available for review by contacting Yellowstone or Grand Teton Planning Offices or at *www.nps.gov/grte/winteruse/intro.htm.*

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government to Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2:

We have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. Numerous tribes in the area were consulted in the development of the SEIS. Their major concern was to reduce the adverse effects on wildlife by snowmobiles. This rule does that through implementation of the guiding requirements and disbursement of snowmobile use through the various entrance stations.

Administrative Procedures Act

NPS recognizes that new rules ordinarily go into effect 30 days after publication in the **Federal Register**. For this regulation, however, we have determined under 5 U.S.C. 553(d) and 318 DM 6.25 that this rule should be effective immediately. This rule relieves a restriction on snowmobile use, and does not require a delay in its effective date. In addition, good cause exists for an immediate effective date because:

(1) Delaying implementation of this rule would prevent it from being in place in time for the opening of the winter use season and would cause it to go into effect well after the season started. Carrying out such a significant change in the terms for winter use mid-season would cause substantial confusion for the public, and could also present implementation and enforcement problems for NPS. It is better to avoid such confusion by ensuring that this new rule is in effect at the start of the season.

(2) Normally, the purpose of the delayed effective date is to give affected parties a chance to learn about a new regulation and how to comply with it. Here, any such benefit to winter users would be greatly outweighed by the harm that a delay in implementation would cause, because it would have significant impacts on visitors planning to visit the park during the forthcoming December-January holiday season, and on various small businesses in the surrounding communities which provide services to the visitors.

Drafting Information: The primary authors of this regulation were Kevin Schneider, Outdoor Recreation Planner, and John Sacklin, Supervisory Park Resource Planner, Yellowstone National Park; Bill Holda, Supervisory Park Ranger, and Gary Pollock, Management Assistant, Grand Teton National Park; and Kym Hall, NPS Special Assistant, and Barry Roth, Deputy Associate Solicitor, Washington, DC.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

■ 36 CFR part 7 is amended as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); § 7.96 also issued under D.C. Code 8–137(1981) and D.C. Code 40–721 (1981).

■ 2. Amend § 7.13 to revise paragraph (l) to read as follows:

§ 7.13 Yellowstone National Park.

* * * * *

(l)(1) *What is the scope of this regulation?* The regulations contained in paragraphs (l)(2) through (l)(19) of this section are intended to apply to the use of recreational and commercial snowmobiles. Except where indicated, paragraphs (l)(2) through (l)(19) do not apply to non-administrative snowmobile or snowcoach use by NPS, contractor or concessioner employees who live or work in the interior of the park, or other non-recreational users authorized by the Superintendent.

(2) *What terms do I need to know?* This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

Commercial guide means those guides who operate as a snowmobile guide for a fee or compensation and are authorized to operate in the park under a concession contract.

Non-commercial guide means those authorized guides who have successfully completed an NPS-approved training course and provide guiding services without compensation.

Oversnow route means that portion of the unplowed roadway located between the road shoulders and designated by snow poles or other poles, ropes, fencing, or signs erected to regulate over-snow activity. Oversnow routes include pullouts or parking areas that are groomed or marked similarly to roadways and are adjacent to designated oversnow routes. An oversnow route may also be distinguished by the interior boundaries of the berm created by the packing and grooming of the unplowed roadway. The only motorized vehicles permitted on oversnow routes are oversnow vehicles.

Oversnow vehicle means a snowmobile, snowcoach, or other motorized vehicle that is intended for travel primarily on snow and is authorized by the Superintendent to operate in the park. An oversnow vehicle that does not meet the definition of a snowcoach or a snowplane must comply with all requirements applicable to snowmobiles.

Snowcoach means a self-propelled mass transit vehicle intended for travel on snow, having a curb weight of over 1000 pounds (450 kilograms), driven by a track or tracks and steered by skis or tracks, and having a capacity of at least 8 passengers.

Snowplane means a self-propelled vehicle intended for oversnow travel and driven by an air-displacing propeller.

(3) *May I operate a snowmobile in Yellowstone National Park?* You may operate a snowmobile in Yellowstone National Park in compliance with use limits and entry passes, guiding requirements, operating hours and dates, equipment, and operating conditions established pursuant to this section. The Superintendent may establish additional operating conditions and shall provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(4) *May I operate a snowcoach in Yellowstone National Park?* Commercial snowcoaches may be operated in Yellowstone National Park under a concessions contract. Non-commercial snowcoaches may be operated if authorized by the Superintendent. Snowcoach operation is subject to the conditions stated in the concessions contract and all other conditions identified in this section.

(i) Historic snowcoaches (Bombardier snowcoaches manufactured in 1983 or earlier) are not initially required to meet air or sound requirements.

(ii) Beginning with the winter of 2005–2006, all non-historic snowcoaches must meet NPS air emissions requirements. These requirements are the EPA's emission standards for the vehicle at the time it was manufactured.

(iii) Beginning with the winter of 2008–2009, all non-historic snowcoaches must meet NPS sound requirements. Snowcoaches must operate at or below 75 dB(A) as measured at 25 mph on the A-weighted scale at 50 feet using test procedures similar to Society of Automotive Engineers J1161 (revised 1983).

(iv) All critical emission-related exhaust components (as defined in 40 CFR 86.004–25(b)(3)(iii) through (v)) must be functioning properly. Malfunctioning critical emissions-related components must be replaced with the original equipment manufacturer (OEM) component, where possible. Where OEM parts are not available, aftermarket parts may be used. In general, catalysts that have exceeded their useful life must be replaced unless the operator can demonstrate the catalyst is functioning properly.

(v) Tampering with or disabling a snowcoach's original pollution control equipment is prohibited except for maintenance purposes.

(vi) Individual snowcoaches may be subject to period inspections to determine compliance with the requirements of paragraphs (l)(4)(ii) through (l)(4)(v) of this section.

(5) *Must I operate a certain model of snowmobile?* Only commercially available snowmobiles that meet NPS air and sound emissions requirements may be operated in the park. The Superintendent will approve snowmobile makes, models, and year of manufacture that meet those requirements. The public will be made aware of any new air or sound emissions requirements through publication in the **Federal Register** and using one or more of the methods listed in § 1.7(a) of this chapter. Any snowmobile model not approved by the Superintendent may not be operated in the park.

(6) *How will the Superintendent approve snowmobile makes, models, and year of manufacture for use in the park?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured emissions levels (official emission results with no deterioration factors applied) to comply with the emission limits specified in paragraph (l)(6)(i) of this section.

(B) Snowmobiles manufactured prior to the 2004 model year may be operated only if they have been shown to have emissions no greater than the requirements identified in paragraph (l)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR 1051 and 1065) shall be used to measure air emissions from model year 2004 and later snowmobiles. Equivalent procedures may be used for earlier model years.

(ii) For sound emissions, snowmobiles must operate at or below 73dB(A), as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected.

(iii) Snowmobiles not operating under a concessions contract are exempt from air and sound emissions requirements for the winter 2003–2004 only.

(iv) The Superintendent may prohibit entry into the park of any snowmobile that has been modified in a manner that may affect air or sound emissions.

(7) *Where must I operate my snowmobile?* You must operate your snowmobile only upon designated oversnow routes established within the park in accordance with § 2.18(c) of this chapter. The following oversnow routes are so designated for snowmobile use:

(i) The Grand Loop Road from its junction with Terrace Springs Drive to Norris Junction.

(ii) Norris Junction to Canyon Junction.

(iii) The Grand Loop Road from Norris Junction to Madison Junction.

(iv) The West Entrance Road from the park boundary at West Yellowstone to Madison Junction.

(v) The Grand Loop Road from Madison Junction to West Thumb.

(vi) The South Entrance Road from the South Entrance to West Thumb.

(vii) The Grand Loop Road from West Thumb to its junction with the East Entrance Road.

(viii) The East Entrance Road from the East Entrance to its junction with the Grand Loop Road.

(ix) The Grand Loop Road from its junction with the East Entrance Road to Canyon Junction.

(x) The South Canyon Rim Drive.

(xi) Lake Butte Road.

(xii) In the developed areas of Madison Junction, Old Faithful, Grant Village, Lake, Fishing Bridge, Canyon, Indian Creek, and Norris.

(xiii) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(xiv) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(xv) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *What routes are designated for snowcoach use?* Authorized snowcoaches may only be operated on the routes designated for snowmobile use in paragraphs (l)(7)(i) through (l)(7)(xii) of this section and the following additional oversnow routes:

(i) Firehole Canyon Drive.

(ii) Fountain Flat Road.

(iii) Virginia Cascades Drive.

(iv) North Canyon Rim Drive.

(v) Riverside Drive.

(vi) That portion of the Grand Loop Road from Canyon Junction to Washburn Hot Springs overlook.

(vii) The Superintendent may open or close these oversnow routes, or portions thereof, or designate new routes for snowcoach travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(viii) This paragraph also applies to non-administrative snowcoach use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(9) *Will I be required to use a guide while snowmobiling?* Beginning in the winter of 2004–2005, all snowmobile operators must be accompanied by a guide who has successfully completed an NPS-approved training program. During the winter of 2003–2004 only, the twenty percent (20%) of the authorized daily snowmobile entries that are allocated to the general public do not require a guide.

(10) *What other requirements apply to the use of snowmobile guides?* Eighty percent (80%) of the authorized daily snowmobile entries are allocated under concessions contracts for commercial guiding services while the remaining twenty percent (20%) of the authorized daily snowmobile entries are allocated to the general public for non-commercially guided parties.

(i) Non-commercial guides are required to successfully complete a training program approved by the Superintendent to include training on park rules, safety considerations, and appropriate actions to minimize impacts to wildlife and other park resources.

(ii) Snowmobile parties must travel in a group, including the guide. Maximum or minimum group size may be designated by the Superintendent. Notice of group size requirements shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) It is prohibited for non-commercial guides, or anyone else, to receive fees or other forms of compensation for non-commercial guiding services.

(iv) Guided parties must travel together within a maximum of one-third mile of the first snowmobile in the group.

(v) The Superintendent may change requirements related to guiding, including the commercial: non-commercial guide ratio. Except for emergency situations, changes to guiding requirements may be made on an annual basis and the public will be notified of those changes through publication in the **Federal Register** and by one or more of the procedures listed in § 1.7(a) of this chapter.

(11) *Are there limits established for the numbers of snowmobiles permitted to enter the park each day?* Snowmobiles allowed to enter the park each day will be limited to a specific number per entrance. The initial limits are listed in the following table:

TABLE 1 TO § 7.13.—INITIAL DAILY SNOWMOBILE ENTRY LIMITS

Park entrance/road segment	Number of commercially-guided snowmobile entrance passes	Number of non-commercially guided snowmobile entrance passes [1]	Total number of snowmobile entrance passes
(i) YNP—North Entrance	40	10	50
(ii) YNP—West Entrance	440	110	550
(iii) YNP—South Entrance	200	50	250
(iv) YNP—East Entrance	80	20	100

[1] In the 2003–2004 winter season only, these entries will be available for unguided parties, to allow sufficient time to develop and implement a non-commercial guide training program.

(v) The limits established in Table 1 to this section apply until modified by the Superintendent. The Superintendent may establish different limits, after taking into consideration the effectiveness of air and sound emissions requirements, the state of technology, monitoring results, or other relevant information. The public will be made aware of any new limits through publication in the **Federal Register** and using one or more of the methods listed in § 1.7(a) of this chapter.

(12) *How will the daily snowmobile entry limits be enforced?* The daily snowmobile entry limits will be enforced through at least three methods:

(i) The operator of a snowmobile is required to have a reservation to obtain entry into the park and pay any fees associated with that reservation;

(ii) The operator of a snowmobile is required to have an entrance pass to obtain entry into the park and pay any fees associated with that entrance pass; and,

(iii) The person who makes or holds the reservation must accompany the snowmobile group while in the park.

(iv) Reservations or entrance passes that have been obtained using false information, or have been altered, are invalid. Reservations or entrance passes that have been transferred or resold without the authorization of the Superintendent are invalid. The use of an invalid reservation or entrance pass is prohibited.

(13) When may I operate my snowmobile or snowcoach? The Superintendent will determine operating hours and dates. Except for emergency situations, changes to operating hours or dates may be made annually and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

(14) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Operating an oversnow vehicle while the operator's state motor vehicle license or privilege is suspended or revoked by any state.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Operating an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or park resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds or other sliding devices by oversnow vehicles, except in emergency situations.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be utilized where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operating so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle operators must possess a valid motor vehicle operator's license. A learner's permit does not satisfy this requirement. The license must be carried by the operator at all times.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from the United States or Canada.

(iii) The Superintendent may impose other terms and conditions as necessary to protect park resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users as authorized by the Superintendent.

(15) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to the regulations contained in 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle

is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters or blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a snowmobile guide or a snowcoach driver and the alcohol concentration in the operator's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users as authorized by the Superintendent.

(16) *Do other NPS regulations apply to the use of oversnow vehicles?* (i) The use of oversnow vehicles in Yellowstone is not subject to §§ 2.18 (b), (d), (e) and 2.19(b) of this chapter.

(ii) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users as authorized by the Superintendent.

(17) *Are there any forms of non-motorized oversnow transportation allowed in the park?* Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted pursuant to this section or other provisions of 36 CFR Part 1.

(i) The Superintendent may designate areas of the park as closed, reopen such areas or establish terms and conditions for non-motorized travel within the park in order to protect visitors, employees or park resources.

(ii) Dog sledding or ski-jorring is prohibited.

(18) *May I operate a snowplane in Yellowstone?* The operation of a snowplane in Yellowstone is prohibited.

(19) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions or requirements of paragraphs (l)(2) through (l)(18) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

* * * * *

■ 3. Amend § 7.21 to revise paragraph (a) to read as follows:

§ 7.21 John D. Rockefeller, Jr., Memorial Parkway.

(a)(1) *What is the scope of this regulation?* The regulations contained in paragraphs (a)(2) through (a)(18) of this section are intended to apply to the use of recreational and commercial snowmobiles. Except where indicated, paragraphs (a)(2) through (a)(18) do not apply to non-administrative snowmobile or snowcoach use by NPS, contractor or concessioner employees who live or work in the interior of Yellowstone, or other non-recreational users authorized by the Superintendent.

(2) *What terms do I need to know?* All the terms in § 7.13(l)(2) of this part apply to this section. This paragraph applies to non-administrative snowmobile use by NPS or concessioner employees.

(3) *May I operate a snowmobile in the Parkway?* You may operate a snowmobile in the Parkway in compliance with use limits and entry passes, guiding requirements, operating hours and dates, equipment, and operating conditions established pursuant to this section. The Superintendent may establish additional operating conditions and shall provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(4) *May I operate a snowcoach in the Parkway?* Commercial snowcoaches may be operated in the Parkway under a concessions contract. Non-commercial snowcoaches may be operated if authorized by the Superintendent. Snowcoach operation is subject to the conditions stated in the concessions contract and all other conditions identified in this section.

(i) Historic snowcoaches (Bombardier snowcoaches manufactured in 1983 or earlier) are not initially required to meet air or sound requirements.

(ii) Beginning with the winter of 2005–2006, all non-historic snowcoaches must meet NPS air emissions requirements. These requirements are the EPA's emission standards for the vehicle at the time it was manufactured.

(iii) Beginning with the winter of 2008–2009, all non-historic snowcoaches must meet NPS sound requirements. Snowcoaches must operate at or below 75 dB(A) as measured at 25 mph on the A-weighted scale at 50 feet using test procedures similar to Society of Automotive Engineers J1161 (revised 1983).

(iv) All critical emission-related exhaust components (as defined in 40 CFR 86.004–25(b)(3)(iii)–(v)) must be functioning properly. Malfunctioning critical emissions-related components must be replaced with the original equipment manufacturer (OEM) component, where possible. Where OEM parts are not available, after-market parts may be used. In general, catalysts that have exceeded their useful life must be replaced unless the operator can demonstrate the catalyst is functioning properly.

(v) Tampering with or disabling a snowcoach's original pollution control equipment is prohibited except for maintenance purposes.

(vi) Individual snowcoaches may be subject to periodic inspections to determine compliance with the requirements of paragraphs (a)(4)(ii) through (a)(4)(v) of this section.

(5) *Must I operate a certain model of snowmobile?* Only commercially available snowmobiles that meet NPS air and sound emissions requirements may be operated in the Parkway. The Superintendent will approve snowmobile makes, models, and year of manufacture that meet those requirements. The public will be made aware of any new air or sound emissions requirements through publication in the **Federal Register** and using one or more of the methods listed in § 1.7(a) of this chapter. Any snowmobile model not approved by the Superintendent may not be operated in the Parkway.

(6) *How will the Superintendent approve snowmobile makes, models, and year of manufacture for use in the Parkway?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured air emissions levels (official emission results with no deterioration factors applied) to comply with the air emission limits specified in paragraph (a)(6)(i) of this section.

(B) Snowmobiles manufactured prior to the 2004 model year may be operated only if they have shown to have air emissions no greater than the requirements identified in paragraph (a)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR parts 1051 and 1065) shall be used to measure air emissions from model year 2004 and later snowmobiles. Equivalent procedures may be used for earlier model years.

(ii) For sound emissions snowmobiles must operate at or below 73dB(A) as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected.

(iii) These air and sound emissions requirements shall not apply to snowmobiles originating in the Targhee

National Forest and traveling on the Grassy Lake Road to Flagg Ranch, however these snowmobiles may not travel further into the Parkway unless they meet the air and sound emissions and all other requirements of this section.

(iv) Snowmobiles not operating under a concessions contract are exempt from air and sound emissions requirements for the winter 2003–2004 only.

(v) The Superintendent may prohibit entry into the Parkway of any snowmobile that has been modified in a manner that may affect air or sound emissions.

(7) *Where must I operate my snowmobile in the Parkway?* You must operate your snowmobile only upon designated oversnow routes established within the Parkway in accordance with 36 CFR 2.18(c). The following oversnow routes are so designated for snowmobile use:

(i) The Continental Divide Snowmobile Trail (CDST) along U.S. Highway 89/287 from the southern boundary of the Parkway north to the Snake River Bridge.

(ii) Along U.S. Highway 89/287 from the Snake River Bridge to the northern boundary of the Parkway.

(iii) Grassy Lake Road from Flagg Ranch to the western boundary of the Parkway.

(iv) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety or other factors. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(v) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(vi) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *What routes are designated for snowcoach use?* (i) Authorized snowcoaches may only be operated on the route designated for snowmobile use in paragraph (a)(7)(ii) of this section. No other routes are open to snowcoach use.

(ii) The Superintendent may open or close this oversnow route, or portions thereof, or designate new routes for snowcoach travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph also applies to non-administrative snowcoach use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(9) *Will I be required to use a guide while snowmobiling in the Parkway?* Beginning in the winter of 2004–2005, all snowmobile operators using the oversnow route along U.S. Highway 89/287 from Flagg Ranch to the northern boundary of the parkway must be accompanied by a guide that has successfully completed an NPS-approved training program. A guide is not required in other portions of the Parkway. During the winter of 2003–2004 only, the twenty percent (20%) of the authorized daily snowmobile entries that are allocated to the general public do not require a guide.

(10) *What other requirements apply to the use of snowmobile guides?* Eighty percent (80%) of the authorized daily snowmobile use on U.S. Highway 89/287 from Flagg Ranch to the northern boundary of the Parkway is allocated under concessions contracts for commercial guiding services while the remaining twenty percent (20%) of the authorized daily snowmobile entries are allocated to the general public for non-commercially guided parties.

(i) Non-commercial guides are required to successfully complete a training program approved by the Superintendent to include training on Parkway rules, safety considerations, and appropriate actions to minimize impacts to wildlife and other Parkway resources.

(ii) Snowmobile parties must travel in a group, including the guide. Maximum or minimum group size may be designated by the Superintendent. Notice of group size requirements shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) It is prohibited for non-commercial guides, or anyone else, to receive fees or other forms of compensation for non-commercial guiding services.

(iv) Guided parties must travel together within a maximum of one-third mile of the first snowmobile in the group.

(v) The Superintendent may change requirements related to guiding, including the commercial to non-commercial guide ratio. Except for emergency situations, changes to guiding requirements may be made on an annual basis and the public will be notified of those changes through publication in the **Federal Register** and by one or more of the procedures listed in § 1.7(a) of this chapter.

(11) *Are there limits established for the numbers of snowmobiles permitted to enter the Parkway each day?* Snowmobiles allowed to enter the Parkway each day will be limited to a specific number per road segment. The initial limits are listed in the following table:

TABLE 1 TO § 7.21.—INITIAL DAILY SNOWMOBILE ENTRY LIMITS

Park entrance/road segment	Number of commercially-guided snowmobiles	Number of non-commercially guided snowmobiles	Total number of snowmobiles
(i) GTNP and the Parkway—Total Use on CDST [2]	N/A	N/A	[3] 75
(ii) Parkway—Total Use Grassy Lake Road	N/A	N/A	[3] 75
(iii) Flagg Ranch to Yellowstone South Entrance	200	50	250

[2] The Continental Divide Snowmobile Trail lies within both GTNP and the Parkway. The 75 daily snowmobile use limit applies to total use on this trail in both parks.

[3] These users do not have to be accompanied by a guide.

(iv) The limits established in Table 1 to this section apply until modified by the Superintendent. The Superintendent may establish different limits, after taking into consideration the effectiveness of air and sound emissions requirements, the state of technology, monitoring results, or other relevant information. The public will be made aware of new limits through publication in the **Federal Register** and using one or more of the methods listed in § 1.7(a) of this chapter.

(12) *When may I operate my snowmobile or snowcoach?* The

Superintendent will determine operating hours and dates. Except for emergency situations, changes to operating hours or dates may be made annually and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

(13) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Operating an oversnow vehicle while the operator's state motor vehicle license or privilege is suspended or revoked by any state.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Operating an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or Parkway resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds or other sliding devices by oversnow vehicles, except in emergency situations.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be utilized where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operating so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle operators must possess a valid motor vehicle operator's license. The license must be carried by the operator at all times. A learner's permit does not satisfy this requirement.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from the United States or Canada.

(iii) The Superintendent may impose other terms and conditions as necessary to protect Parkway resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(14) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to the regulations in 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters or blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a guide or a snowcoach driver and the alcohol concentration in the driver's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(15) *Do other NPS regulations apply to the use of oversnow vehicles?* (i) The use of oversnow vehicles in the Parkway is not subject to §§ 2.18(d) and (e) and 2.19(b) of this chapter.

(ii) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(16) *Are there any forms of non-motorized oversnow transportation allowed in the Parkway?* (i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking are permitted unless otherwise restricted pursuant to this section or other provisions of 36 CFR Part 1 provided you follow all applicable regulations.

(ii) The Superintendent may designate areas of the Parkway as closed, reopen such areas or establish terms and conditions for non-motorized travel within the Parkway in order to protect visitors, employees or park resources.

(iii) Dog sledding or ski-jorring is prohibited.

(17) *May I operate a snowplane in the Parkway?* The operation of a snowplane in the Parkway is prohibited.

(18) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions or requirements of paragraphs (a)(2) through (a)(17) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

* * * * *

■ 4. Amend § 7.22 to revise paragraph (g) to read as follows:

§ 7.22 Grand Teton National Park.

* * * * *

(g)(1) *What is the scope of this regulation?* The regulations contained in paragraphs (g)(2) through (g)(20) of this section are intended to apply to the use of recreational and commercial snowmobiles. Except where indicated, paragraphs (g)(2) through (g)(20) do not apply to non-administrative snowmobile or snowcoach use by NPS or concessioner employees who live or work in the interior of Yellowstone.

(2) *What terms do I need to know?* All the terms in § 7.13(l)(2) of this part apply to this section. This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(3) *May I operate a snowmobile in Grand Teton National Park?* You may operate a snowmobile in Grand Teton National Park in compliance with use limits and entry passes, operating hours and dates, equipment, and operating conditions established in this section. The Superintendent may establish additional operating conditions and shall provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(4) *May I operate a snowcoach in Grand Teton?* Operate a snowcoach in Grand Teton National Park is prohibited.

(5) *Must I operate a certain model of snowmobile in the park?* Only commercially available snowmobiles that meet NPS air and sound emissions requirements may be operated in the park. The Superintendent will approve snowmobile makes, models, and year of manufacture that meet those requirements. The public will be made aware of any new air or sound emissions requirements through publication in the **Federal Register** and using one or more of the methods listed in § 1.7(a) of this chapter. Any snowmobile model not approved by the Superintendent may not be operated in the park.

(6) *How will the Superintendent approve snowmobile makes, models, and year of manufacture for use in Grand Teton?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured air emissions levels

(official emission results with no deterioration factors applied) to comply with the air emission limits specified in paragraph (g)(6)(i) of this section.

(B) Snowmobiles manufactured prior to the 2004 model year may be operated only if they have shown to have air emissions no greater than the requirements identified in paragraph (g)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR 1051 and 1065) shall be used to measure air emissions from model year 2004 and later snowmobiles. Equivalent procedures may be used for earlier model years.

(ii) For sound emissions, snowmobiles must operate at or below 73dB(A), as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected.

(iii) These air and sound emissions requirements shall not apply to snowmobiles while in use to access lands authorized by paragraphs (g)(16) and (g)(18) of this section.

(iv) Snowmobiles not operating under a concessions contract are exempt from air and sound emissions requirements for the winter 2003–2004 only.

(v) The Superintendent may prohibit entry into the park of any snowmobile that has been modified in a manner that may affect air or sound emissions.

(7) *Where must I operate my snowmobile?* You must operate your snowmobile only upon designated oversnow routes established within the park in accordance with 36 CFR 2.18(c). The following oversnow routes are so designated for snowmobile use:

(i) The frozen water surface of Jackson Lake for the purposes of ice fishing only. Those persons accessing Jackson Lake for ice fishing must possess a valid Wyoming state fishing license and the proper fishing gear.

(ii) The Continental Divide Snowmobile Trail along U.S. 26/287 from Moran Junction to the eastern park boundary and along U.S. 89/287 from Moran Junction to the north park boundary.

(iii) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel and may establish separate zones for motorized and non-motorized use on Jackson Lake, after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety and other factors. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(iv) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(v) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *Will I be required to use a guide while snowmobiling in Grand Teton?* (i) You will not be required to use a guide while snowmobiling in Grand Teton.

(ii) The Superintendent may establish requirements related to the use of guides, including requirements for commercial and/or non-commercial guides. Changes to guiding requirements may be made annually and the public will be notified of those changes through publication in the **Federal Register** and by one or more of the procedures listed in § 1.7(a) of this chapter.

(9) *Are there limits established for the numbers of snowmobiles permitted to operate in Grand Teton each day?* Snowmobiles allowed to enter the park each day will be limited to a specific number per road segment or area. The initial limits are listed in the following table:

TABLE 1 TO § 7.22.—INITIAL DAILY SNOWMOBILE ENTRY LIMITS

Park entrance/road segment	Number of commercially-guided snowmobile entrance passes	Number of non-commercially guided snowmobile entrance passes	Total number of snowmobile entrance passes
(i) GTNP and the Parkway—Total Use on CDST [4]	N/A	N/A	[5] 75
(ii) Jackson Lake	N/A	N/A	[5] 40

[4] The Continental Divide Snowmobile Trail lies within both GTNP and the Parkway. The 75 daily snowmobile use limit applies to total use on this trail in both parks.

[5] These users do not have to be accompanied by a guide.

(iii) The limits established in Table 1 to this section apply until modified by the Superintendent. The Superintendent may establish different limits after taking into consideration the effectiveness of air and sound emissions requirements, the state of technology, monitoring results, or other relevant information. The public will be made aware of new limits through publication in the **Federal Register** and using one or more of the methods listed in § 1.7(a) of this chapter.

(10) *When may I operate my snowmobile?* The Superintendent will determine operating hours and dates. Except for emergency situations, changes to operating hours or dates may be made annually and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

(11) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Operating an oversnow vehicle while the operator's state motor vehicle license or privilege is suspended or revoked by any state.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Operating an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or park resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds or other sliding devices by oversnow vehicles, except in emergency situations.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be utilized where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operating so

slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle operators must possess a valid motor vehicle operator's license. The license must be carried by the operator at all times. A learner's permit does not satisfy this requirement.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from the United States or Canada.

(iii) The Superintendent may impose other terms and conditions as necessary to protect park resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(12) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to the regulations in 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters or blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a commercial guide or a snowcoach driver and the alcohol concentration in the driver's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph also applies to non-administrative snowmobile use by NPS, contractor or concessioner employees, or other non-recreational users authorized by the Superintendent.

(13) *Do other NPS regulations apply to the use of oversnow vehicles?* The use of oversnow vehicles in Grand Teton is not subject to §§ 2.18(d) and (e) and 2.19(b) of this chapter.

(14) *Are there any forms of non-motorized oversnow transportation allowed in the park?* (i) Non-motorized travel including skiing, skating, snowshoeing, or walking are permitted unless otherwise restricted pursuant to this section or other provisions of 36 CFR Part 1 provided you follow all applicable regulations.

(ii) The Superintendent may designate areas of the park as closed, reopen such areas or establish terms and conditions for non-motorized travel within the park in order to protect visitors, employees or park resources.

(iii) Dog sledding or ski-jorring is prohibited.

(15) *May I operate a snowplane in Grand Teton National Park?* The operation of a snowplane in Grand Teton National Park is prohibited.

(16) *May I continue to access public lands via snowmobile through the park?* Reasonable and direct access, via snowmobile, to adjacent public lands will continue to be permitted on designated routes through the park. Requirements established in this section related to snowmobile operator age, air and sound emissions, guiding and licensing do not apply on these oversnow routes. The following routes only are designated for access via snowmobile to public lands:

(i) From the parking area at Shadow Mountain directly along the unplowed portion of the road to the east park boundary.

(ii) Along the unplowed portion of the Ditch Creek Road directly to the east park boundary.

(17) *For what purpose may I use the routes designated in paragraph (g)(16) of this section?* You may use those routes designated in paragraph (g)(16) of this section only to gain direct access to public lands adjacent to the park boundary.

(18) *May I continue to access private property within or adjacent to the park via snowmobile?* Until such time as the United States takes full possession of an inholding in the park, the Superintendent may establish reasonable and direct access routes via snowmobile, to such inholding, or to private property adjacent to park boundaries for which other routes or means of access are not reasonably available. Requirements established in this section related to air and sound emissions, snowmobile operator age, licensing, and guiding do not apply on these oversnow routes. The following routes are designated for access to properties within or adjacent to the park:

(i) The unplowed portion of Antelope Flats Road off U.S. 26/89 to private lands in the Craighead Subdivision.

(ii) The unplowed portion of the Teton Park Road to the piece of land commonly referred to as the ''Clark Property''.

(iii) From the Moose-Wilson Road to the land commonly referred to as the ''Barker Property''.

(iv) From the Moose-Wilson Road to the land commonly referred to as the ''Wittimer Property''.

(v) From the Moose-Wilson Road to those two pieces of land commonly referred to as the ''Halpin Properties''.

(vi) From the south end of the plowed sections of the Moose-Wilson Road to that piece of land commonly referred to as the ''JY Ranch''.

(vii) From Highway 26/89/187 to those lands commonly referred to as the ''Meadows'', the ''Circle EW Ranch'', the ''Moulton Property'', the ''Levinson Property'' and the ''West Property''.

(viii) From Cunningham Cabin pullout on U.S. 26/89 near Triangle X to the piece of land commonly referred to as the ''Lost Creek Ranch''.

(ix) Maps detailing designated routes will be available from Park Headquarters.

(19) *For what purpose may I use the routes designated in paragraph (g)(18) of this section?* Those routes designated in paragraph (g)(18) of this section are only to access private property within or directly adjacent to the park boundary. Use of these roads via snowmobile is authorized only for the landowners and their representatives or guests. Use of these roads by anyone else or for any other purpose is prohibited.

(20) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions or requirements of paragraphs (g)(2) through (g)(19) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

David P. Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–30755 Filed 12–10–03; 8:45 am]

BILLING CODE 4312–CX–U

Federal Register

Thursday,
December 11, 2003

Part IX

The President

Proclamation 7743—National Drunk and Drugged Driving Prevention Month, 2003

Federal Register
Vol. 68, No. 238
Thursday, December 11, 2003

Presidential Documents

Title 3—

The President

Proclamation 7743 of December 8, 2003

National Drunk and Drugged Driving Prevention Month, 2003

By the President of the United States of America

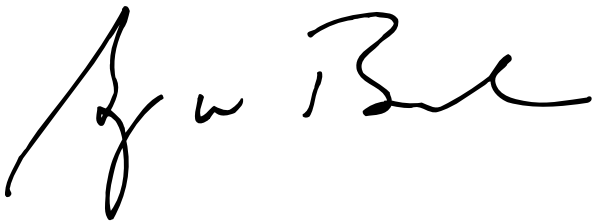
A Proclamation

Last year, more than 17,000 people were killed and 258,000 more were injured in alcohol-related crashes. Such accidents cause unnecessary suffering, loss of life, and expense. During National Drunk and Drugged Driving Prevention Month, we continue our efforts to stop impaired driving and improve the safety of our roads during the holiday season and throughout the year.

We are enhancing both the education of our citizens about the dangers of driving while under the influence and our methods for keeping impaired drivers off the road. My Administration is helping in this fight by supporting the enforcement of traffic programs that teach Americans about the risks of impaired driving. Earlier this year, my Administration proposed to the Congress the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA), which would elevate safe transportation to a national priority and increase State resources for existing enforcement and education efforts. While Federal help and funding are important, State and local involvement is also critical. As part of the Department of Transportation's National Highway Traffic Safety Administration's ''You Drink & Drive. You Lose.'' national campaign, from December 19, 2003, through January 4, 2004, more than 10,000 law enforcement agencies will join forces with community, health, government, and business organizations to demonstrate that impaired driving is unacceptable and unlawful.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 2003 as National Drunk and Drugged Driving Prevention Month. I encourage all Americans to join the ''You Drink & Drive. You Lose.'' national campaign to protect our citizens from impaired drivers.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of December, 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. 03–30846
Filed 12–10–03; 8:45 am]
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Federal Acquisition Regulation (FAR):
- Federal Prison Industries—
  - Waiver threshold; increased; published 12-11-03
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- Various States; published 12-11-03

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- Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr. Memorial Parkway, WY; winter visitation and recreational use management; published 12-11-03

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 1/P.L. 108–173

Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Dec. 8, 2003; 117 Stat. 2066)

H.R. 3348/P.L. 108–174

To reauthorize the ban on undetectable firearms. (Dec. 9, 2003; 117 Stat. 2481)

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