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Federal Register

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE198, Special Condition 23–137–SC]

Special Conditions; Aero Vodochody Ae-270 Propjet; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Aero Vodochody Ae-270 Propjet airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays made by Chelton Flight Systems for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is September 16, 2003. Comments must be received on or before November 7, 2003.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE198, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE198. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4127.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE198.'' The postcard will be date stamped and returned to the commenter.

Background

On June 8, 1998, Aero Vodochody a.s. in the Czech Republic made application for a new Type Certificate for the Ae-270 Propjet. This application date has been extended and revised to September 10, 2002. As part of the FAA validation process for issuance of a Type Certificate in the United States for foreign applicants, the FAA is issuing these special conditions to address special certification review items for novel and unusual features of the Ae-270 Propjet. The proposed type design incorporates a novel or unusual design feature, the Chelton Flight Systems Synthetic Vision System (SVS) Primary Flight Display (PFD), that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.17, Aero Vodochody a.s, must show that the Ae-270 Propjet aircraft meets the following provisions, or the applicable regulations in effect on the date of application for the Ae-270 Propjet: 14 CFR part 23, Amendment 55, effective March 1, 2002; exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

Aero Vodochody a.s. plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged

by the existing regulations for this type of airplane.

Protection of Systems from High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

Note: The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to Aero Vodochody a.s. in the Czech Republic. Should Aero Vodochody a.s. apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and § 21.17; and 14 CFR 11.38 and 11.19.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Aero Vodochody Ae-270 Propjet airplane with the Chelton Flight Systems SVS PFD.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on September 16, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–25425 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. FAA–02–ANM–07]

Establishment of Class E Airspace at Afton Municipal Airport, Afton, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action deletes reference to the magnetic headings in the airspace description of the Class E airspace at Afton Municipal Airport, Afton, WY, that was published on July 31, 2003 (68 FR 44874), Airspace Docket 02–ANM–07.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, ANM–520.7; telephone (425) 227–2527; Federal Aviation Administration, Docket No. 02–ANM–07, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION:

History: Airspace Docket 02–ANM–07 published on July 31, 2003 (68 FR 44874), established Class E Airspace at Afton Municipal Airport, Afton, WY, effective date of October 30, 2003. Magnetic as well as true heading were used to describe parameters of the Class E Airspace for Afton Municipal Airport, Afton, WY. This action only deletes references to the magnetic headings.

E Airspace; Airways; Routes; and Reporting Points [Amended]

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565.

Correction to Final Rule

§ 71.1 [Amended]

■ The references to magnetic headings in the description of the Class E Airspace for Afton Municipal Airport, Afton, WY. Accordingly, pursuant to the authority delegated to me, as published in the **Federal Register** on July 31, 2003 (68 FR 44874) (Airspace Docket 02–ANM–07); page 44874, column 2, are corrected as follows:

* * * * *

ANM UT E5 Afton, WY (Corrected)

Afton Municipal Airport, WY

(Lat 42°42′41″ N, long. 110°56′32″ W)

That airspace extending upward from 700 feet above the surface of the earth within 6.5 mile radius of the Afton Municipal Airport, and within 2 miles either side of the 355° bearing from the airport extending from the 6.5 miles radius to 7.5 miles north of the airport, and within 2 miles either side of the 185° bearing from the airport extending from the 6.5 mile radius to 19.3 miles south of the airport.

* * * * *

Issued in Seattle, Washington, on September 22, 2003.

ViAnne Fowler,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 03–25427 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–03–062]

RIN 1625–AA08

Special Local Regulations for Marine Events; Isle of Wight Bay, Ocean City, MD.

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent special local regulations for fireworks displays over the waters of Isle of Wight Bay, Ocean City, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the fireworks displays. This action is intended to restrict vessel traffic in portions of Isle of Wight Bay during the events.

DATES: This rule is effective November 7, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–03–062 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 8, 2003 we published a notice of proposed rulemaking (NPRM) entitled ''Special Local Regulations for Marine Events; Isle of Wight Bay, Ocean City, MD'' in the **Federal Register** (68 FR 40615). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

Several times each year, O.C. Seacrets, Inc. sponsors fireworks displays over the waters of Isle of Wight Bay, Ocean City, Maryland. The fireworks are launched from two pontoon boats anchored near the O.C. Seacrets Dock in the vicinity of 117 W. 49th Street, Ocean City, Maryland. A small fleet of spectator vessels normally gathers nearby to view the event. Due to the need for vessel control during the fireworks, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation will prevent traffic from transiting a portion of Isle of Wight Bay during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the proposed regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit Isle of Wight Bay by navigating around the regulated area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Isle of Wight Bay during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only 4 days each year. Vessel traffic will be able to pass safely around the regulated area. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. We received no requests for assistance, and none was provided.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of

energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section. Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100–SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 100.531 to read as follows:

§ 100.531 Isle of Wight Bay, Ocean City, MD.

(a) *Definitions.*

Coast Guard Patrol Commander. The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Eastern Shore.

Official Patrol. The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Group Eastern Shore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Regulated Area. The regulated area includes all waters of Isle of Wight Bay enclosed by the arc of a circle 300 feet in diameter with the center located at position 38°22′30.0″ N latitude, 075°04′18.0″ W longitude. All coordinates reference Datum NAD 1983.

(b) *Special local regulations.*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Enforcement period.* This section will be enforced annually from 9:15 p.m. to 10:15 p.m. on Memorial Day, July 4th, August 6th, and Labor Day. If the fireworks are delayed by inclement weather, the special local regulations will be enforced from 9:15 p.m. to 10:15 p.m. the next day

Dated: September 17, 2003.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–25414 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD08–03–036]

RIN 1625–AA08

Special Local Regulations for Marine Events; Ohio River, Miles 467.0 to 475.0 and Licking River, Miles 0.0 to 0.5; Cincinnati, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations during the ''2003 Tall Stacks Heritage Festival'', a marine event to be held from October 14, 2003 until October 20, 2003, on the waters of the Ohio River beginning at mile marker 467.0 and ending at mile marker 475.0, and on the waters of the Licking River beginning at mile marker 0.0 and ending at mile marker 0.5. These temporary special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to control vessel traffic along portions of the Ohio and Licking Rivers during the event.

DATES: This rule is effective from 8 a.m. on October 14, 2003 until 1 p.m. on October 20, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [CGD08–03–036] and are available for inspection or copying at Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, Room 1341, New Orleans, LA 70130 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Kevin Lynn, Project Manager for the Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans LA 70130, telephone (504) 589–6271.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553 (d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to protect vessels and mariners from the hazards associated with the ''2003 Tall Stacks Heritage Festival''. This festival is expected to attract over 25,000 waterborne spectators, 17 paddle wheel vessels, hereafter referred to as participant vessels, and daily shoreside spectators in excess of 200,000. The potential for vessel collisions and damage to moored vessels is high. These temporary special local regulations will reduce the potential for collisions and damage by limiting the speed that vessels may transit through the regulated area.

Background and Purpose

Commencing on October 14, 2003 and lasting until October 20, 2003, the Greater Cincinnati Tall Stacks Commission will sponsor the ''2003 Tall Stacks Heritage Festival'', on the waters of the Ohio River beginning at mile marker 467.0 and ending at mile marker 475.0 and on the waters of the Licking River beginning at mile marker 0.0 and ending at mile marker 0.5. The event will involve 17 participant vessels which will conduct excursions, races, parades and moored tours. Over 25,000 waterborne spectators are anticipated. Over 200,000 daily shoreside spectators are anticipated. In order to preserve the

safety of the participant vessels, recreational vessels and shoreside spectators, temporary special local regulations are needed to control vessel traffic during the event. Vessel traffic will be temporarily restricted to provide for this safety. Vessels entering into the regulated area described in this rule are only authorized to do so at a no wake speed. Commercial towing vessels shall transit at the slowest safe speed to maintain steerageway and minimize wake. All vessels within the regulated area shall not anchor, loiter, impede participant vessels or pass within 20 feet of a moored participant vessel. The operator of any vessel in the regulated area shall stop the vessel immediately when directed to do so by any Coast Guard Patrol Commander and proceed as directed by any Coast Guard Patrol Commander.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. This rule only prevents traffic from transiting within 20 feet of a moored participant vessel and does not otherwise effect a closure of the Ohio and Licking Rivers. All commercial, spectator and recreational vessels will be allowed to transit through the regulated area provided that they are in compliance with these temporary special local regulations. The effect of this rule will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via Local Notice to Mariners and marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of recreational and commercial towing vessels intending to transit the Ohio River beginning at mile marker 467.0 and ending at mile marker 475.0 and the Licking River beginning at mile marker 0.0 and ending at mile marker 0.5, from 8 a.m. on October 14, 2003 until 1 p.m. on October 20, 2003.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period of time. All commercial, spectator and recreational vessels will be allowed to transit through the regulated area provided that they are in compliance with these temporary special local regulations. Before the effective period, we will notify the maritime community through Local Notice to Mariners and marine information broadcasts.

If you are a small business entity and are significantly affected by this regulation please contact LT Kevin Lynn, Project Manager for the Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans LA 70130, telephone (504) 589–6271.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a state, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not determined it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Paragraph (34)(h) states that special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 100.35T–08–803 is added to read as follows:

§ 100.35T–08–803 Ohio River, Miles 467.0 to 475.0 and Licking River, Miles 0.0 to 0.5; Cincinnati, OH.

(a) *Definitions.*

Coast Guard Patrol Commander means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Captain of the Port Louisville.

Participant means all vessels participating in the ''2003 Tall Stacks Heritage Festival'' under the auspices of the Marine Event Permit issued to the event sponsor and approved by the Captain of the Port Louisville.

Regulated area means the waters of the Ohio River beginning at mile marker 467.0 and ending at mile marker 475.0, and the waters of the Licking River beginning at mile marker 0.0 and ending at mile marker 0.5.

(b) *Special local regulations.* (1) All vessels entering into the regulated area are only authorized to do so at a no wake speed.

(2) Commercial towing vessels shall transit through the regulated area at the slowest safe speed to maintain steerageway and minimize wake.

(3) All vessels within the area shall not anchor, loiter, impede participant vessels or pass within 20 feet of a moored participant vessel.

(4) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Coast Guard Patrol Commander.

(ii) Proceed as directed by any Coast Guard Patrol Commander.

(c) *Effective date.* This section is effective from 8 a.m. on October 14, 2003 until 1 p.m. on October 20, 2003.

Dated: September 18, 2003.

R.F. Duncan,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 03–25413 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 110 and 165

[CGD05–03–099]

RIN 1625–AA00 and 1625–AA01

Anchorage Grounds and Safety Zone; Delaware Bay and River

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Delaware Bay and River around the Weeks Dredge and Barge #312 and placing additional requirements on vessels in Anchorage 6 off Deepwater Point, Anchorage 7 off Marcus Hook, and Anchorage 9 near the entrance to Mantua Creek. The Army Corps of Engineers dredges parts of the Delaware River including the Marcus Hook Range Ship Channel to maintain congressionally authorized depths. These regulations will help ensure the safety of vessels transiting the channel as well as vessels engaged in dredging operations.

DATES: This rule is effective from September 29, 2003, to December 31, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–03–099 and are available for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania, 19147, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Kevin Sligh or Lieutenant Junior Grade Toussaint Alston, Coast Guard Marine Safety Office Philadelphia, at (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. Allowing for a comment period is impracticable and contrary to public interest, since immediate action is needed to protect mariners against potential hazards associated with dredging operations in the Marcus Hook Range Ship Channel and to modify the anchorage regulations to facilitate vessel traffic. However, advance notification will be made to affected mariners via marine information broadcasts.

Background and Purpose

The U.S. Army Corps of Engineers (USACE) conducts dredging operations on the Delaware River in the vicinity of the Marcus Hook Range Ship Channel to maintain the forty-foot project depth.

To reduce the hazards associated with dredging the channel, vessel traffic that would normally transit through the Marcus Hook Range Ship Channel will be diverted through part of Anchorage 7 off Marcus Hook (''Anchorage 7'')

during the dredging operations. Therefore, additional requirements and restrictions on the use of Anchorage 7 are necessary. For the protection of mariners transiting in the vicinity of dredging operations, the Coast Guard is also establishing a safety zone around the dredging vessels, Weeks Dredge and Barge #312. The safety zone is intended to protect mariners from the potential hazards associated with dredging operations and equipment.

Discussion of Temporary Final Rule

Currently in paragraph (b)(2) of 33 CFR 110.157 we allow vessels to anchor for up to 48 hours in the anchorage grounds listed in § 110.157(a), which includes Anchorage 7. However, because of the temporary re-routing of vessel traffic through Anchorage 7, the Coast Guard is adding a paragraph (b)(11) in 33 CFR 110.157 to provide additional requirements and restrictions on vessels using Anchorage 7. During the effective period, vessels desiring to use Anchorage 7 must obtain permission from the Captain of the Port Philadelphia at least 24 hours in advance. The Captain of the Port will permit only one vessel at a time to anchor in Anchorage 7 and will grant permission on a ''first come, first served'' basis. A vessel will be directed to a location within Anchorage 7 where it may anchor, and will not be permitted to remain in Anchorage 7 for more than 12 hours.

Any vessel that is arriving from or departing for sea requiring an examination by the public health service, customs or immigration authorities will be directed to an anchorage for the required inspection by the Captain of the Port on a case by case basis.

When Anchorage 7 is occupied, the Coast Guard expects that vessels normally permitted to anchor in Anchorage 7 will use Anchorage 6 off Deepwater Point (''Anchorage 6'') or Anchorage 9 near the entrance to Mantua Creek (''Anchorage 9''), because they are the closest anchorage grounds to Anchorage 7. To control access to Anchorage 7, the Coast Guard is requiring a vessel desiring to anchor in Anchorage 7 obtain advance permission from the Captain of the Port. The Captain of the Port may be contacted by telephone at (215) 271–4807 or via VHF marine band radio, channels 13 and 16. To control access to Anchorages 6 and 9, the Coast Guard is requiring any vessel 700 feet or greater in length to obtain advance permission from the Captain of the Port before anchoring. The Coast Guard is also concerned that the holding ground in Anchorages 6 and 9 is not as solid as it is in Anchorage 7. Therefore, a vessel 700 to 750 feet in length is required to have one tug standing alongside while at anchor and a vessel over 750 feet in length must have two tugs standing alongside. The tug must be of sufficient size and horsepower to prevent an anchored vessel from swinging into the channel.

The Coast Guard is also establishing a safety zone within a 150-yard radius of the dredging operations being conducted in the Marcus Hook Range Ship Channel in the vicinity of Anchorage 7, by the Weeks Dredge Barge #312. The safety zone is intended to protect mariners transiting the area from the potential hazards associated with dredging operations. Vessels transiting the Marcus Hook Range Ship Channel will have to divert from the main ship channel through Anchorage 7 and must operate at the minimum safe speed necessary to maintain steerage and reduce wake. No vessel may enter the safety zone unless permission is received from the Captain of the Port.

Regulatory Evaluation

This temporary rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation requires certain vessels to have one or two tugs alongside while at anchor, the requirement only applies to vessels 700 feet or greater in length that choose to anchor in Anchorages 6 and 9. Alternate anchorage grounds such as Anchorage A (Breakwater) and Anchorage 1 (Big Stone) in Delaware Bay, are reasonably close and generally available. Vessels anchoring in Anchorages A and 1 are not required to have tugs alongside, except when specifically directed to do so by the Captain of the Port because of a specific hazardous condition. Furthermore, few vessels 700 feet or greater are expected to enter the port during the effective period. The majority of vessels expected to anchor are less than 700 feet and thus will not be required to have tugs alongside.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 people.

This rule's greatest impact is on vessels greater than 700 feet in length, which choose to anchor in Anchorages 6 and 9. This rule will have virtually no impact on any small entities. Therefore, the Coast Guard certifies under section 605(b) of the regulatory Flexibility Act (5 U.S.C 605(b)) that this will not have a significant impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking.

Small businesses may send comments on the actions of federal employees who enforce or otherwise determine compliance with federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guards, call 1–888–REG–FAIR (1–888–743–3247).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of

their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(f) and (g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 110 and 165 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

■ 2. From September 29, 2003 to December 31, 2003, in § 110.157 add a new paragraph (b)(11) to read as follows:

§ 110.157 Delaware Bay and River.

* * * * *

(b) * * *

(11) From September 29, 2003 until December 31, 2003, additional requirements and restrictions in this paragraph for the use of anchorages defined in paragraphs (a)(7), (a)(8), and (a)(10) of this section apply.

(i) Before anchoring in Anchorage 7 off Marcus Hook, as described in paragraph (a)(8) of this section, a vessel must first obtain permission from the Captain of the Port, Philadelphia, at least 24 hours in advance of arrival. Permission to anchor will be granted on a ''first-come, first-served'' basis. The Captain of the Port will allow only one vessel at a time to be at anchor in Anchorage 7, and no vessel may remain within Anchorage 7 for more than 12 hours. Any vessel that is arriving from or departing for sea and that requires an examination by the public health service, customs or immigration authorities will be directed to an anchorage for the required inspection by the Captain of the Port on a case by case basis.

(ii) For Anchorage 6 off Deepwater Point, as described in paragraph (a)(7) of this section, and Anchorage 9 near entrance to Mantua Creek, as described in paragraph (a)(10) of this section—

(A) Any vessel 700 feet or greater in length requesting anchorage must obtain permission from the Captain of the Port, Philadelphia, Pennsylvania, at least 24 hours in advance.

(B) Any vessel from 700 to 750 feet in length shall have one tug alongside at all times while the vessel is at anchor.

(C) Any vessel greater than 750 feet in length must have two tugs alongside at all times while the vessel is at anchor.

(D) The Master, owner or operator of a vessel at anchor must ensure that any tug required by this section is of sufficient size and horsepower to assist with necessary maneuvers to keep an anchored vessel clear of the navigation channel.

(iii) As used in this section, *Captain of the Port* means the Captain of the Port, Philadelphia, Pennsylvania or any Coast Guard commissioned, warrant, or petty officer authorized to act on his behalf. The Captain of the Port may be contacted by telephone at (215) 271–4807 or via VHF marine band radio, channels 13 and 16.

* * * * *

PART 165—REGULATED NAVIATION AREAS AND LIMITED ACCESS AREAS

■ 3. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1(G), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 4. From September 29, 2003, to December 31, 2003, add temporary § 165.T05–099 to read as follows:

§ 165.T05–099 Safety Zone; Delaware Bay and River.

(a) *Definition.* As used in this section, *Captain of the Port* means the Captain of the Port, Philadelphia, Pennsylvania or any Coast Guard commissioned, warrant, or petty officer authorized to act on his behalf. The Captain of the Port may be contacted by telephone at (215) 271–4807 or via VHF marine band radio, channels 13 and 16.

(b) *Location.* The following area is a safety zone: All waters located within a 150-yard radius arc centered around the Weeks Dredge and Barge #312 conducting dredging operations in or near the Marcus Hook Range Ship Channel in the vicinity of Anchorage 7.

(c) *Regulations.* (1) All persons are required to comply with the general

regulations governing safety zones in 33 CFR 165.23 of this part.

(2) All Coast Guard vessels enforcing this safety zone or watch officers aboard the Weeks Dredge and Barge #312 can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(3) The Captain of the Port will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(d) *Effective period.* This section is effective from September 29, 2003 until December 31, 2003.

Dated: September 25, 2003.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–25416 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD11–03–001]

RIN 1625–AA09

Drawbridge Operation Regulation; Cerritos Channel, Long Beach, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary rule.

SUMMARY: The Commander, Eleventh Coast Guard District, is temporarily changing the regulation governing the Heim Drawbridge, mile 4.9 Cerritos Channel, Long Beach, CA, so the drawbridge need not open for vessel traffic on weekends and evenings during October and November, 2003. California Department of Transportation (''Caltrans'') requested this temporary change to perform essential deck repairs on the drawbridge.

DATES: This temporary rule is effective from 7 p.m. on October 2, 2003, to 6 a.m. on November 21, 2003.

ADDRESSES: Documents referred to in this rule are available for inspection and copying at Commander (oan), Eleventh Coast Guard District, Building 50–3, Coast Guard Island, Alameda, CA 94501–5100, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, telephone (510) 437–3516.

SUPPLEMENTARY INFORMATION:

Good Cause for Not Publishing an NPRM

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This rule is being promulgated without an NPRM due to the short time frame between the submission of the request and the start date of the scheduled repairs.

Good Cause for Making Rule Effective in Less Than 30 Days

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard received the request for the temporary change less than 30 days prior to the scheduled repairs. Delaying the effective date of this rule would be contrary to the public interest because the deck of the bridge is in need of repairs and the repairs require the bridge to be in the closed-to-navigation position for extended periods of time. This event has been thoroughly coordinated with waterway users and no objections have been received. There is an alternative path for navigation around Terminal Island and the repair work will occur during evening hours when there is less waterway activity.

Background and Purpose

Caltrans has requested a temporary change to the operation of the Heim Drawbridge, mile 4.9 Cerritos Channel in Long Beach, CA. The Heim Drawbridge navigation span provides vertical clearance of 37 feet above Mean High Water in the closed-to-navigation position. The waterway is navigated by commercial, recreational, and emergency response watercraft. Presently, 33 CFR 117.147 requires the draw to open on signal for the passage of vessels, except during established workday rush hours. In order to repair the deck of the bridge, Caltrans requested the drawbridge temporarily be allowed to remain closed to navigation on the weekends from 7 p.m. Friday until 6 a.m. Monday, and for the bridge to remain closed during the work week each night from 7 p.m. until 6 a.m., Monday through Friday. This temporary rule is effective from 7 p.m. on October 2, 2003, to 6 a.m. on November 21, 2003. During this time Caltrans will perform essential deck repairs on the drawspan. This temporary drawbridge operation amendment has been coordinated with the waterway users. No objections to the proposed temporary rule were raised.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because waterway traffic has an alternative route and is not likely to be delayed more than one hour.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities as none will be affected by the temporary rule.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. None were identified as being present on the waterway during the temporary rule.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have

determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded no factors in this case would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation as a promulgation of operating regulations or procedures for drawbridges. A Categorical Exclusion Determination is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1; section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From 7 p.m. on October 2 to 6 a.m. November 21, 2003, in § 117.147, paragraph (a) is suspended and a new paragraph (c) is temporarily added to read as follows:

§ 117.147 Cerritos Channel.

* * * * *

(c) From 7 p.m. on October 2, 2003, to 6 a.m. on November 21, 2003, the draw of the Commodore Schuyler F. Heim highway bridge, mile 4.9 at Long Beach, need not open for vessels on weekends from 7 p.m. each Friday until 6 a.m. each Monday, and during weekdays, the draw need not open from 7 p.m. until 6 a.m., each night, Monday through Friday. During these times, the draw may remain closed to navigation.

Dated: September 30, 2003.

J.M. Hass,

Captain, U.S. Coast Guard, Acting Commander, Eleventh Coast Guard District.

[FR Doc. 03–25415 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 187–1187a; FRL–7569–9]

Approval and Promulgation of State Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to approve a revision to the State Implementation Plan (SIP) submitted by the State of Iowa. The purpose of this revision is to update the 1998 and 2000 Polk County Board of Health Rules and Regulations, Air Pollution, Chapter V. These revisions will help to ensure consistency between the applicable local agency rules and Federally-approved rules, and ensure Federal enforceability of the applicable parts of the local agency air programs.

DATES: This direct final rule will be effective December 8, 2003, unless EPA receives adverse comments by November 7, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be submitted to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Electronic comments should be sent either to Heather Hamilton at *hamilton.heather@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in ''What action is EPA taking'' in the **SUPPLEMENTARY INFORMATION** section.

Copies of documents relative to this action are available for public inspection during normal business hours at the EPA Region 7 location listed in the previous paragraph. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at 913–551–7039, or by e-mail at *hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional

information by addressing the following questions:

What is a SIP?

What is the Federal approval process for a SIP?

What does Federal approval of a state regulation mean to me?

What is being addressed in this document?

Have the requirements for approval of a SIP revision been met?

What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

The Iowa Department of Natural Resources (IDNR) has requested that EPA approve changes to the Polk County Board of Health Rules and Regulations, Air Pollution, Chapter V, as a revision to the Iowa SIP. The changes were adopted by the Polk County Board of Health Supervisors on April 15, 1998, and October 4, 2000, and became effective on those same days.

The following is a description of the changes to Polk County Board of Health Rules and Regulations, Air Pollution, Chapter V, revisions which are subject to this approval action:

1. Purpose and Ambient Air Quality Standards. A reference to Title 40 Code of Federal Regulations (40 CFR) part 50 was added to Article I, 5–1(b) to clarify that the standards referenced in the ordinance are the standards in part 50.

2. Changes in Definitions. Changes were made to the following definitions found in Article I, 5–2: Allowable emissions, APCD, ASME, ASTM, Control equipment, Criteria, Distillate oil, Emission limitation, EPA reference method, Excess emission, Federally enforceable, Health officer, Heating value, Major stationary source, Natural gas, Permit conditions, Trade waste, and Volatile organic compounds. These changes make minor clarifications to the definitions or update the references contained in the definitions consistent with the state and Federal requirements.

3. Additions to List of Definitions. The following were added to the list of definitions found in Article I, 5–2: Fireplace, Grill, PM 2.5, PM 2.5 emissions, and Twelve month rolling period. These additions are also minor clarifications and updates.

4. Powers of Health Officer. Article II, 5–4(15) was added to give the Health Officer the authority to determine the characteristics of a violation, recommend civil penalties and demand payment of the applicable penalty.

5. Allowable Visible Emissions from Incinerators. Article III, 5–6(b)(2) was changed to lower the allowable visible emissions limit from an incinerator from forty percent to twenty percent, or such other limit specified in a permit.

6. Exemptions from Limitations on Visible Air Contaminants from Equipment. Article IV, 5–9(5) and (6) were changed to clarify that the exemption for the emissions from stoves or fireplaces in family dwellings requires the wood and/or coal to be untreated.

7. Visible Air Contaminants Methodology. Article IV, 5–10 was changed to update the reference to Method 9, 40 CFR part 60 appendix A, as amended through March 12, 1996.

8. General Emission Standards for Industrial Processes. Article VI, 5–14(b) was changed to clarify the allowable emission of particulate matter from process gases. Also, Article VI, 5–15(b) was updated to add the title of the referenced subrule.

9. Specific Emission Standards. Article VI, 5–16(d) was changed to reflect the change made in Article VI, 5–14(b) and to add emission standards for foundry cupolas with a process weight rate less than or equal to 20,000 pounds per hour.

10. Stack Emission Tests. The reference to Iowa's ''Compliance Sampling Manual'' in Article VII, 5–18(a)(2) was updated to the version revised through January 1, 1995. Also, the sampling methods, analytical determinations and minimum performance specifications referenced in Article VII, 5–18(a)(3) were changed and updated.

11. Reporting of Continuous Monitoring Information. Article VII, 5–19(b)(4) was amended to specify the date by which quarterly reports are due to the health officer.

12. Conditions for Exemptions from Continuous Monitoring Requirements. Article VII, 5–18(b)(5)(i) was changed to specify that the reference to new source performance standards are those at 40 CFR part 60 as amended through November 24, 1998. Also, Article VII 5–18(b)(7) was changed to update the reference to the Federal acid rain program as provided in 40 CFR part 75 as adopted January 11, 1993 and as corrected or amended through October 24, 1997.

13. Issuance of Permit. Article X, 5–31(c) was changed to add adoption by reference and incorporation of Iowa Administrative Code subrule 567–

23.1(6), ''Calculation of Emission Limitations Based Upon Stack Height.'' This revision is consistent with the state rule which has been approved by EPA.

14. Exemptions from Construction Permit Requirements. Article X, 5–33(6) was changed to include certain pyrolysis cleaning furnaces in the exemption from construction permits and to specifically exclude salt bath units from the exemption. Also, Article X, 5–33(11) was changed to broaden the exemption to any storage tank with a capacity of less than 10,570 gallons and an annual throughput less than 40,000 gallons. This revision is consistent with the state rule which has been approved by EPA.

15. Exemptions from Operating Permit Requirements. Article X, 5–39(a)(1) was changed to include certain pyrolysis cleaning furnaces in the exemption from operating permits and to specifically exclude salt bath units from the exemption.

16. Special Requirements for Non Attainment Areas. The reference in Article XII, 5–58 to the ''Special Requirements for Non Attainment Areas'', Rule 567–22.5(455B) was updated to include any amendments or changes in the state rule through July 21, 1999. Polk County is currently in attainment for all NAAQS, so this change does not impact any sources.

The EPA is not acting on the following revisions:

1. Article I, 5–2, definition of variance: The definition of variance will not be approved in this SIP as the provisions for variances found in Article XIII are not currently a part of the EPA-approved SIP.

2. Civil Penalties. Article XVI, 5–75(b) was amended to define when separate violations exist and to add a schedule of penalties which the Health Officer shall normally request unless in the judgement of the Health Officer the offense is so minor that a lesser penalty would be appropriate. This provision will not be approved because EPA has separate authority under section 113 of the CAA to seek penalties for violations, and would apply its own policies developed under that section to determine the appropriate penalty to be sought.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are taking direct final action to approve this revision with the exception of Article I, 5–2, and Article VI, 5–17 (a), (b), and (d). The revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number, IA 187–1187a, 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. 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.

a. Electronic mail. Comments may be sent by e-mail to Heather Hamilton at *hamilton.heather@epa.gov.* Please include identification number, IA 187–1187a, 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.

b. Regulations.gov. Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, click on ''To Search for Regulations,'' then select Environmental Protection Agency and use the ''go'' button. 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.

2. *By Mail.* Written comments should be sent to the name and address listed in the **ADDRESSES** section of this document.

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 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in

Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 8, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 25, 2003.

Nat Scurry,

Acting Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart Q—Iowa

■ 2. In § 52.820 the table in paragraph (c) is amended by revising the entry for ''Chapter V'' under the heading ''Polk County'' to read as follows:

§ 52.820 Identification of Plan.

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Comments
Iowa Department of Natural Resources, Environmental Protection Commission [567]				
*	*	*	*	* * *
Polk County				
Chapter V	Polk County Board of Health Rules and Regulations Air Pollution Chapter V.	4/15/1998 10/4/2000	[*10/8/03 and FR page citation*].	Article I, 5–2, definition of and ''variance''; Article VI, Sections 5–16(n), (o) and (p); Article IX, Sections 5–27(3) and (4) and Article XVI, Section 5–75(b) are not a part of the SIP.

* * * * *

[FR Doc. 03–25396 Filed 10–7–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AI39

Migratory Bird Permits; Regulations for Double-Crested Cormorant Management

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule and notice of record of decision.

SUMMARY: Increasing populations of the double-crested cormorant have caused biological and socioeconomic resource conflicts. In November 2001, the U.S. Fish and Wildlife Service (Service or we) completed a Draft Environmental Impact Statement (DEIS) on double-crested cormorant management. In March 2003, a proposed rule was published to establish regulations to implement the DEIS proposed action, Alternative D. In August 2003, the notice of availability for a Final Environmental Impact Statement (FEIS) was published, followed by a 30-day comment period. This final rule sets forth regulations for implementing the FEIS preferred alternative, Alternative D (establishment of a public resource depredation order and revision of the aquaculture depredation order). It also provides responses to comments we received during the 60-day public comment period on the proposed rule. The Record of Decision (ROD) is also published here.

DATES: This final rule will go into effect on November 7, 2003.

ADDRESSES: Comments can be mailed to the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, MBSP–4107, Arlington, Virginia 22203;

or emailed to *cormorants@fws.gov*; or faxed to 703/358–2272.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

The Service is the Federal agency with primary responsibility for managing migratory birds. Our authority is based on the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and Russia. The double-crested cormorant (DCCO) is Federally protected under the 1972 amendment to the Convention for the Protection of Migratory Birds and Game Mammals, February 7, 1936, United States-Mexico, as amended, 50 Stat. 1311, T.S. No. 912. The take of DCCOs is strictly prohibited except as authorized by regulations implementing the MBTA.

As we stated in the proposed rule published in the **Federal Register** in March 2003, the authority for the regulations set forth in this rule is the MBTA. The MBTA authorizes the Secretary, subject to the provisions of, and in order to carry out the purposes of, the applicable conventions, to determine when, if at all, and by what means it is compatible with the terms of the conventions to allow the killing of migratory birds. DCCOs are covered under the terms of the Convention for the Protection of Migratory Birds and Game Mammals with Mexico. The DCCO is a nongame, noninsectivorous bird for which the applicable treaty does not impose specific prohibitions or requirements other than the overall purpose of protection so as not to be exterminated and to permit rational utilization for sport, food, commerce, and industry. In the FEIS for this action, the Service has considered all of the statutory factors as well as compatibility with the provisions of the convention with Mexico. The Russian convention (Convention between the United States of America and the Union of Soviet Socialist Republics Concerning the Conservation of Migratory Birds and Their Environment, concluded November 19, 1976) provides an authority to cover DCCOs even though not listed in the Appendix. To the extent we choose to apply the convention, it contains an exception from the prohibitions that may be made for the protection against injury to persons or property. We note, therefore, that there is no conflict between our responsibility for managing migratory birds and our selected action.

Regulations governing the issuance of permits for migratory birds are contained in title 50, Code of Federal Regulations, parts 13 and 21. Regulations in subpart D of part 21 deal specifically with the control of depredating birds. Section 21.41 outlines procedures for issuing depredation permits. Sections 21.43 through 21.47 deal with special depredation orders for migratory birds to address particular problems in specific geographical areas. Section 21.47 addresses DCCOs at aquaculture facilities.

While the Service has the primary responsibility for regulating DCCO management, on-the-ground management activities are largely carried out by entities such as State fish and wildlife agencies, the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS/WS), and, in some cases, by private citizens. APHIS/WS was a cooperating agency in the development of the DEIS and FEIS. Additionally, States and Canadian provinces were involved through the International Association of Fish and Wildlife Agencies.

On March 17, 2003 we published a proposed rule in the **Federal Register** (68 FR 12653). We solicited comments on the proposed rule until May 16, 2003. During that time, we received approximately 9,700 letters, emails, and faxes. About 85 percent of these comments were opposed to the proposed action, the vast majority of which were driven by mass email/letter campaigns promoted by nongovernmental organizations. This final rule reflects consideration of comments received on the proposed rule. The final rule promulgates regulations to implement the selected action described in the FEIS. We published the notice of availability for the FEIS in the **Federal Register** on August 11, 2003 (68 FR 47603). Copies of the FEIS may be obtained by writing us (*see* **ADDRESSES**) or by downloading it from our Web site at *http://migratorybirds.fws.gov/issues/cormorant/cormorant.html*. The Wires *et al.* report ''Status of the double-crested cormorant in North America,'' mentioned in a **Federal Register** notice of November 8, 1999 (64 FR 60828), may also be downloaded at *http://migratorybirds.fws.gov/issues/cormorant/status.pdf*.

The FEIS examined six management alternatives for addressing conflicts with DCCOs: (A) No Action, (B) Nonlethal Control, (C) Increased Local Damage Control, (D) Public Resource Depredation Order, (E) Regional Population Reduction, and (F) Regulated Hunting. The selected action in the FEIS is Alternative D, Public Resource Depredation Order. This alternative is intended to enhance the ability of resource agencies to deal with immediate, localized DCCO damages by giving them more management flexibility.

To address DCCO populations from a broader and more coordinated perspective, a population objectives approach will likely need to be considered over the long term. In the future, if supported by biological evidence and appropriate monitoring resources, the Service may authorize management that focuses on setting and achieving regional population goals. At that time, a cormorant management plan will be developed. Until then, our strategy will continue to focus on alleviating localized damages.

We acknowledge that there is a need for more information about DCCOs and their impacts on resources across a variety of ecological settings. We also recognize that more rigorous monitoring efforts would be helpful in thoroughly assessing the impacts of the selected action on DCCO populations. While DCCO populations are currently tracked by a number of regional and national surveys, the Service concurs with many reviewers of the proposed rule, and recognizes that better information on population status and trends is desirable. For this reason, consistent with program, Service, and Department goals and priorities and subject to available funds, the Service intends to use all reasonable means to implement an improved DCCO population monitoring program of sufficient rigor to detect meaningful population changes subsequent to implementation of this action. The Service's objective will be to use available resources to collect data that can be used to reassess the population status of DCCOs by 2009, in advance of a decision whether or not to extend the depredation orders. This assessment may involve a Service-sponsored technical workshop, with various agency and non-governmental representatives, to discuss optimum survey methodologies. Also as part of that assessment, we will compile and evaluate available data on population trends of other species of birds that nest or roost communally with DCCOs to determine if negative impacts might be occurring to these species.

The Service has weighed these deficiencies against the costs of taking no action, and we believe it is prudent to move forward as outlined in this final

rule. In making a decision about whether or not to extend the depredation orders, the Service will review and consider all additional research that has been conducted that evaluates the effects of the proposed action on fish stocks and other resources. The Service strongly encourages all stakeholders to assist in gathering the needed data through well-designed scientific research. Our expectation is that the annual reports in the depredation orders, especially the monitoring and evaluation data associated with the public resource depredation order, will provide substantive increases in scientific and management knowledge of DCCOs and their impacts. We urge States, Tribes, and Federal agencies involved in DCCO control to, wherever possible, design monitoring programs to provide useful information on the effects of DCCO control on public resources. We also urge all relevant governmental and nongovernmental entities to work together, whenever possible, to coordinate research and management activities at the local and regional scale. In particular, the following needs exist: greater demographic information (age-specific survival/mortality, age at first breeding, reproductive output, and philopatry) for use in modeling to help predict population responses to management scenarios; region-wide surveys of DCCOs to document changes in breeding populations; assessments of DCCO-caused fish mortality in relation to other mortality factors at the local level; studies to examine mechanisms within fish populations that may buffer the effects of DCCO predation, including investigation of whether different fish life-stages or species complexes are differentially affected by DCCOs; studies to quantify the impacts of DCCOs on vegetation and other waterbirds; studies to determine how DCCO population processes respond to changes in population density resulting from control activities; and studies to address human dimensions of DCCO conflicts and possible solutions through education and outreach.

The selected action establishes a public resource depredation order in 50 CFR 21.48 and amends 50 CFR 21.47, the aquaculture depredation order that was originally created in 1998. In the proposed rule, we presented draft regulations and opened a 60-day public comment period. Differences between this final rule and the proposed rule reflect both our attentiveness to public comments and our deference to agency expertise. The chart below highlights these changes.

Proposed rule	Final rule	Justification
ADO [1]: Winter roost control authorized from October to March.	Winter roost control authorized from October to April [21.47(c)(2)].	Public and agency comments indicate that DCCOs continue to congregate in large numbers in April and these birds have a major impact on adjacent aquaculture facilities.
Both DOs [2]: Statement that take of any species protected by the Endangered Species Act (ESA) is not authorized.	Same, plus conservation measures added [21.47(d)(8); 21.48(d)(8)].	In accordance with Section 7 of the ESA, we completed informal consultation; this led to development of conservation measures to avoid adverse effects to any species protected by the ESA.
Both DOs: General statement that authority under depredation orders can be revoked.	Added specific suspension and revocation procedures [21.47(d)(10); 21.48(d)(13)].	For consistency's sake, we believe it is important to have a revocation/suspension process outlined.
Both DOs: OMB information collection control number not specified.	Added OMB approval number of 1018–0121 and expiration date [21.47(e); 21.48(e)].	We received this number in May 2003, after publication of proposed rule and comment period.
PRDO [3]: Recipients of donations of birds killed must have a scientific collecting permit.	This requirement removed [21.48(d)(6)(i)]	The proposed rule would have been more stringent than what is currently allowed in 50 CFR 21.12(b) and we do not consider stricter rules necessary.
PRDO: Agencies must provide a one-time notice of their intent to act under the order.	Added an advance notification requirement for take of >10% of a breeding colony [21.48(d)(9)].	We wanted to address concerns about there being no opportunity for us to review, and even suspend, control actions before they take place.
PRDO: Annual reporting period set at Sept. 1 to Aug. 31.	Changed reporting period to Oct. 1 to Sept. 30 [21.48(d)(11)].	The State of New York requested this change to better accommodate fall harassment activities.
PRDO: Monitoring requirements for population level activities.	Changed the word ''monitor'' to ''evaluate''; added requirement that data from this section be included in annual report; and removed (11)(iii) [21.48(d)(12)].	This section ensures that agencies will consider (and take action to avoid) impacts to nontarget species and will evaluate the effects of control actions at breeding colonies, without being cost-prohibitive.

[1] Aquaculture Depredation Order.
[2] Aquaculture and Public Resource Depredation Orders.
[3] Public Resource Depredation Order.

Population Status of the Double-Crested Cormorant

The information in this section is derived from the FEIS (to obtain a copy, *see* **ADDRESSES**). DCCOs are native to North America and range widely there. There are essentially five different breeding populations, variously described by different authors as: Alaska, Pacific Coast, Interior, Atlantic, and Southern (Hatch and Weseloh 1999, Wires *et al.* 2001). The continental population is estimated at 2 million birds (including breeders and nonbreeders). For the United States as a whole, according to Breeding Bird Survey (BBS) data, the breeding population of DCCOs increased at a statistically significant rate of approximately 7.5 percent per year from 1975–2002 (Sauer *et al.* 2003). However, growth rates for the different breeding populations vary considerably from this average.

Atlantic. Approximately 23 percent of the DCCO breeding population is found

in the Atlantic region (Tyson *et al.* 1999), which extends along the Atlantic coast from southern Newfoundland to New York City and Long Island (Wires *et al.* 2001). Atlantic DCCOs are migratory and occur with smaller numbers of great cormorants. From the early 1970s to the early 1990s, the Atlantic population increased from about 25,000 pairs to 96,000 pairs (Hatch 1995). While this population declined by 6.5 percent overall in the early to mid-1990s, some colonies were still increasing during this period. The most recent estimate of the Atlantic population is at least 85,510 breeding pairs (Tyson *et al.* 1999).

Interior. Nearly 70 percent of the DCCO breeding population is found in the Interior region (Tyson *et al.* 1999), which reaches across the prairie provinces of Canada, includes the Canadian and U.S. Great Lakes, and extends west of Minnesota to southwestern Idaho (Wires *et al.* 2001). Interior DCCOs are strongly migratory and, in the breeding months, are concentrated in the northern prairies, with the Canadian province of Manitoba hosting the largest number of breeding DCCOs in North America (Wires *et al.* 2001). Additionally, large numbers of Interior DCCOs nest on or around the Great Lakes (Hatch 1995, Wires *et al.* 2001). Since 1970, when 89 nests were counted during a severe pesticide-induced population decline (Weseloh *et al.* 1995), DCCO numbers have increased rapidly in the Great Lakes, with breeding surveys in 2000 estimating 115,000 nests there (Weseloh *et al.* 2002). From 1990 to 1997, the overall growth rate in the Interior region was estimated at 6 percent with the most dramatic increases occurring in Ontario, Michigan, and Wisconsin. The Interior population (including Canada) numbers is at least 256,212 breeding pairs (Tyson *et al.* 1999).

Southern. The Southern region includes Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas (Wires *et al.* 2001). Most DCCOs in this region are winter migrants from the Interior and Atlantic regions; the number of these wintering birds has increased dramatically in recent years (Dolbeer 1991, Glahn and Stickley 1995, Jackson and Jackson 1995, Glahn *et al.* 2000). Surveys conducted by APHIS/WS biologists suggest that winter numbers in the delta region of Mississippi have increased by nearly 225 percent since the early 1990s (over 73,000 DCCOs were counted in the 2001–2002 winter surveys; G. Ellis, unpubl. data). Breeding DCCOs in this region are also on the rise, with some nesting occurrences representing first records and others recolonizations (Wires *et al.* 2001). Today, approximately 4 percent of the DCCO breeding population occurs in this region, numbering at least 13,604 breeding pairs (Tyson *et al.* 1999).

Pacific Coast and Alaska. Approximately 5–7 percent of North America's DCCOs are found in this population, which has approximately 27,500 nesting pairs (including Mexico) according to Carter *et al.* (1995b) or at least 17,084 pairs (not including Mexico) according to Tyson *et al.* (1999). Carter *et al.* (1995) documented recent increases in California and Oregon, and declines in British Columbia, Washington, and Baja California. Tyson *et al.* (1999) did not consider Mexican populations and calculated a decline for the entire West Coast-Alaska region. In the past 20 years, the largest increases in the region have taken place in the Columbia River Estuary, where East Sand Island supports the largest active colony along the coast with 6,390 pairs in 2000 (Carter *et al.* 1995b, Collis *et al.* 2000, Wires *et al.* 2001). Increases at East Sand Island coincided with declines in British Columbia, Washington, and locations in interior Oregon, and the rapid increase undoubtedly reflected some immigration from these other areas (Carter *et al.* 1995).

Impacts of Double-Crested Cormorants on Public Resources

Fish. In order to fully understand fisheries impacts related to predation, DCCO diet must be evaluated in terms of the number of DCCOs in the area, the length of their residence in the area, and the size of the fish population of concern (Weseloh *et al.* 2002). While most, but not all, studies of cormorant diet have indicated that sport or other human-valued fish species do not make up high percentages of DCCO diet, conclusions about actual fisheries impacts cannot be based on diet studies alone. Nisbet (1995) referred to this as the ''body-count'' approach (*i.e.*, counting the numbers of prey taken rather than examining the effects on prey populations) and noted that it is necessary to also ''consider functional relationships between predation and output parameters.''

Stapanian (2002) observed that ''Rigorous, quantitative studies suggest that the effects of cormorants on specific fisheries appear to be due in part to scale and stocks of available prey.'' Indeed, negative impacts are typically very site-specific and thus DCCO-fish conflicts are most likely to occur on a localized scale. Even early cormorant researcher H.F. Lewis recognized that cormorants could be a local problem at some fishing areas (Milton *et al.* 1995). In sum, the following statements about DCCO feeding habits and fisheries impacts can be concluded with confidence from the available science: (1) DCCOs are generalist predators whose diet varies considerably between seasons and locations and tends to reflect fish species composition; (2) The present composition of cormorant diet appears to have been strongly influenced by human-induced changes in the natural balance of fish stocks; (3) ''Impact'' can occur at different scales, such that ecological effects on fish populations are not necessarily the same as effects on recreational or commercial catches, or vice versa; (4) Cormorant impact is generally most significant in artificial, highly managed situations; and (5) Because environmental and other conditions vary locally, the degree of conflicts with cormorants will vary locally.

Research in New York's Oneida Lake and eastern Lake Ontario has examined data on DCCO diets and fish populations (walleye and yellow perch in Oneida Lake and smallmouth bass in Lake Ontario) and concluded that cormorant predation is likely a significant source of fish mortality that is negatively impacting recreational catch (Adams 1999, Rudstam 2000, Lantry *et al.* 1999). Based on these studies, the Service will allow the authorized agencies and Tribes acting under the public resource depredation order to determine whether a similar situation exists in their location, and undertake appropriate control actions to mitigate negative effects, if applicable.

Other Birds. Weseloh *et al.* (2002) observed that nesting DCCOs could impact other colonial waterbirds in at least three ways: by DCCO presence limiting nest site availability, by DCCOs directly taking over nest sites, or by falling guano and nesting material from DCCO nests leading to the abandonment of nests below. Habitat destruction is another concern reported by biologists (USFWS 2001). The significance of DCCO-related effects on other birds varies with scale. While large-scale impacts on regional or continental bird populations have not been documented (Cuthbert *et al.* 2002), there is evidence that species such as black-crowned night herons, common terns, and great egrets can be negatively impacted by DCCOs at a site-specific level (Jarvie *et al.* 1999, Shieldcastle and Martin 1999, USFWS 2001, Weseloh *et al.* 2002). Biologists from several States and provinces have reported or expressed concern about impacts to other bird

species in relation to increased cormorant abundance (Wires *et al.* 2001, USFWS 2001). Some biologists have also expressed concern about incidental impacts to co-nesting species caused by DCCO control efforts (both lethal and nonlethal). We believe that such impacts are preventable and easily mitigated to a level of insignificance. For example, New York biologists conducting DCCO control work in eastern Lake Ontario have successfully managed to avoid negative impacts to other species such as Caspian terns, herring gulls, and ring-billed gulls (USFWS 2003).

Vegetation and Habitat. Cormorants destroy their nest trees by both chemical and physical means. Cormorant guano, or excrement, is highly acidic and kills ground vegetation and eventually the nest trees. In addition, cormorants damage vegetation by stripping leaves for nesting material and by breaking branches due to the combined weight of the birds and their nests. Vegetation and habitat destruction problems tend to be localized in nature. For example, resource professionals from the Great Lakes region are concerned about loss of plant diversity associated with increasing cormorant numbers at some breeding sites (Weseloh and Ewins 1994, Moore *et al.* 1995, Lemmon *et al.* 1994, Bédard *et al.* 1995, Shieldcastle and Martin 1999).

Aquaculture. Cormorant depredation at commercial aquaculture facilities, particularly those in the southern catfish-producing region, remains economically significant. DCCOs move extensively within the lower Mississippi valley during the winter months (Dolbeer 1990). In the delta region of Mississippi, cormorants have been found to forage relatively close to their night roosting locations with most birds traveling an average distance of less than 20 km from their night roosting locations to their day roosts (King *et al.* 1995). Cormorants that use day roosts within the catfish-producing regions of the delta typically forage at aquaculture facilities, and USDA researchers have found that as much as 75 percent of the diet of DCCOs in these areas consists of catfish (Glahn *et al.* 1999). Losses from cormorant predation on fingerling catfish in the delta region of Mississippi have been estimated at approximately 49 million fingerlings each winter, valued at $5 million. Researchers have estimated the value of catfish at harvest to be about 5 times more than the replacement cost of fingerlings, placing the total value of catfish consumed by DCCOs at approximately $25 million (Glahn *et al.* 2000). Total sales of catfish growers in Mississippi amounted to $261 million in 2001 (USDA–NASS 2002).

Hatcheries. DCCO impacts to hatcheries are related to predation, stress, disease, and financial losses to both hatcheries and recipients of hatchery stock. Hatchery fish may be stressed by the presence of DCCOs, wounds caused by unsuccessful attacks, and noisemakers used to scare away DCCOs. This stress can lead to a decrease in growth factors as feeding intensity decreases. Additionally, disease and parasites can be spread more easily by the presence of fish-eating birds. State and Federal hatchery managers, particularly in the upper midwest (*e.g.*, Wisconsin, Michigan) and the south (*e.g.*, Arizona, Louisiana, Oklahoma, Texas), have reported significant depredation problems at hatcheries (USFWS 2001). Currently, Director's Order No. 27, ''Issuance of Permits to Kill Depredating Migratory Birds at Fish Cultural Facilities,'' dictates that ''kill permits [for fish-eating birds] will be issued for use at public facilities only when it has been demonstrated that an emergency or near emergency exists and an [APHIS/WS] official certifies that all other deterrence devices and management practices have failed.'' The two depredation orders that we are proposing would supersede this Director's Order (for DCCOs only) by giving managers at State, Federal, and Tribal fish hatcheries more authority to control DCCOs to protect fish stock.

Environmental Consequences of Action

We analyzed our action in the FEIS. Our environmental analysis indicates that the action will cause the estimated take of <160,000 DCCOs, which is not predicted to have a significant negative impact on regional or continental DCCO populations; will cause localized disturbances to other birds but these can be minimized by taking preventive measures, leading to the action having beneficial effects overall; will help reduce localized fishery and vegetation impacts; will not adversely affect any Federally listed species; is likely to help reduce localized water quality impacts; will help reduce depredation of aquaculture and hatchery stock; is not likely to significantly benefit recreational fishing economies or commercial fishing; may indirectly reduce property damages; and will have variable effects on existence and aesthetic values, depending on perspective.

References

A complete list of citation references is available upon request from the Division of Migratory Bird Management (*see* **ADDRESSES**).

Responses to Significant Comments

During the public comment period on the proposed rule, we received approximately 9,700 emails, letters, and faxes. We provide our responses to significant comments here.

Comment 1: The Service should protect, not kill, DCCOs.

Service Response: In the wildlife management field, the control of birds through the use of humane, but lethal, techniques can be an effective means of alleviating resource damages, preventing further damages, and/or enhancing nonlethal techniques. It would be unrealistic and overly restrictive to limit a resource manager's damage management methods to nonlethal techniques, even if ''nonlethal'' included nest destruction and/or egg oiling. Lethal control techniques are an important, and in many cases necessary, part of a resource manager's ''tool box.''

Comment 2: States and other agencies don't have sufficient resources to effectively control DCCOs.

Service Response: Agencies will need to decide whether or not cormorant management is a high enough priority for them to justify committing resources to it. We have tried to keep reporting and evaluation requirements such that they are unlikely to be cost prohibitive. We have also allowed agencies to designate ''agents'' to act under the orders. Our budget does not currently allow us to provide financial assistance to States and other agencies for cormorant control.

Comment 3: The Service needs to manage DCCOs through a coordinated, regional population objectives approach.

Service Response: The selected action, Alternative D, in no way precludes regional coordination or consideration of population objectives, despite being chiefly a localized damage control approach. We are keeping the option open of taking this approach in the future, given greater biological information and the necessary funding.

Comment 4: The Service needs to reduce overall DCCO populations.

Service Response: At this time, we believe that the evidence better supports Alternative D, a localized damage control strategy rather than Alternative E, a largescale population reduction strategy. While many stakeholders portray cormorant conflicts as being a simple overabundance problem whose solution is population reduction, that is not clearly the case. That is, it is unclear whether fewer cormorants would

actually mean fewer problems (since sometimes distribution is as important as number in determining impacts), what the necessary scale of control would be, and whether or not that scale of control is biologically, socially, and economically feasible.

Comment 5: States should be granted full authority to control DCCOs as needed.

Service Response: Under the MBTA, we have the ultimate responsibility for cormorant management. While we can grant States and other agencies increased authority, giving them ''full authority'' without any limitations and requirements would abdicate our responsibilities.

Comment 6: The final rule should authorize the use of all effective DCCO control methods at aquaculture facilities.

Service Response: The final rule authorizes shooting, which is considered very effective, to be used at aquaculture facilities. There is no evidence of the need for other techniques to be used.

Comment 7: The Service needs to more fully address other causes of fish depletion.

Service Response: We recognize that factors other than DCCOs contribute to resource impacts such as fishery declines. However, an exhaustive and comprehensive analysis of these myriad factors is outside the scope of the EIS. Our focus is chiefly on addressing conflicts caused by cormorants and then attempting to manage DCCOs, or the resources themselves, to alleviate those conflicts.

Comment 8: There should be a hunting season on DCCOs.

Service Response: While we recognize the validity of hunting as a wildlife management tool, we believe that the risks associated with it outweigh any potential benefits. We are gravely concerned about the negative public perception that would arise from authorizing hunting of a bird with little consumptive (or ''table'') value. While it is true that this has been done in the past for other species (*e.g.*, crows), public attitudes are different today than they were 30 years ago when those decisions were made. Additionally, a number of hunters commented that they did not support hunting as a means of cormorant control. Therefore, it is our position that hunting is not, on the whole, a suitable technique for reducing cormorant damages.

Comment 9: The Service should add Montana and New Hampshire to the public resource depredation order.

Service Response: We determined that the most crucial States to include in the public resource depredation order were those States with DCCOs from the increasing Interior and Southern populations or States affected by those populations (*e.g.*, those with high numbers of migrating birds). Other States with cormorant conflicts are not precluded from cormorant control but would have to obtain depredation permits.

Comment 10: The Service should remove DCCOs from MBTA protection.

Service Response: In our view, this is not a ''reasonable alternative.'' DCCOs have been protected under the MBTA since 1972. Removing DCCOs from MBTA protection would not only be contrary to the intent and purpose of the original treaty, but would require amending it, a process involving lengthy negotiations and approval of the U.S. Senate and President. Since DCCOs are protected by family (*Phalacrocoracidae*) rather than by species, the end result could be the loss of protection for all North American cormorant species in addition to that of DCCOs. At this time, there is adequate authority for managing cormorant conflicts within the context of their MBTA protection and, thus, we believe the suggestion to remove DCCOs from MBTA protection is not practical, necessary, or in the best interest of the migratory bird resource.

Comment 11: Private landowners should be allowed to control DCCOs on their lands.

Service Response: The take of DCCOs and other migratory birds is regulated by the MBTA and, in most cases, requires a Federal permit. Under the aquaculture depredation order, private commercial aquaculture producers in 13 States are allowed to control DCCOs on their fish farms without a Federal permit. However, all other individuals who experience damages to private resources must contact the appropriate Service Regional Migratory Bird Permit Office for a depredation permit. There is not sufficient justification for authorizing ''private landowners'' in general to take DCCOs without a Federal permit.

Comment 12: The proposed action will be more effective if agencies coordinate with each other.

Service Response: Yes, this is true. While agencies are not required under the public resource depredation order to coordinate with each other, they are entirely free to do so.

Comment 13: Humaneness and the use of nonlethal methods should be emphasized.

Service Response: Wherever feasible, we have required the use of nonlethal methods before killing is allowed. All authorized control techniques for killing birds outside of the egg are approved by the American Veterinary Medical Association as being humane for the euthanization of birds.

Comment 14: The Service needs to better educate the public about DCCOs.

Service Response: We have prepared fact sheets for public distribution. Information about DCCOs is available at our Web site *http://migratorybirds.fws.gov/issues/cormorant/cormorant.html.* Our intention is to distribute fact sheets on the depredation orders in the near future. Beyond DCCOs, we participate in numerous outreach activities around the nation to increase public awareness about the importance of migratory birds and other Federal trust species.

Comment 15: The Service needs to issue permits to allow DCCOs to be shot legally at anytime.

Service Response: The authorization of virtually unregulated shooting of DCCOs would clearly not be a fulfillment of our responsibilities under the MBTA, since it could lead to extermination of the species. We can only allow take under appropriately adopted regulations that are consistent with our obligations and the relevant treaties. The depredation orders issued in this rulemaking only authorize take of DCCOs in certain locations and timeframes, and by certain agencies, to ensure this take is consistent with the purpose for which the depredation order was established.

Comment 16: DCCOs are being scapegoated for fishery declines.

Service Response: The Service recognizes that many factors other than DCCOs can contribute to fishery declines. However, studies have shown that in some cases cormorants are a significant contributing factor to these declines and therefore we believe that DCCO management, where there is evidence of real conflicts, is likely to have beneficial impacts.

Comment 17: The Service is dumping the burden of DCCO control on the States; the Service should take care of the DCCO problem since they created it.

Service Response: The public resource depredation order is not a requirement being forced upon the States (or any other agency). The decision ultimately lies with individual agencies to choose whether or not to use the authority granted to them by the public resource depredation order. As we were considering options for addressing DCCO conflicts more effectively, it became clear that, since many conflicts tend to be localized in nature, a sensible and flexible solution was to allow local agencies more authority in deciding when to control cormorants. The

Service did not ''create'' the cormorant problem. Their population increases are due to many factors, most of which are entirely out of our control.

Comment 18: The Service should provide financial support for DCCO control.

Service Response: We are currently unable to provide funding to other agencies under the public resource depredation order. However, in our Congressional budget request, we have asked for increased financial resources to implement the DCCO selected action. This figure specifically includes money that could be used in cooperative efforts with States and other agencies to conduct cormorant monitoring, research, and management.

Comment 19: California and Wisconsin should be added to the aquaculture depredation order.

Service Response: We do not believe that adding States to the aquaculture depredation order is necessary at this time. Private, commercial, freshwater aquaculture producers can obtain depredation permits to take DCCOs at their fish farms.

Comment 20: The final rule should allow proactive measures to be taken so problems can be dealt with before they become serious.

Service Response: The rule does allow for proactive measures to a certain extent. Both depredation orders allow DCCOs to be taken when ''committing or about to commit depredations.'' The public resource depredation order takes this a step further by allowing for take of DCCOs to prevent depredations on public resources.

Comment 21: Expansion of the aquaculture depredation order to authorize winter roost control should not be allowed.

Service Response: The USDA report, ''A Science-Based Initiative to Manage Double-Crested Cormorant Damage to Southern Aquaculture'' notes that ''Coordinated and simultaneous harassment of cormorants can disperse them from night roosts and reduce damage at nearby catfish farms'' and cites three scientific studies that support this claim. It then concludes that shooting at roosts ''might enable farmers to reduce the number of birds on their farms significantly * * *'' Part of the logic behind this is that studies in the Mississippi Delta have shown that, while DCCOs move widely in general, they tend to exhibit high roost fidelity. This implies that shooting birds at roosts (where turnover is lower) is likely to be more effective at alleviating damages than shooting birds just at ponds (where turnover is higher).

Comment 22: Actions in the proposed rule should not be allowed to take place.

Service Response: Clearly, we and our cooperators, APHIS Wildlife Services disagree with this statement. The Record of Decision below explains our rationale.

Comment 23: Hatcheries and fish farms should only be allowed to use nonlethal methods.

Service Response: Shooting is a legitimate and effective technique for scaring away or killing depredating birds that, when done in a controlled manner, has no adverse impact on populations.

Comment 24: Habitat damage caused by DCCOs has not been quantified or confirmed.

Service Response: This statement is incorrect. Vegetation/habitat damage has been both confirmed and quantified. See the FEIS, section 4.2.4, for more details.

Comment 25: APHIS Wildlife Services should be granted full authority to manage migratory birds.

Service Response: Under the MBTA and other laws, the Service has been delegated full responsibility for authorizing the take of and management of migratory bird populations. It would require an act of Congress to grant APHIS this authority. We do not support such action.

Comment 26: The Service should take the lead in DCCO research.

Service Response: The Migratory Bird Management Program monitors over 800 bird species in North America, including cormorants. However, we are not specifically a research agency. Our involvement in research consists mainly of providing financial assistance to researchers. In fewer cases, we are involved in direct research activities (such as color banding work being done in Lake Michigan by the USFWS Green Bay Field Office). We recognize that we have a leadership role to play in encouraging DCCO research.

Comment 27: The proposed rule is not based on ''sound science.''

Service Response: The Service recognizes the importance of resource management being science-based, and we will always defer to well-designed scientific studies when such information is available. In this case, the Service relied on scientific studies as well as the best available biological knowledge to make its decision. Additionally, social, political, and economic factors contribute to the Service's decisions regarding whether or not to address a problem. Our position is that there is sufficient biological and socioeconomic justification to pursue a solution and sufficient biological information to meet the requirements of the MBTA and to support this rulemaking action.

Comment 28: The Service is caving in to ''political pressure'' and ''special interests.''

Service Response: Given the fact that DCCO populations are not at risk in the areas where the depredation orders are authorized, and the Service is granted management flexibility under the MBTA, we believe it is appropriate to permit control of local DCCO populations. We have considered input from all stakeholders and believe that our decision reflects an appropriate balance of the public interest. Our goal in this and every other issue under our jurisdiction is to make informed, impartial decisions based on scientific and other considerations.

Comment 29: The Service should stay with the No Action alternative.

Service Response: In recent years, it has become clear from public and professional feedback that the status quo is not adequately resolving DCCO conflicts for many stakeholders. Furthermore, our environmental analysis indicated that conflicts were more likely to be resolved under other options than under Alternative A.

Comment 30: The proposed rule is a wrongful abdication of the Service's MBTA responsibilities.

Service Response: We disagree. Rather than an abdication of our responsibilities, this rule is an exercise of them. The public resource depredation order by no means puts an end to the Federal role in migratory bird management. The conservation of migratory bird populations is and will remain the Service's responsibility. Second, while the MBTA gives the Federal Government (as opposed to individual States) the chief responsibility for ensuring the conservation of migratory birds, this role does not preclude State involvement in management efforts. Bean (1983) described the Federal/State relationship as such (emphases added):

> It is clear that the Constitution, in its treaty, property, and commerce clauses, contains ample support for the development of a comprehensive body of federal wildlife law and that, to the extent such law conflicts with state law, it takes precedence over the latter. *That narrow conclusion, however, does not automatically divest the states of any role in the regulation of wildlife or imply any preference for a particular allocation of responsibilities between the states and the federal government.* It does affirm, however, that such an allocation can be designed without serious fear of constitutional hindrance. In designing such a system, for reasons of policy, pragmatism, and political comity, *it is clear that the states will continue*

to play an important role either as a result of Federal forbearance or through the creation of opportunities to share in the implementation of federal wildlife programs.

Nowhere in the MBTA is the implementation of migratory bird management activities limited to the Federal Government. In fact, the statute specifically gives the Secretary of Interior the authority to determine when take of migratory birds may be allowed and to adopt regulations for this purpose. Additionally, we've ensured that this rule does not conflict with the Convention for the Protection of Migratory Birds and Game Mammals between the U.S. and Mexico (under which cormorants are protected). Finally, the depredation orders specifically limit the authority of non-Federal entities through the terms and conditions, including suspension and revocation procedures, advance notification requirements, and other restrictions. We would also note that we have the authority to amend this rule in the future if DCCO population status or other conditions demand it.

Comment 31: The Service should more fully consider the economic value of DCCOs and activities associated with them such as birding and photography.

Service Response: Assigning economic value to any wildlife species is difficult, and it is made all the more so when that species (such as the DCCO) is of little direct use to humans. However, this should not be read to imply that we have no regard for the indirect and intangible values of cormorants as a native part of the North American avifauna. As such, we stated clearly in the FEIS (p. 6) that DCCOs ''have inherent value regardless of their direct use to humans.'' A quantitative analysis of the economic benefits associated with DCCO was not possible at this time due to lack of studies in this area. The Service welcomes submission of such studies and will consider them in its analysis of future depredation orders, if applicable.

Comment 32: In addition to the Service, States and APHIS Wildlife Service should have a say in revoking authority under the depredation orders.

Service Response: Since, under the MBTA, the Service is the chief agency responsible for migratory bird management, it is our responsibility to decide when to revoke an agency's or individual's authority under the depredation orders. We do, however, give agencies a chance to appeal any revocation decisions.

Comment 33: The public resource depredation order has no sound biological underpinning.

Service Response: We have analyzed the available biological information in the FEIS. We believe our decision is supported by the information available at this time.

Comment 34: Proposed rule contains too much ''red tape.''

Service Response: We can understand that some people see the rule as having too many mandatory terms and conditions but these are necessary to ensure that the depredation orders are used for their stated purposes and to safeguard cormorant populations and other Federal trust species (*e.g.*, other migratory birds and ESA-protected species). We tried to make the final rule as flexible as we could without compromising these factors.

Comment 35: The public resource depredation order should be expanded to include damages to private property as well.

Service Response: The public resource depredation order does not provide direct relief to private landowners experiencing DCCO conflicts. This is partly because such conflicts have not been well-documented and partly because our practice is not to allow the take of migratory birds, a public resource, to alleviate minor damages to private resources (a similar example would be hawks that take privately owned game birds). While the biological and other justification for implementing the aquaculture and public resource depredation orders is strong, this is not necessarily the case for impacts to private resources. In cases of significant economic damage caused by DCCOs, private landowners may request a depredation permit from the appropriate Service Regional Migratory Bird Permit Office.

Comment 36: Requiring monitoring at all control sites is too much of a burden; agencies should be able to use best available information.

Service Response: We understand that strict monitoring requirements (*i.e.*, population surveys) can be cost prohibitive and that, to a certain degree such monitoring is the Service's responsibility. It is important that agencies thoroughly evaluate the impacts of their management actions on DCCOs and, in some cases, on other resources, but we don't want these requirements to be so cost prohibitive that agencies are unable to take any action. Thus, in the final rule, we changed slightly the wording in § 21.48(d)(12) to account for this.

Comment 37: Monitoring should be required no less than once every 3 years.

Service Response: The Service currently surveys or sponsors surveys of colonial waterbirds every 5–10 years. We believe that such frequency is adequate to ensure the long-term conservation of populations of DCCOs and other migratory birds.

Comment 38: The winter roost control season should be extended to include April.

Service Response: Since numbers of DCCOs at fish farms in the southern United States are known to peak in March and April, and to cause the most damage at that time, we added April to the months in which roost control can occur.

Comment 39: Monitoring requirements under the public resource depredation order are too vague.

Service Response: We may provide future guidelines for monitoring and evaluation for the benefit of other agencies. Until such guidelines are issued, the Service intends to rely on States, Tribes, and APHIS Wildlife Services to develop and implement protocols for evaluation of the effects of control actions.

Comment 40: The proposal is likely to inflame relations between tribal and nontribal interests.

Service Response: We have not seen sufficient evidence to evaluate whether or not this is indeed likely to occur.

Comment 41: The aquaculture depredation order should be expanded to include all 48 States.

Service Response: At this time, we do not believe the available evidence indicates that expansion beyond 13 States is necessary to further protect commercial aquaculture stock. The issuance of depredation permits for damage at private fish farms is a high priority and, therefore, it is generally a quick process for aquaculture producers to obtain a depredation permit through their Regional Migratory Bird Permit Office.

Comment 42: Under the public resource depredation order, nonlethal techniques (*e.g.*, harassment) should not be prescribed as a mandatory first step at multispecies breeding colonies because of the risk of disturbance.

Service Response: We understand that harassment efforts can have secondary impacts on other colonially nesting birds and that is precisely why we did not require such efforts to be used first but rather stated that they be used ''when these are considered effective and practicable by the responsible Agency.'' We have since changed it to read that agencies ''should first utilize nonlethal control methods such as harassment and exclusion devices when these are considered effective and practicable and not harmful to other nesting birds.''

Comment 43: The Service should issue guidelines making it clear what constitutes depredation on a public resource.

Service Response: In developing the rule, USFWS wanted to maximize the flexibility of other agencies in determining what constitutes a public resource depredation. We understand that there are concerns about all of the ''what ifs'' that could conceivably take place in the absence of guidelines. We have made the purpose of the depredation orders clear, and we trust that our agency partners will not abuse their authority. If they do, we have the option to suspend or revoke their authority under the depredation order or to amend this rule.

Comment 44: In the proposed rule, the only advanced requirement for agencies to initiate a control program is to submit a one-time notice to the Service. The rule does not require evaluation of potential impacts before control actions occur.

Service Response: In the final rule, under the public resource depredation order, we have added a clause for advance notification of control actions that would take 10% or more of the birds in a breeding colony. This will allow us to review such actions for compliance with the purpose of the order and for impacts on overall cormorant populations. Inherent in the idea of this public resource depredation order is the Service's trust in the professionalism and conservation expertise of the States, Tribes, and APHIS Wildlife Services. At the same time, we will continue our role of providing oversight to ensure that the cumulative effects of activities under the depredation orders do not threaten the long-term conservation of DCCO populations.

Comment 45: There is no process outlined for disputing control at a particular site. Control activities might come into conflict with ongoing research activities.

Service Response: We do not intend to establish guidelines for dispute resolution or public notice of proposed control efforts. In some cases, NEPA analysis will be necessary and this will open the door for limited public input regarding specific management actions. We cannot guarantee that conflicts won't occur between control and research activities. Researchers will need to coordinate with local resource agencies (as, presumably, they are already doing) on this issue.

Comment 46: The public resource depredation order should have a requirement for agencies to formally assess a control site before control is carried out to determine potential impacts to other species.

Service Response: We do not intend to require formal assessment of control sites before control is conducted. The final rule requires that agencies must provide advance notification for certain actions, including information on the location and a description of the proposed control activity, specifying what public resources are being impacted, how many birds are likely to be taken and what approximate percentage they are of total DCCOs present, and which species of other birds are present. Additionally, in their annual reports, agencies must provide us with detailed information on why they're conducting control actions, including what they're doing to minimize effects on other species. Agencies don't have to report this information until after control actions have occurred, but we believe this process is sufficient.

Comment 47: The proposed rule seems to violate the Service's mission to ''conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people.''

Service Response: We do not in any way believe that the rule interferes with our conservation mission. Our responsibility is to ensure the long-term conservation of DCCO populations, and we will do so. A mission is a general statement of an agency's vision that, by its very nature, cannot encompass every potential management responsibility. We believe that managing certain species to address economic or social concerns, while ensuring the long-term conservation of such species is consistent with our mission.

Comment 48: The Service has not established a process by which other agencies could set population goals.

Service Response: At some point in the future, we may initiate a process for setting population goals. States and other agencies are fully capable of doing this on their own in local situations (DCCO management efforts on Little Galloo Island in New York are a good example). The public resource depredation order does not authorize regional population management, and, therefore, regional goals are not yet necessary.

Comment 49: The return of an extirpated species to its former breeding range is a positive ecological event.

Service Response: Weseloh *et al.* (1995, p48) wrote that DCCO population increases in North America ''have involved more than just a re-occupation of areas which experienced severe population declines or extirpations * * * previously unoccupied breeding and wintering areas have now been colonized'' and gave three citations supporting this hypothesis. Regardless of whether or not DCCOs had previously occurred in some parts of their range, we have to manage and conserve them by today's standards, not those of a hundred (or more) years ago. Our intent under the final rule is not to eliminate cormorants on a regional or national level but to manage them, even to the point of reducing local populations, so that there are fewer impacts to natural and human resources. We fully understand that fish-eating birds are a natural part of the ecosystem and that, within limits prescribed by the need to consider the bigger picture than ''ecological'' factors alone, population recovery is a positive event.

Comment 50: Only State wildlife agencies should be allowed to take or permit the take of DCCOs at nesting colonies in their State.

Service Response: Under the public resource depredation order, any agency that takes DCCOs must have landowner permission and, if required, a State permit to take DCCOs. We believe that these clauses are sufficient to avoid compromising State oversight.

Comment 51: Issuing a resource depredation order for DCCOs under the proposed rule would set a dangerous precedent for fish-eating birds in the United States and in other nations to our south.

Service Response: We do not agree with the statement that the depredation orders are a ''dangerous'' precedent. Each conflict must be evaluated on its own merits. If problems with other fish-eating birds arise in the future, we will give full and fair consideration to these issues.

Comment 52: The Service should require safe management practices when DCCO control is conducted to protect birders.

Service Response: Conducting DCCO control in a manner that does not threaten human health or safety is the responsibility of the agencies and individuals carrying out the actions.

Comment 53: The scientific and public outcry against the Service's proposed rule should be convincing. Sound science is being supplanted by perceptions fueling political cries for substantial lethal population controls.

Service Response: We would note that there is also public outcry against the status quo and in support of the final rule. We believe that our decision is supported by the available data. Furthermore, the rule requires that agencies who act under the public

resource depredation order have sound reasoning for doing so.

Comment 54: The Service must publish a Final EIS, Record of Decision, and appropriate Section 7 consultation documents prior to engaging in the rulemaking process.

Service Response: This is not a correct statement of the requirements of either the National Environmental Policy Act or the Endangered Species Act. Issuance of these regulations is in compliance with both of these laws.

Comment 55: The Service cannot establish depredation orders for DCCOs because they are not a ''migratory game bird'' pursuant to 50 CFR 21.42.

Service Response: This is incorrect because our authority for issuing a depredation order comes from the MBTA, not 50 CFR 21.42. Section 21.42 is a regulation adopted by the Service that allows the Director to issue depredation orders under certain circumstances. This new regulation is in addition to 21.42.

Comment 56: The Service needs to specify how the depredation orders will be enforced.

Service Response: We have law enforcement agents in every State who investigate violations of Federal wildlife laws. Providing the details of how they work is neither necessary nor sensible since such details could prevent the prosecution of those who violate the terms and conditions of the orders.

Comment 57: The requirement to report unauthorized take of migratory birds or threatened and endangered species requires individuals to incriminate themselves and thus violates the Fifth Amendment to the Constitution.

Service Response: While any take, unless permitted, is prohibited by statute, the Service directs its enforcement efforts on those individuals or companies that take migratory bird species outside the scope of the depredation orders. It is incumbent on those who will be working under the orders to have a working knowledge of what is authorized and to properly act under its terms and conditions. Failure to report would be grounds to revoke authorization. The Service sees the reporting requirements not as an attempt to identify the unlawful take of migratory birds but as a management tool to reduce unauthorized take.

Cormorant Regulations Under the Rule

This final rule implements the FEIS selected action in the following ways: (1) It revises the 1998 aquaculture depredation order that allows APHIS/WS to protect public and private aquacultural stock in the 13 States listed in 50 CFR 21.47 by also allowing the take of DCCOs at winter roost sites and at State and Federal fish hatcheries; and (2) it establishes a new depredation order authorizing State fish and wildlife agencies, Federally recognized Tribes, and APHIS/WS to take DCCOs without a Federal permit to protect public resources on public and private lands and freshwaters in 24 States (the 13 States listed in 50 CFR 21.47 and 11 additional States). Both of the actions revise subpart D of 50 CFR 21.

NEPA Considerations

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we published a DEIS in December 2001, followed by a 100-day public comment period. In August 2003, both the Service and the Environmental Protection Agency published notices of availability for the FEIS in the **Federal Register**. This FEIS is available to the public (*see* **ADDRESSES**).

Endangered Species Act Considerations

Section 7(a)(2) of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884) provides that ''Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *'' We completed a biological evaluation and informal consultation (both available upon request; *see* **ADDRESSES**) under Section 7 of the ESA for the action described in this final rule. In the letter of concurrence between the Division of Migratory Bird Management and the Division of Endangered Species, we concluded that the inclusion of specific conservation measures in the final rule satisfies concerns about the four species (piping plover, interior least tern, bald eagle, and wood stork) and therefore the proposed action is not likely to adversely affect any threatened, endangered, or candidate species.

Executive Order 12866

In accordance with the criteria in Executive Order 12866, this action is a significant regulatory action subject to Office of Management and Budget review. OMB has made this determination of significance under the Executive Order. OMB has determined that this action raises novel legal or policy issues. This rule will not have an annual economic effect of $100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. The purpose of this rule is to help reduce adverse effects caused by cormorants, thereby providing economic relief. The total estimated economic impact of DCCOs is less than $50 million per year. Assuming that landowners (*e.g.*, aquaculture producers) and other stakeholders utilize, informally or formally, some degree of cost-benefit analysis, the financial expenses to control cormorant problems should not exceed the damages incurred. Thus we can assume that the total annual economic effect of this rule will be less than $50 million.

This rulemaking action will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. The selected action is consistent with the policies and guidelines of other Department of the Interior bureaus. This action will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for actions that will have a significant economic effect on a substantial number of small entities, which includes small businesses, organizations, or governmental jurisdictions. Because of the structure of wildlife damage management, the economic impacts of our action will fall primarily on State governments and APHIS/WS. These do not qualify as ''small governmental jurisdictions'' under the Act's definition. Effects on other small entities, such as aquacultural producers, will be positive but are not predicted to be significant. Thus, we have determined that a Regulatory Flexibility Act analysis is not required.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not have an annual effect on the economy of $100 million or more, nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will 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.

Paperwork Reduction Act and Information Collection

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Office of Management and Budget (OMB) has approved the information collection requirements included in this final rule under OMB control number 1018–0121, which expires on May 31, 2006. Agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

We will collect information from State, Tribal, and Federal agencies and private aquaculture producers who conduct DCCO management under the authority of the depredation orders. The specific monitoring and reporting requirements associated with this rule are listed below. The information collected will help us to determine how many DCCOs are being taken and for what purposes.

In response to public comments on the proposed rule (68 FR 12653, March 17, 2003), we added one new information collection requirement in this final rule that was not included in the proposed rule. That new requirement is advance notification to the Service of any control actions that would take more than 10 percent of a breeding DCCO population. This new requirement is located in § 21.48 (d)(9) and adds 165 hours to the total annual hour burden of these information collection requirements.

The information collections associated with this final rule are in §§ 21.47(d)(7), (d)(8), and (d)(9) and 21.48(d)(7), (d)(8), (d)(9), (d)(10) and (d)(12) and are listed below in the amendments to 50 CFR part 21. The breakdown of the information collection burden is as follows: We estimate that §§ 21.47(d)(7) and (d)(8) will have 50 annual responses at an estimated .5 burden hours per response; we estimate that § 21.47(d)(9) will have 900 annual responses at an estimated 2 burden hours per response; we estimate that §§ 21.48(d)(7) and (d)(8) will have 10 annual responses at an estimated .5 burden hours per response; we estimate that § 21.48(d)(9) will have 75 annual responses at an estimated average of 3 burden hours per response; we estimate that § 21.48(d)(10) will have 60 annual responses at an estimated 20 burden hours per response; and we estimate that § 21.48(d)(12) will have 10 annual responses at an estimated 80 burden hours per response. Overall, we estimate that a total of 960 respondents will annually submit a total of 1,105 responses to the recordkeeping and reporting requirements associated with these depredation orders. Each response will require an average of 3.67 hours to complete, for a total of 4,055 hours per year for all of the information collection and recordkeeping requirements in this final rule.

OMB regulations at 5 CFR part 1320 require that interested members of the public and affected agencies have an opportunity to comment on information collection and record keeping activities. If you have any comments on this information collection at any time, please contact the Service Information Collection Officer, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. We have determined, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the selected action would not ''significantly or uniquely'' affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this action is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings Implication Assessment

In accordance with Executive Order 12630, this action does not have significant takings implications and does not affect any constitutionally protected property rights. This action will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this action will help alleviate private and public property damage and allow the exercise of otherwise unavailable privileges.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given statutory responsibility over these species by the MBTA. While legally this responsibility rests solely with the Federal Government, in the best interest of the migratory bird resource we work cooperatively with States and other relevant agencies to develop and implement the various migratory bird management plans and strategies. This action does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. It will allow, but will not require, States to develop and implement their own DCCO management programs. Therefore, in accordance with Executive Order 13132, this action does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this policy does not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Order.

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 Executive Order 13175, we have determined that this action has no significant effects on Federally recognized Indian Tribes. In order to promote consultation with Tribes, a copy of the DEIS was mailed to all Federally recognized Tribes in the continental United States.

Energy Effects—Executive Order 13211

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

Record of Decision

The Record of Decision for management of double-crested cormorants in the United States, prepared pursuant to National Environmental Policy Act (NEPA) regulations at 40 CFR 1505.2, is herein published in its entirety.

This Record of Decision (ROD) has been developed by the U.S. Fish and Wildlife Service (Service) in compliance with the agency decision-making requirements of NEPA. The purpose of this ROD is to document the Service's decision for the selection of an alternative for managing resource damages associated with the double-

crested cormorant (DCCO). Alternatives have been fully described and evaluated in the August 2003 Final Environmental Impact Statement (FEIS) on DCCO management in the United States.

This ROD is intended to: (a) State the Service's decision, present the rationale for its selection, and describe its implementation; (b) identify the alternatives considered in reaching the decision; and (c) state whether all means to avoid or minimize environmental harm from implementation of the selected alternative have been adopted (40 CFR 1505.2).

Project Description

Increases in DCCO populations over the past 25 years, combined with other environmental and social factors, have led to greater occurrences of both real and perceived conflicts with human and natural resources. In 1999, in response to urgings from the public and from State and Federal wildlife agencies, the Service decided to prepare a programmatic EIS, in cooperation with the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS/WS), to evaluate the significance of, and consider alternatives to address, conflicts associated with DCCOs.

Key Issues

Public involvement occurred throughout the EIS and rulemaking process. From 1999 to 2003, we held 22 public meetings over the course of more than 10 months of total public comment. Through public scoping (the first stage of public comment) and agency discussions, key issues were identified. Key issues can be placed into two general categories: (1) Impacts caused by DCCOs (including impacts to other birds, fish, vegetation, aquaculture, Federally listed species, water quality, hatcheries, recreational fishing economies, and commercial fishing); and (2) impacts caused by control actions (including impacts to DCCO populations, other birds, Federally listed species, and existence and aesthetic values). In the EIS environmental analysis, these issues made up the environmental categories for which effects of the different alternatives were considered.

The alternatives were also considered in terms of their ability to fulfill the purpose of the proposed action: to reduce resource conflicts associated with DCCOs in the contiguous United States, to enhance the flexibility of natural resource agencies in dealing with DCCO-related resource conflicts, and to ensure the long-term conservation of DCCO populations.

Alternatives

Since the FEIS is a programmatic document, the alternatives reflect general management approaches to the alleviation of DCCO resource damages. Six alternatives were examined in the EIS: (A) No Action, (B) Nonlethal, (C) Increased Local Damage Control, (D) Public Resource Depredation Order, (E) Regional Population Reduction, and (F) Regulated Hunting.

Alternative A

Alternative A is essentially the no change, or status quo, alternative. The main features of this alternative are the issuance of a small number of depredation permits to address DCCO conflicts; an aquaculture depredation order that allows commercial, freshwater aquaculture producers in 13 States to shoot DCCOs without a permit; unregulated nonlethal harassment of DCCOs; and Director's Order No. 27, which prevents most public fish hatcheries from conducting lethal take of DCCOs.

Alternative B

Alternative B would not allow the take of DCCOs or their eggs. Only harassment methods and physical exclusion devices would be used to prevent or control DCCO damages.

Alternative C

Alternative C would allow for increased take of DCCOs, through a revision of our cormorant damage management practices, but agencies and individuals would still have to obtain a depredation permit. It would also revise the aquaculture depredation order to allow winter roost control.

Alternative D

Alternative D, the selected action, creates a public resource depredation order to authorize State fish and wildlife agencies, Federally recognized Tribes, and APHIS/WS to take DCCOs found committing or about to commit, and to prevent, depredations on the public resources of fish (including hatchery stock at Federal, State, and Tribal facilities), wildlife, plants, and their habitats. This authority applies to all lands and freshwaters (with appropriate landowner permission) in 24 States (Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Vermont, West Virginia, and Wisconsin). This alternative also revises the aquaculture depredation order by specifying that it is applicable to commercial freshwater facilities and State and Federal fish hatcheries, and by authorizing APHIS/WS employees to take DCCOs at roost sites in the vicinity of aquaculture facilities during the months of October, November, December, January, February, March, and April. Depredation permits would continue to be used to address conflicts outside the authority of the depredation orders.

Alternative E

Alternative E would reduce regional DCCO populations to pre-determined levels. Population objectives would be developed on an interdisciplinary, interagency basis and would be based on the best available data, while giving consideration to other values. Control would be carried out at nesting, roosting, wintering, and all other sites in order to achieve those objectives as rapidly as possible without adversely affecting other protected migratory birds or threatened and endangered species.

Alternative F

Under Alternative F, frameworks to develop seasons and bag limits for hunting DCCOs would be established jointly by Federal and State wildlife agencies. These seasons would coincide with those for waterfowl hunting.

Decision

The Service's decision is to implement the preferred alternative, Alternative D, as it is presented in the final rule. This decision is based on a thorough review of the alternatives and their environmental consequences.

Other Agency Decisions

A Record of Decision will be produced by APHIS/WS. The responsible officials at APHIS/WS will adopt the FEIS.

Rationale for Decision

As stated in the CEQ regulations, ''the agency's preferred alternative is the alternative which the agency believes would fulfill its statutory mission and responsibilities, giving consideration to economic, environmental, technical and other factors.'' The preferred alternative has been selected for implementation based on consideration of a number of environmental, regulatory, and social factors. Based on our analysis, the preferred alternative would be more effective than the current program; is environmentally sound, cost effective, and flexible enough to meet different management needs around the country;

and does not threaten the long-term sustainability of DCCO populations or populations of any other natural resource.

Alternative D was selected because it allows greater responsiveness in addressing localized resource damages (and will therefore be more effective at reducing or preventing them) than the No Action Alternative. It will provide a net benefit to fish, wildlife, and plants by allowing agencies to control DCCOs to protect these resources from damages. It will also alleviate economic damages to aquaculture. Through successful implementation of mitigation measures, it will not result in negative impacts to DCCO populations, other migratory birds, or Federally listed species. As such, this alternative represents the environmentally preferable alternative.

The No Action Alternative (A) was not selected for implementation because by itself it would not adequately address resource damages caused by DCCOs. The Nonlethal Management Alternative (B) was not selected because it severely limits the scope of allowable control techniques and would not adequately address resource damages caused by DCCOs. The Increased Local Damage Control Alternative (C) was not selected because it does not provide other agencies with the flexibility needed to adequately address resource damages caused by DCCOs. The Regional Population Reduction Alternative (E) was not selected because of uncertainty about the actual relationship between cormorant numbers and distribution and subsequent damages. The Regulated Hunting Alternative (F) was not selected because hunting is not a biologically or socially acceptable means of reducing DCCO damages.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ For the reasons stated in the preamble, we hereby amend part 21, of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 21—[AMENDED]

■ 1. The authority citation for part 21 is revised to read as follows:

Authority: Pub. L. 95–616; 92 Stat. 3112 (16 U.S.C. 712(2)); Pub. L. 106–108; Section 3 of the Migratory Bird Treaty Act (16 U.S.C. 704), 40 Stat. 755.

■ 2. In Subpart D, revise § 21.47 to read as follows:

§ 21.47 Depredation order for double-crested cormorants at aquaculture facilities.

(a) *What is the purpose of this depredation order?* The purpose of this depredation order is to help reduce depredation of aquacultural stock by double-crested cormorants at private fish farms and State and Federal fish hatcheries.

(b) *In what areas can this depredation order be implemented?* This depredation order applies to commercial freshwater aquaculture facilities and to State and Federal fish hatcheries in the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Minnesota, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.

(c) *What does this depredation order allow and who can participate?* (1) This depredation order authorizes landowners, operators, and tenants (or their employees or agents) actually engaged in the commercial, Federal, or State production of freshwater aquaculture stocks to take, without a Federal permit, double-crested cormorants when they are found committing or about to commit depredations to aquaculture stocks. This authority is applicable only during daylight hours and only within the boundaries of freshwater commercial aquaculture facilities or State and Federal hatcheries.

(2) This depredation order authorizes employees of the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service to take double-crested cormorants, with appropriate landowner permission, at roost sites in the vicinity of aquaculture facilities, at any time, day or night, during the months of October, November, December, January, February, March, and April.

(3) Authorized employees of the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service may designate agents to carry out control, provided these individuals act under the conditions of the order.

(d) *What are the terms and conditions of this order?* (1) Persons operating under paragraph (c)(1) of this section may only do so in conjunction with an established nonlethal harassment program as certified by officials of the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service. Wildlife Services directive 2.330 outlines this certification process.

(2) Double-crested cormorants may be taken only by shooting with firearms, including rifles. Persons using shotguns are required to use nontoxic shot as listed in 50 CFR 20.21(j).

(3) Persons operating under this depredation order may use decoys, taped calls, or other devices to lure within gun range birds committing or about to commit depredations.

(4) Persons operating under this depredation order must obtain appropriate landowner permission before implementing activities authorized by the order.

(5) Double-crested cormorants may not be killed contrary to the laws or regulations of any State, and none of the privileges of this section may be exercised unless the person possesses the appropriate State or other permits, if required.

(6) Persons operating under this depredation order must properly dispose of double-crested cormorants killed in control efforts:

(i) Individuals may donate birds killed under authority of this order to museums or other such scientific and educational institutions for the purposes of scientific or educational exhibition;

(ii) Individuals may also bury or incinerate birds taken; and

(iii) Individuals may not allow birds taken under this order, or their plumage, to be sold, offered for sale, bartered, or shipped for purpose of sale or barter.

(7) Nothing in this depredation order authorizes the take of any migratory bird species other than double-crested cormorants. Two look-alike species co-occur with double-crested cormorants in the southeastern States: the anhinga, which occurs across the southeastern United States, and the neotropic cormorant, which is found in varying numbers in Texas, Louisiana, and Oklahoma. Both species can be mistaken for double-crested cormorants, but take of these two species is not authorized under this depredation order. Persons operating under this order must immediately report the take of a migratory bird species other than double-crested cormorants to the appropriate Service Regional Migratory Bird Permit Office.

(8) Nothing in this depredation order authorizes the take of any species protected by the Endangered Species Act. Persons operating under this order must immediately report the take of species protected under the Endangered Species Act to the Service.

(i) To protect wood storks and bald eagles, the following conservation measures must be observed within any geographic area where Endangered Species Act protection applies to these species: All control activities are allowed if the activities occur more than 1,500 feet from active wood stork

nesting colonies, more than 1,000 feet from active wood stork roost sites, and more than 750 feet from feeding wood storks, and if they occur more than 750 feet from active bald eagle nests.

(ii) At their discretion, landowners, operators, and tenants may contact the Regional Migratory Bird Permit Office to request modification of the measures listed in paragraph (d)(8)(i) of this section. Such modification can occur only if the Regional Director determines, on the basis of coordination between the Regional Migratory Bird Permit Office and the Endangered Species Field Office, that wood storks and bald eagles will not be adversely affected.

(iii) If adverse effects are anticipated from the control activities in a geographical area where Endangered Species Act protection applies to wood storks or bald eagles, either during the intra-Service coordination discussions described above or at any other time, the Regional Migratory Bird Permit Office will initiate consultation with the Endangered Species Field Offices.

(9) Persons operating under this depredation order must:

(i) Keep a log recording the date, number, and location of all birds killed each year under this authorization;

(ii) Maintain this log for a period of 3 years (and maintain records for 3 previous years of takings at all times thereafter); and

(iii) Each year, provide the previous year's log to the appropriate Service Regional Migratory Bird Permit Office. Regional Office addresses are found in § 2.2 of subchapter A of this chapter.

(10) We reserve the right to suspend or revoke the authority of any Agency or individual granted by this order if we find that the specified purpose, terms, and conditions have not been adhered to by that Agency or individual or if the long-term sustainability of double-crested cormorant populations is threatened by that Agency's or individual's action(s). The criteria and procedures for suspension, revocation, reconsideration, and appeal are outlined in §§ 13.27 through 13.29 of this subchapter. For the purposes of this section, ''issuing officer'' means the Regional Director and ''permit'' means the authority to act under this depredation order. For purposes of § 13.29(e), appeals shall be made to the Director.

(e) *Does this section contain information collection requirements?* Yes, the information collection requirements in this section are approved by the Office of Management and Budget (OMB) under OMB control number 1018–0121. Federal agencies may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(f) *When does this depredation order expire?* This depredation order will automatically expire on April 30, 2009, unless revoked or extended prior to that date.

■ 3. In Subpart D, add § 21.48 to read as follows:

§ 21.48 Depredation order for double-crested cormorants to protect public resources.

(a) *What is the purpose of this depredation order?* The purpose of this depredation order is to reduce the occurrence and/or minimize the risk of adverse impacts to public resources (fish, wildlife, plants, and their habitats) caused by double-crested cormorants.

(b) *In what areas can this depredation order be implemented?* This depredation order applies to all lands and freshwaters in the States of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Vermont, West Virginia, and Wisconsin.

(c) *What does this depredation order allow and who can participate?* (1) This depredation order authorizes State fish and wildlife agencies, Federally recognized Tribes, and State Directors of the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service (collectively termed ''Agencies'') to prevent depredations on the public resources of fish (including hatchery stock at Federal, State, and Tribal facilities), wildlife, plants, and their habitats by taking without a permit double-crested cormorants found committing or about to commit, such depredations.

(2) Agencies may designate agents to carry out control, provided those individuals act under the conditions of the order.

(3) Federally recognized Tribes and their agents may carry out control only on reservation lands or ceded lands within their jurisdiction.

(d) *What are the terms and conditions of this order?* (1) Persons operating under this order should first utilize nonlethal control methods such as harassment and exclusion devices when these are considered effective and practicable and not harmful to other nesting birds by the responsible Agency.

(2) Double-crested cormorants may be taken only by means of egg oiling, egg and nest destruction, cervical dislocation, firearms, and CO_2 asphyxiation. Persons using shotguns must use nontoxic shot, as listed in 50 CFR 20.21(j). Persons using egg oiling must use 100 percent corn oil, a substance exempted from regulation by the U.S. Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act.

(3) Persons operating under this depredation order may use decoys, taped calls, or other devices to lure within gun range birds committing or about to commit depredation of public resources.

(4) Persons operating under this depredation order must obtain appropriate landowner permission before implementing activities authorized by the order.

(5) Persons operating under this depredation order may not take double-crested cormorants contrary to the laws or regulations of any State, and none of the privileges of this section may be exercised unless the person possesses the appropriate State or other permits, if required.

(6) Persons operating under this depredation order must properly dispose of double-crested cormorants killed in control efforts:

(i) Individuals may donate birds killed under authority of this order to museums or other such scientific and educational institutions for the purposes of scientific or educational exhibition;

(ii) Individuals may also bury or incinerate birds taken; and

(iii) Individuals may not allow birds taken under this order, or their plumage, to be sold, offered for sale, bartered, or shipped for purpose of sale or barter.

(7) Nothing in this depredation order authorizes the take of any migratory bird species other than double-crested cormorants. Two look-alike species co-occur with double-crested cormorants in the southeastern States: the anhinga, which occurs across the southeastern United States, and the neotropic cormorant, which is found in varying numbers in Texas, Louisiana, Kansas, and Oklahoma. Both species can be mistaken for double-crested cormorants, but take of these two species is not authorized under this depredation order. Persons operating under this order must immediately report the take of a migratory bird species other than double-crested cormorants to the appropriate Service Regional Migratory Bird Permit Office.

(8) Nothing in this depredation order authorizes the take of any species protected by the Endangered Species Act. Persons operating under this order must immediately report the take of

species protected under the Endangered Species Act to the Service.

(i) To protect piping plovers, interior least terns, wood storks, and bald eagles, the following conservation measures must be observed within any geographic area where Endangered Species Act protection applies to these species:

(A) The discharge/use of firearms to kill or harass double-crested cormorants or use of other harassment methods are allowed if the control activities occur more than 1,000 feet from active piping plover or interior least tern nests or colonies; occur more than 1,500 feet from active wood stork nesting colonies, more than 1,000 feet from active wood stork roost sites, and more than 750 feet from feeding wood storks; or occur more than 750 feet from active bald eagle nests;

(B) Other control activities such as egg oiling, cervical dislocation, CO_2 asphyxiation, egg destruction, or nest destruction are allowed if these activities occur more than 500 feet from active piping plover or interior least tern nests or colonies; occur more than 1,500 feet from active wood stork nesting colonies, more than 1,000 feet from active wood stork roost sites, and more than 750 feet from feeding wood storks; or occur more than 750 feet from active bald eagle nests;

(C) To ensure adequate protection of piping plovers, any Agency or its agents who plan to implement control activities that may affect areas designated as piping plover critical habitat in the Great Lakes Region are to obtain prior approval from the appropriate Regional Director. Requests for approval of activities in these areas must be submitted to the Regional Migratory Bird Permit Office. The Regional Migratory Bird Permit Office will then coordinate with the Endangered Species Field Office staff to assess whether the measures in paragraph (d)(8)(i)(B) of this section are adequate.

(ii) At their discretion, Agencies or their agents may contact the Regional Migratory Bird Permit Office to request modification of the above measures. Such modification can occur only if the Regional Director determines, on the basis of coordination between the Regional Migratory Bird Permit Office and the Endangered Species Field Office, that the species listed in paragraph (d)(8)(i) of this section will not be adversely affected.

(iii) If adverse effects are anticipated from the control activities in a geographical area where Endangered Species Act protection applies to any of the four species listed in paragraph (d)(8)(i) of this section, either during the intra-Service coordination discussions described in paragraph (d)(8)(i)(C) of this section or at any other time, the Regional Migratory Bird Permit Office will initiate consultation with the Endangered Species Field Offices.

(9) Responsible Agencies must, before they initiate any control activities in a given year, provide a one-time written notice to the appropriate Service Regional Migratory Bird Permit Office indicating that they intend to act under this order.

(i) Additionally, if any Agency plans a single control action that would individually, or a succession of such actions that would cumulatively, kill more than 10 percent of the double-crested cormorants in a breeding colony, it must first provide written notification to the appropriate Service Regional Migratory Bird Permit Office. This letter must be received no later than 30 days in advance of the activity and must provide:

(A) The location (indicating specific colonies, if applicable) of the proposed control activity;

(B) A description of the proposed control activity, specifying what public resources are being impacted, how many birds are likely to be taken and what approximate percentage they are of total DCCOs present, and which species of other birds are present; and

(C) Contact information for the person in charge of the control action.

(ii) The Regional Director may prevent any such activity by notifying the agency in writing if the Regional Director deems the activity a threat to the long-term sustainability of double-crested cormorants or any other migratory bird species.

(10) Persons operating under this order must keep records of all activities, including those of designated agents, carried out under this order. On an annual basis, Agencies must provide the Service Regional Migratory Bird Permit Office with a report detailing activities conducted under the authority of this order, including:

(i) By date and location, a summary of the number of double-crested cormorants killed and/or number of nests in which eggs were oiled;

(ii) A statement of efforts being made to minimize incidental take of nontarget species and a report of the number and species of migratory birds involved in such take, if any;

(iii) A description of the impacts or anticipated impacts to public resources by double-crested cormorants and a statement of the management objectives for the area in question;

(iv) A description of the evidence supporting the conclusion that double-crested cormorants are causing or will cause these impacts;

(v) A discussion of other limiting factors affecting the resource (*e.g.*, biological, environmental, and socioeconomic); and

(vi) A discussion of how control efforts are expected to, or actually did, alleviate resource impacts.

(11) Agencies must provide annual reports to the appropriate Service Regional Migratory Bird Permit Office, as described in paragraph (d)(10) of this section, by December 31 for the reporting period October 1 of the previous year to September 30 of the same year. For example, reports for the period October 1, 2003, to September 30, 2004, would be due on or before December 31, 2004. The Service will regularly review Agency reports and will periodically assess the overall impact of this program to ensure compatibility with the long-term conservation of double-crested cormorants and other resources.

(12) In some situations, Agencies may deem it necessary to reduce or eliminate local breeding populations of double-crested cormorants to reduce the occurrence of resource impacts.

(i) For such actions, Agencies must:

(A) Comply with paragraph (d)(9) of this section;

(B) Carefully plan activities to avoid disturbance of nontarget species;

(C) Evaluate effects of management activities on cormorants at the control site;

(D) Evaluate, by means of collecting data or using best available information, effects of management activities on the public resources being protected and on nontarget species; and

(E) Include this information in the report described in paragraph (d)(10) of this section.

(ii) Agencies may coordinate with the appropriate Service Regional Migratory Bird Permit Office in the preparation of this information to attain technical or other assistance.

(13) We reserve the right to suspend or revoke the authority of any Agency, Tribe, or State Director granted by this order if we find that the specified purpose, terms, and conditions have not been adhered to or if the long-term sustainability of double-crested cormorant populations is threatened by the action(s) of that Agency, Tribe, or State Director. The criteria and procedures for suspension, revocation, reconsideration, and appeal are outlined in §§ 13.27 through 13.29 of this subchapter. For the purposes of this section, ''issuing officer'' means the Regional Director and ''permit'' means the authority to act under this

depredation order. For purposes of § 13.29(e), appeals shall be made to the Director.

(e) *Does this section contain information collection requirements?* Yes, the information collection requirements in this section are approved by the Office of Management and Budget (OMB) under OMB control number 1018–0121. Federal agencies may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(f) *When does this depredation order expire?* This depredation order will automatically expire on April 30, 2009, unless revoked or extended prior to that date.

Dated: September 25, 2003.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–25500 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000407096–0096–01; I.D. 092903B]

Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Commercial Haddock Harvest

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

ACTION: Removal of haddock trip limit.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator) is suspending the haddock trip limit for the NE multispecies fishery for the remainder of the 2003 fishing year. The Regional Administrator has projected that less than 75 percent of the haddock target total allowable catch (TAC) will be harvested for the 2003 fishing year under the existing restrictive trip limits. This action is intended to allow fishermen to catch more of the haddock TAC, without exceeding it, and to reduce discards of haddock. Therefore, this action removes the haddock trip limit for the remainder of the 2003 fishing year, through April 30, 2004.

DATES: Effective beginning October 3, 2003, through April 30, 2004.

FOR FURTHER INFORMATION CONTACT: Susan Chinn, Fishery Management Specialist, 978–281–9218.

SUPPLEMENTARY INFORMATION: Framework Adjustment 33 to the NE Multispecies Fishery Management Plan, which became effective May 1, 2000, implemented the current haddock trip limit regulations (65 FR 21658, April 24, 2000). To ensure that haddock landings do not exceed the appropriate target TAC, Framework 33 established a haddock trip limit of 3,000 lb (1,361 kg) per NE multispecies day-at-sea (DAS) fished, and a maximum trip limit of 30,000 lb (13,608 kg) of haddock for the period May 1 through September 30; and 5,000 lb (2,268 kg) of haddock per DAS and 50,000 lb (22,680 kg) per trip from October 1 through April 30. Framework 33 also provided a mechanism to adjust the haddock trip limit based upon the percentage of TAC that is projected to be harvested. Section 648.86(a)(1)(iii)(B) specifies that, if the Regional Administrator projects that less than 75 percent of the haddock target TAC will be harvested in the fishing year, the haddock trip limit may be adjusted. Further, this section stipulates that NMFS will publish notification in the **Federal Register** informing the public of the date of any changes to the trip limit.

Based on the December 2002 ''Declaration of Steven A. Murawski, Ph.D.'' to the U.S. District Court for the District of Columbia,'' in the case *Conservation Law Foundation et al.* v. *Evans et al.*, the Georges Bank (GB) haddock TAC calculated for the 2003 fishing year was 18,540 mt, including both U.S. and Canadian landings. The 2003 Canadian quota for eastern GB haddock is 6,934 mt. The U.S. portion of the GB haddock target TAC for the 2003 fishing year should be approximately the difference between the entire GB haddock TAC and the Canadian quota, or 11,606 mt. Based on recent historical fishing practices, the Regional Administrator has projected that, under the current suspension of the daily landing limits, with the trip limits still in effect, GB haddock landings for fishing year 2003 would be about 15 million lb (6,804 mt), accounting for about 59 percent of the estimated 2003 target TAC (11,606 mt). Based on data from the 2002 fishing year, the Regional Administrator has determined that, if trip limits were suspended starting in August 2003 for the remainder of the 2003 fishing year, GB haddock landings would be between 17.36 million lb and 24.04 million lb, or 68 to 94 percent of the target TAC. The upper-bound estimation is considered extremely liberal because it treats all GB DAS yielding any NE multispecies in fishing year 2002 as days on which GB haddock would be harvested under no trip limit in fishing year 2003.

Given that, under current management measures, less than 75 percent of the 2003 fishing year haddock target TAC is projected to be harvested by April 30, 2004, and that GB haddock landings will not exceed the target TAC if trip limits are suspended, the Regional Administrator has determined that suspending the haddock trip possession limits will provide the industry with the opportunity to harvest the target TAC for the 2003 fishing year, while minimizing discards of legal-sized haddock. In order to prevent the TAC from being exceeded, the Regional Administrator will closely monitor the GB haddock landings and may adjust this possession limit again through publication of a notification in the **Federal Register**, pursuant to § 648.86(a)(1)(iii) if projections indicate that the haddock TAC for fishing year 2003 is likely to be exceeded.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: October 2, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–25510 Filed 10–3–03; 2:00 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 100203B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the pollock total allowable catch (TAC) for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 4, 2003, through 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 GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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 pollock TAC in Statistical Area 610 of the GOA is 16,788 metric tons (mt) as established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the pollock TAC in Statistical Area 610 has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 16,738 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.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 TAC in Statistical Area 610, 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: October 2, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–25509 Filed 10–3–03; 2:00 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 100203A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the pollock total allowable catch (TAC) for Statistical Area 620 of the GOA.

DATES: Effective 1200 hrs., Alaska local time (A.l.t.), October 3, 2003, through 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 GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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 pollock TAC in Statistical Area 620 of the GOA is 19,685 metric tons (mt) as established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003).

In accordance with § 679.20(d)(1)(i), the Regional Administrator, has determined that the pollock TAC in Statistical Area 620 has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 19,635 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

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 pollock TAC in Statistical Area 620, 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: October 2, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–25508 Filed 10–3–03; 2:00 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 020412085–3189–02; I.D. 022102B]

RIN 0648–AP66

Fisheries of the Exclusive Economic Zone Off Alaska; Electronic Reporting Requirements

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to amend regulations governing the North Pacific Groundfish Observer Program (observer program). This action is necessary to refine requirements for the facilitation of observer data transmission and improve support for observers. The final rule is necessary to improve the timely transmission of high quality observer data for a sector of catcher vessels in these fisheries. It is intended to support the management objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (groundfish FMPs).

DATES: Effective January 1, 2004.

ADDRESSES: Copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for this regulatory action may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall. Send comments on information collection requests to NMFS and to OMB, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Jason Anderson, 907–586–7228 or e-mail at *jason.anderson@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the U.S. groundfish fisheries of the Gulf of Alaska and the Bering Sea and Aleutian Islands management areas in the Exclusive Economic Zone (EEZ) under the groundfish FMPs. The North Pacific Fishery Management Council (Council) prepared the groundfish FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations at 50 CFR part 679 implement the FMPs. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600. Regulations implementing the interim observer program were published November 1, 1996 (61 FR 56425), amended December 30, 1997 (62 FR 67755) and December 15, 1998 (63 FR 69024), extended through 2002 under a final rule published December 21, 2000 (65 FR 80381), and extended again through 2007 under a final rule published December 6, 2002 (67 FR 72595). The observer program provides for the collection of observer data necessary to manage the Alaska groundfish fisheries by providing information on total catch estimation, discards, prohibited species catch (PSC) and biological samples that are used for stock assessment purposes. Observers also provide information related to compliance with regulatory requirements.

The regulations implementing the observer program at § 679.50 require observer coverage aboard fishing vessels, shoreside processors, and stationary floating processors that participate in the Alaska groundfish fisheries. Timely communication between the fishing industry and NMFS through catch reports submitted to NMFS by both industry and observers is crucial to the effective in-season monitoring of the groundfish quotas and PSC allowances. This final rule enhances timely communication by updating the hardware requirements for the observer communication system (OCS), requiring vessels to maintain OCS equipment functionality, clarifying shoreside processor requirements, and extending the OCS requirements to all catcher vessels required to have at least one NMFS certified observer on board at all times.

By extending the OCS program to catcher vessels who carry observers 100 percent of the time, several deficiencies with the current program are addressed. First, necessary timely monitoring for in-season management of PSC and discard data is not possible under the observer data reporting system currently used by catcher vessels delivering to inshore processors. Shoreside catcher vessel observers opportunistically transmit data via fax to NMFS from a shoreside processor, which can be between 5 and 14 days after a given haul was made. This delay is caused in part by the fact that an observer usually must return to sea immediately upon completion of the delivery to shoreside processors, leaving no time for the observer to compile data into a format appropriate for fax transmission to NMFS, most often several hours worth of work. Once received by NMFS, the faxed data subsequently must be hand entered into an electronic database, further delaying the availability to in-season managers.

Second, if a catcher vessel observer had time available to compile and transmit data from the shoreside processor, logistical problems remain. Shoreside processors do support OCS communication systems for transmission of observer data. However, OCS software on these systems is designed specifically for shoreside processor applications and does not support observer data collected at sea. While the shoreside system could be adapted to support data collected by vessel observers, other logistical problems prevent reliable use of these systems by catcher vessel observers. These difficulties include vessel observers having to return to sea prior to data input and transmission via the OCS communications system, as well as the lack of access to shoreside computers and communications equipment that support the OCS system. Offices that house this equipment at the shoreside processors generally are not open 24 hours a day, while deliveries may be completed at any time during the day.

Installation of OCS software, in combination with point to point modem communication capability aboard shoreside catcher vessels, would allow daily electronic transmission of catch data. This would provide NMFS with observer data from catcher vessels within 24 hours of receiving their delivery reports from the shoreside processor. At-sea discards and PSC could then be accounted for together with the landings data in real-time for each OCS-equipped vessel. Such real-time in-season management would be expected to result in fishery closures that better approximate actual quotas.

Additionally, observer data quality problems can have a significant impact on PSC estimates and fishery closure projections. Resulting management errors can include early closure of a fishery, which results in direct lost revenue to the fleet, or over harvest of a PSC fishery allowance, which can impact other fisheries as the total annual PSC limit is reached.

The OCS program provides several advantages and improvements to NMFS' current management systems which result in higher quality data. These include:

Improved data recording efficiency. Observers using OCS initially record data on deck forms. These data are then entered into the vessel's computer and sent electronically to NMFS. Data received by NMFS are automatically screened for errors and may be accessed by users in a database in a timely manner. Without OCS, data are transcribed from deck forms to paper and faxed to NMFS for subsequent electronic entry. Less paperwork provides observers with more time to dedicate to sampling.

Consistent, secure communications with observer program staff and a reduction in the overall frequency of errors. OCS communications allow NMFS to assign to each deployed observer an in-season advisor who screens data for errors and advises the observer throughout their deployment, resulting in improved observer

performance and a reduction in errors. The quality of timely data available for in-season management decisions is thus greatly improved.

Faster, more efficient, and higher quality debriefing. The OCS application automatically screens out many potential data errors at the point of entry. These data are further screened by the in-season advisor, and all data are again screened by computer programs and corrected at the point of debriefing. These processes eliminate hand checking of paper data forms, further reducing debriefing time and allowing for faster availability of the final data.Installation and maintenance of OCS aboard catcher vessels requiring 100 percent observer coverage would eliminate 1,100 faxed observer reports and the associated processing per year. Availability of timely data on PSC by this sector of the fleet, which is largely made up of American Fisheries Act-qualified catcher vessels that are members of inshore cooperatives, would improve the in-season management of the BSAI pollock and Pacific cod trawl fisheries. In the BSAI pollock trawl fishery, salmon and herring PSC are of concern, and in the BSAI Pacific cod trawl fishery, halibut bycatch is of concern. Although the few Pacific cod trawl fishery closures that have occurred since 1998 have been based primarily on TACs being reached, prior to 1998, BSAI Pacific cod trawl fishery closures were based on halibut bycatch allowances being caught before the TAC was reached. Improved timeliness of PSC data transmission would allow NMFS resources to be reallocated to processing faxed data received from observers aboard vessels that are subject to 30 percent coverage requirements. Overall this would result in the expedited availability to managers and improved quality of all in-season data from all catcher vessels in the BSAI and the GOA. This timely information also benefits industry through access via NMFS web sites. Fleets coordinate their activity to avoid areas of high incidental catch of prohibited species, thus delaying or eliminating costly PSC closures. This coordination can only work where information is available quickly.

More timely harvest data from catcher vessels is also needed for management measures that temporally and spatially disperse some groundfish fisheries in near shore areas of the EEZ off Alaska (67 FR 956, January 8, 2002). These measures were developed as Steller Sea Lion protection measures and involve some time-area restrictions for the pollock, Pacific cod and Atka mackerel fisheries, including harvest limits in Steller sea lion critical habitat. To ensure compliance with these measures, levels of groundfish harvest must be monitored on a real-time basis.

Further background for the development of the regulatory amendments contained in this final rule and the detailed descriptions of the hardware upgrades, catcher vessel requirements and functionality of communication systems are in the proposed rule (67 FR 48604, July 25, 2002).

Comments on the proposed rule were invited for a 30–day period that ended August 26, 2002. No written comments on the proposed rule were received.

Changes From the Proposed Rule

NMFS identified four necessary changes from the proposed rule to the final rule. Each is a technical, non-substantive correction to the proposed regulation language. The technical changes to the final rule are made as follows:

1. The paragraph designations for the regulatory amendments in the proposed rule (67 FR 48604, July 25, 2002) are revised from (f) to (g) in this final rule to ensure consistency with recent revisions to § 679.50 (67 FR 72595, December 6, 2002).

2. Regulatory text in § 679.50(g)(2) and (3) is changed from the proposed rule to clarify that OCS provisions apply to stationary floating processors. Stationary floating processors provide the same function as shoreside processors and nearly all observer program regulations that apply to shoreside processors also apply to stationary floating processors. Therefore, the regulations in paragraphs (g)(2) and (g)(3) apply to both shoreside processors and stationary floating processors. The proposed rule identified only shoreside processors in the revised language for these paragraphs. However, the Regulatory Impact Review and Initial Regulatory Flexibility Analysis (RIR/IRFA) thoroughly analyzed the effects of this action on stationary floating processors. The regulatory language for § 679.50(g)(2) and (3) is changed in the final rule from the proposed rule to apply to both shoreside processors and stationary floating processors.

3. The term ''processors'' in § 679.50(g)(1)(iii)(B)(1) is changed to ''personal computers'' to clarify potential confusion between fish processing operations and computer hardware.

4. The title to § 679.50 is revised from the proposed rule to reflect the extension of the observer program through December 31, 2007.

Classification

This final rule has been determined to be significant for purposes of Executive Order 12866.

NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) for this action, pursuant to the requirements of the Regulatory Flexibility Act at section 604(a). The objectives of and the legal basis for this action are described earlier in the preamble.

The proposed rule was published in the **Federal Register** on July 25, 2002 (67 FR 48604). An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule, and described in the classifications section of the preamble to the rule. The public comment period ended on August 26, 2002. No comments were received on the proposed rule.

The entities that would be regulated by the proposals are the BSAI and GOA entities operating catcher-processors, motherships, shoreside processors, required to maintain one or more observers, and catcher vessels required to have 100 percent observer coverage. Data available for 2000 indicate that there were 34 small (according to Small Business Administration criteria) catcher/processors active that year, and 31 small catcher vessels. All three of the motherships were assumed to be large entities. Five directly regulated processors were identified as small. The six CDQ groups are non-profits and are therefore small by definition.

This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities. Although the proposed changes in the OCS communications requirements require some new expenditures by small entities, they contain no new or revised record keeping or reporting requirements for those entities. The OCS requirements will not affect private sector record keeping requirements; they will facilitate communication of reports that are already required from observers.

Four alternatives to the proposed action were considered. The status quo was rejected because it would not meet the objectives of the action for more timely and more accurate data. An alternative that would have restricted the regulations to catcher-processors, motherships, and shoreside processors would have had a smaller impact on directly regulated small entities, because it would not have regulated catcher vessels that were required to have 100 percent observer coverage. This alternative was rejected because it would not have provided faster or more

accurate observer data on this important fleet sector. An alternative that would have extended the requirements to catcher vessels with 30 percent required coverage, in addition to catcher-processors, motherships, shoreside processors, and catcher vessels with 100 percent observer coverage, was also rejected. This would have involved extending coverage to several hundred additional catcher vessels, all of which were estimated to be small entities. Concerns were also raised over the security of the OCS software on computers during periods of time when observers were not present on the vessels. A final alternative would have required OCS coverage on catcher-processors, motherships, and shoreside processors, but not catcher vessels. This alternative would have increased resources devoted to observer program data processing in order to reduce the time it took to get catcher vessel data to in-season managers for management purposes. This alternative would have reduced the impact on small catcher vessel entities, however, while it would have reduced the time to process data and provide it to in-season managers, it would not have affected the important time lag between at-sea observation by the observer and delivery to observer program data processors. In addition, it would not have addressed concerns over data quality.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: October 2, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

■ 2. In § 679.50, paragraphs (g)(1)(iii)(A), (g)(1)(iii)(B), (g)(1)(iii)(C), (g)(2), (g)(2)(iii)(B), and (g)(2)(iii)(C) are revised and paragraph (g)(3) is added to read as follows:

■

§ 679.50 Groundfish Observer Program applicable through December 31, 2007.

* * * * *

(g) * * *

(1) * * *

(iii) * * *

(A) *Observer use of equipment.* Allowing NMFS-certified observers to use the vessel's communications equipment and personnel, on request, for the confidential entry, transmission, and receipt of work-related messages, at no cost to the NMFS-certified observers or the nation.

(B) *Communication equipment requirements.* In the case of an operator of a catcher/processor or mothership that is required to carry one or more observers, or a catcher vessel required to carry an observer as specified in paragraph (c)(1)(iv) of this section:

(*1*) *Hardware and software.* Making available for use by the observer a personal computer in working condition that contains a full Pentium 120 Mhz or greater capacity processing chip, at least 32 megabytes of RAM, at least 75 megabytes of free hard disk storage, a Windows 9x or NT compatible operating system, an operating mouse, and a 3.5–inch (8.9 cm) floppy disk drive. The associated computer monitor must have a viewable screen size of at least 14.1 inches (35.8 cm) and minimum display settings of 600 x 800 pixels. The computer equipment specified in paragraph (g)(1)(iii)(B) of this section must be connected to a communication device that provides a point-to-point modem connection to the NMFS host computer and supports one or more of the following protocols: ITU V.22, ITU V.22bis, ITU V.32, ITU V.32bis, or ITU V.34. Personal computers utilizing a modem must have at least a 28.8kbs Hayes-compatible modem.

(*2*) *NMFS-Supplied software.* Ensuring that the catcher/processor, mothership, or catcher vessel specified in paragraph (g)(1)(iii)(B) of this section obtains and has installed the data entry software provided by the Regional Administrator for use by the observer.

(C) *Functional and operational equipment.* Ensuring that the communications equipment required at paragraph (g)(1)(iii)(B) of this section, and that is used by observers to enter and transmit data, is fully functional and operational, where ''functional'' means that data transmissions to NMFS can be initiated effectively aboard the vessel by such communications equipment.

* * * * *

(2) *Shoreside processor and stationary floating processor responsibilities.* A manager of a shoreside processor or a stationary floating processor that is required to maintain observer coverage as specified under paragraph (d) of this section must:

* * * * *

(iii) * * *

(B) *Communication equipment requirements*—(*1*) *Hardware and software.* Making available for use by the observer a personal computer, in working condition, with a full Pentium 120 Mhz or greater capacity processing chip, at least 32 megabytes of RAM, at least 75 megabytes of free hard disk storage, a Windows 9x or NT compatible operating system, an operating mouse, and a 3.5–inch (8.9 cm) floppy disk drive. The associated computer monitor must have a viewable screen size of at least 14.1 inches (35.8 cm) and minimum display settings of 600 x 800 pixels. The computer equipment specified in this paragraph must be connected to a communication device that provides a point-to-point modem connection to the NMFS host computer and supports one or more of the following protocols: ITU V.22, ITU V.22bis, ITU V.32, ITU V.32bis, or ITU V.34. Processors utilizing a modem must have at least a 28.8kbs Hayes-compatible modem.

(*2*) *NMFS-supplied software.* Ensuring that the shoreside processor or stationary floating processor obtains and installs the data entry software provided by the Regional Administrator for use by the observer.

(C) *Functional and operational equipment.* Ensuring that the communications equipment required at paragraph (g)(2)(iii)(B) of this section and that is used by observers to enter and transmit data, is fully functional and operational, where functional means that data transmissions to NMFS can be initiated effectively by that equipment.

* * * * *

(3) The owner of a vessel, shoreside processor, stationary floating processor, or buying station is responsible for compliance and must ensure that the operator or manager of a vessel, shoreside processor, or stationary floating processor required to maintain observer coverage under paragraphs (c) or (d) of this section complies with the requirements given in paragraphs (g)(1) and (g)(2) of this section.

* * * * *

[FR Doc. 03–25514 Filed 10–7–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 68, No. 195

Wednesday, October 8, 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 25

[Docket No. NM266; Notice No. 25–03–07–SC]

Special Conditions: Airbus Model A320 Airplanes; Child Restraint System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for Airbus Model A320 airplanes. These airplanes, as modified by AMSAFE Inc., will have novel and unusual design features associated with a child restraint system that attaches to the existing passenger lap belt. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before November 7, 2003.

ADDRESSES: Comments on these proposed special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM266, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM266. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2195; facsimile (425) 227–1149, e-mail *alan.sinclair@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these proposed special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On February 12, 2003, AMSAFE Inc., P.O. Box 1570, Higley, Arizona 85236, applied for a supplemental type certificate for the modification of Airbus Model A320 airplanes. The modification includes a child restraint system that attaches to the existing passenger lap belt and can be installed on certain seats of Airbus Model A320 airplanes in order to reduce the potential for injury in the event of an accident. The Model A320 is a swept-wing, conventional tail, twin-engine, turbofan-powered transport airplane.

Type Certification Basis

Under the provisions of § 21.101, AMSAFE Inc. must show that the Airbus Model A320 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A28NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A28NM are as follows: 14 CFR part 25, effective February 1, 1965, including Amendments 25–1 through 25–56; SFAR 27, effective February 1, 1974, including Amendments 27–1 through 27–5; and 14 CFR part 36 effective December 1, 1969, including Amendments 36–1 through 36–12. In addition, the certification basis includes other regulations and special conditions that are not pertinent to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A320 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A320 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should AMSAFE Inc. apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The AMSAFE Inc. Child Safety System (CSS) is an improved harness type Child Restraint System (CRS) that utilizes the seat back and the lap belt on

passenger seats to provide upper torso restraint and improve the restraint of small children. The physical characteristics of small children will govern the use of the CSS and must be defined according to accepted classification standards. The device is intended for children in the 2- to 4-year age group who are prohibited from being held in their parents' arms during taxi, take-off, and landing and must occupy their own passenger seat, typically with no supplemental restraint. The CSS is made with webbing and fastening hardware and consists of an adjustable strap that wraps horizontally around the seat back to secure the device to the passenger seat, and a double shoulder harness that is fastened around the child's upper torso. The ends of the device's shoulder harness are held in place using the existing passenger lap belt that is passed through two open loops on the lower ends of the device's shoulder straps. The current part 25 airworthiness regulations are not adequate to define the necessary certification criteria.

Discussion

The CSS is a non-conforming CRS (that is, not approved for use on aircraft per Federal Motor Vehicle Safety Standard (FMVSS) 213 and as such the design requirements are established in these special conditions. It is a safety restraint device specifically designed for use by small children on JetBlue Airways Airbus A320 aircraft.

The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this particular design feature. Additional safety standards are therefore necessary to establish a level of safety equivalent to that established by the existing airworthiness standards for transport category airplanes.

Additionally, the operating regulations, 14 CFR 91.107 and 121.311, prohibit the use of any ''vest-type child restraints, and harness-type child restraints'' for commercial and private use operations. In order for the CSS, which is a harness-type child restraint, to be useable in the U.S., AMSAFE Inc., or their agent, must petition the FAA for an exemption from the operating regulations. The petition must be granted in order to allow use of the CSS.

The following special conditions can be characterized as addressing the safety performance of the system and the capability of the system to be installed and utilized without creating additional safety concerns. Because of the nature of the system and the direct interface with the crew and passengers, as well as the intended occupants, these special conditions are more rigorous from a design standpoint than for the standard lapbelt installation.

Applicability

As discussed above, these special conditions are applicable to the Airbus Model A320 airplanes modified by AMSAFE Inc. Should AMSAFE Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A28NM to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on Airbus Model A320 airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Airbus Model A320 airplanes modified by AMSAFE Inc.

1. The child restraint system (CSS) must provide child restraint protection under dynamic emergency landing conditions to prevent serious head and other injuries. It must protect a range of occupant statures for which the system is designed in accordance with Sections 2.3 and 2.4 of the Society of Automotive Engineers (SAE) document AS5276/1. The CSS must provide a consistent approach to energy absorption throughout that range.

2. Means must be provided to prevent the use of the CSS with children who are outside the range of statures for which the system was designed and tested. The range of statures for which the CSS is approved must be clearly labeled on the device.

3. There must be obvious, clear, and concise instructions readily available to the flight and cabin crew as to the proper installation and use of the CSS system for children.

4. The design of the CSS must prevent it from being incorrectly buckled and/or incorrectly installed such that the CSS would not properly perform its intended function.

5. The CSS must meet the minimum performance standards of Appendix 1 and the test conditions of Appendix 2 of Technical Standard Order C100b.

6. The CSS must not impede rapid egress of the occupant using the CSS and the occupants seated in the same row.

7. Means must be provided to prohibit the installation and use of the CSS in the emergency exit rows.

8. The CSS must be shown to operate safely in the following locations, or means must be provided to prohibit the installation and use of the CSS at these seat locations:

a. Behind any wall or seat back that has an inflatable airbag.

b. Any passenger seat that has an inflatable restraint system.

c. Side-facing seats.

9. It must be shown that the CSS will not cause the occupant's passenger seat back to fold over during a crash situation and cause injury to the occupant.

10. It must be shown that tray tables, phones or other devices installed in the seat back will not degrade the performance of the CSS.

11. Passenger seats approved for installation of the CSS must be clearly identified to the installer by location and part number.

12. The operating regulations, 14 CFR 91.107 and 14 CFR 121.311, prohibit the use of any ''vest-type child restraints, and harness-type child restraints'' in commercial and private use operations. It is therefore incumbent upon AMSAFE Inc., or their agent, to petition the FAA for exemption from these two regulations. The exemption must be granted in order for the system to be used by a U.S. operator.

Issued in Renton, Washington, on September 25, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–25423 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–183–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 Airplanes; DC–8–50 Series Airplanes; DC–8F–54 and DC–8F–55 Airplanes; DC–8–60 Series Airplanes; DC–8–60F Series Airplanes; DC–8–70 Series Airplanes; and DC–8–70F Series Airplanes; All with Flat Aft Pressure Bulkheads

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 Model DC–8 airplanes. This proposal would require a one-time inspection of the aft fuselage skin panel at the longeron 28 skin splice for cracks; repair of any cracks detected; and reporting of the findings of the inspection to the manufacturer. This action is necessary to detect and correct cracks in the aft fuselage skin at the longeron 28 skin splice, which could lead to loss of structural integrity of the aft fuselage, resulting in rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 24, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–183–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–183–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aeronautical Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5322; 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 2001–NM–183–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–183–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that a crack has been found in the aft fuselage skin at the longeron 28 skin splice. This crack was found just forward of the aft pressure bulkhead on a McDonnell Douglas Model DC–8–71F airplane, between fuselage stations Y=1704 and Y=1717. Analysis indicated that the crack is due to fatigue and could be a result of multi-site damage. Failure to detect and correct such a crack before it grows to a critical length could lead to loss of structural integrity of the aft fuselage, resulting in rapid decompression of the airplane.

The subject area on Model DC–8–71F airplanes is almost identical to that on the other Model DC–8 airplanes. Therefore, those Model DC–8 airplanes may be subject to the unsafe condition revealed on the Model DC–8–71F airplanes.

Explanation of Relevant Service Information

There is not yet any service information pertaining to the proposed inspection of the aft fuselage skin panel at the longeron 28 skin spice for cracks and the repair of any such cracks. The manufacturer is developing service information which may include repetitive inspections and repairs. However, several methods in the manufacturer's Non-Destructive Testing Standard Practice Manual are referenced in this proposed AD as approved methods of inspection.

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 performing a one-time inspection of the aft fuselage skin panel at the longeron 28 skin splice for cracks, repairing any cracks detected, and reporting results of the inspection (both negative and positive) to the manufacturer.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

There are approximately 264 airplanes of the affected design in the worldwide fleet. The FAA estimates that 244 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed inspection and reporting of results, and that the average labor rate is $65 per

work hour. Based on these figures, the cost impact of the proposed actions on U.S. operators is estimated to be $47,580, or $195 per airplane.

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

Regulatory Impact

The regulations 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 2001–NM–183–AD.

Applicability: McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; DC–8–51, DC–8–52, DC8–53, and DC–8–55 airplanes; DC–8F–54 and DC–8F–55 airplanes; DC–8–61, DC–8–62, and DC–8–63 airplanes; DC–8–61F, DC–8–62F, and DC–8–63F airplanes; DC–8–71, DC–8–72, and DC–8–73 airplanes; and DC–8–71F, DC–8–72F, and DC–8–73F airplanes; all with flat aft pressure bulkheads; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracks in the aft fuselage skin at the longeron 28 skin splice, which could result in loss of structural integrity of the aft fuselage, resulting in a rapid decompression of the airplane; accomplish the following:

One-time Inspection for Cracks

(a) For airplanes that have accumulated fewer than 24,000 total flight cycles as of the effective date of this AD: Within 2 years after the effective date of this AD or prior to accumulating a total of 24,000 flight cycles, whichever occurs later, perform an inspection of the aft fuselage skin panel having part number (P/N) 5649328–3 along the rivet row common to longeron 28 from the tail joint to the aft pressure bulkhead for cracks, using one of the methods indicated in paragraph (a)(1), (a)(2), or (a)(3) of this AD.

(1) Non-Destructive Testing Standard Practice Manual MDC–93K0393, 06–10–01.001, High Frequency Eddy Current, Procedure 1, scan 48, crack direction Y, calibration N.

(2) Non-Destructive Testing Standard Practice Manual MDC–93K0393, 06–10–03.001, Magnetic-optic/Eddy Current Imager, Procedure 1.

(3) A method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

Note 1: The fuselage skin is 0.05 inch thick 7075–TA aluminum, and the fasteners are NAS 1097 DD 6/32-inch diameter with control countersink.

Note 2: The tail joint is at Station 1490 for DC–8–50 series airplanes, at Station 1530 for DC–8–62, DC–8–62F, DC–8–72, and DC–8–72F airplanes, and at Station 1690 for DC–8–63, DC–8–63F, DC–8–71, and DC–8–73 airplanes.

(b) For airplanes that have accumulated 24,000 total flight cycles or more as of the effective date of this AD: Within 1 year after the effective date of this AD or within 1,000 flight cycles after the effective date of this AD, whichever occurs first, perform the inspection required by paragraph (a) of this AD.

(c) If no crack is detected during the one-time inspection required by paragraph (a) or (b) of this AD, as applicable: No further action is required by this AD, other than the reporting of the results of the inspection, as required by paragraph (e) of this AD.

Repair

(d) If any cracks are detected during the one-time inspection required by paragraph (a) or (b) of this AD: Prior to further flight, repair the crack or cracks per a manner approved by the Manager, Los Angeles ACO, FAA.

Reporting of Results

(e) Submit a report of findings (both positive and negative) of the inspection required by paragraph (a) or (b) of this AD to the Manager, Structure/Payloads, Technical and Fleet Support, Service Engineering/Commercial Aviation Services, Boeing Company at the applicable time specified in paragraph (e)(1) or (e)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane fuselage number, and the total number of landings and flight hours on the airplane. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the one-time inspection is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection.

(2) For airplanes on which the one-time inspection was accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

Alternative Methods of Compliance

(f)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles ACO, FAA, is authorized to approve alternative methods of compliance for this AD.

(2) An AMOC that provides an acceptable level of safety may be used for repair of any cracks detected during the inspection required by paragraph (a) or (b) of this AD, if it is approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Los Angeles ACO, to make such findings.

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

Issued in Renton, Washington, on October 2, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–25492 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–110–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas 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

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 all McDonnell Douglas 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. This proposal would require the implementation of a program of structural inspections of baseline structure to detect and correct fatigue cracking in order to ensure the continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. This action is necessary to detect and correct fatigue cracking that could compromise the structural integrity of these airplanes. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 24, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–0NM–110–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. 2000–NM–110–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 Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Mike Lee , Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5325; 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 2000–NM–110–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. 2000–NM–110–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In the early 1980's, as part of its continuing work to maintain the structural integrity of older transport category airplanes, the FAA concluded that the incidence of fatigue cracking may increase as these airplanes reach or exceed their design service goal (DSG). A significant number of these airplanes were approaching or had exceeded the DSG on which the initial type certification approval was predicated. In light of this, and as a result of increased utilization, longer operational lives, and the high levels of safety expected of the currently operated transport category airplanes, we determined that a supplemental structural inspection program (SSIP) was necessary to ensure a high level of structural integrity for all airplanes in the transport fleet.

Issuance of Advisory Circular

As a follow-on from that determination, the FAA issued Advisory Circular (AC) No. 91–56, ''Supplemental Structural Inspection Program for Large Transport Category Airplanes,'' dated May 6, 1981. That AC provides guidance material to manufacturers and operators for use in developing a continuing structural integrity program to ensure safe operation of older airplanes throughout their operational lives. This guidance material applies to transport airplanes that were certified under the fail-safe requirements of part 4b (''Airplane Airworthiness, Transport Categories'') of the Civil Air Regulations of the Federal Aviation Regulations (FAR) (14 CFR part 25), and that have a maximum gross weight greater than 75,000 pounds. The procedures set forth in that AC are applicable to transport category airplanes operated under subpart D (''Special Flight Operations'') of part 91 of the FAR (14 CFR part 91); part 121 (''Operating Requirements: Domestic, Flag, and Supplemental Operations''); part 125 (''Certification and Operations: Airplanes having a Seating Capacity of 20 or More Passengers or a Maximum Payload of 6,000 Pounds or More''); and part 135 (''Operating Requirements: Commuter and On-Demand Operations'') of the FAR (14 CFR parts 121, 125, and 135). The objective of the SSIP was to establish inspection programs to ensure timely detection of fatigue cracking.

Development of the Supplemental Structural Inspection Program

In order to evaluate the effect of increased fatigue cracking, with respect to maintaining fail-safe design and damage tolerance of the structure of McDonnell Douglas 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 (commonly referred to as Model MD–80 and MD–88 airplanes), Boeing conducted a structural reassessment of those airplanes, using modern damage tolerance evaluation techniques. Boeing accomplished this reassessment using the criteria contained in AC No. 91–56, as well as 14 CFR 25.571; Amdt. 25–45. During the reassessment, members of the airline industry participated with Boeing in working group sessions and developed the SSIP for Model MD–80 and MD–88 airplanes. Engineers and maintenance specialists from the FAA also attended these sessions to observe these developments. Subsequently, based on the working group's recommendations, Boeing developed the Supplemental Inspection Document (SID) for Model MD–80 and MD–88 airplanes.

Aging Aircraft Safety Act (AASA)

In October 1991, Congress enacted Title IV of Public Law 102–143, the AASA of 1991, to address aging aircraft concerns. That Act instructed the FAA administrator to prescribe regulations that will ensure the continuing airworthiness of aging aircraft.

SSID Team

In April 2000 the Transport Airplane Directorate (TAD) chartered a SSID Team to develop recommendations to standardize the SID/SSID ADs regarding the treatment of repairs, alterations, and modifications (RAMs). The report can be accessed at *http://www.faa.gov/certification/aircraft/transport.htm.*

FAA Responses To AASA

In addition to the SSID Team activity, there are other on-going activities associated with FAA's Aging Aircraft Program. This includes, among other initiatives, our responses to the AASA.

On November 1, 2002, as one of the responses to the AASA, we issued the Aging Airplane Safety Interim Final Rule (AASIFR) (67 FR 72726, December 6, 2002). The applicability of that rule addresses airplanes that are operated under part 121 of the FAR (14 CFR part 121), all U.S. registered multi-engine airplanes operated under part 129 of the FAR (14 CFR part 129), and all multi-engine airplanes used in scheduled operations under part 135 of the Federal Aviation Regulations (14 CFR part 135). The AASIFR requires the maintenance programs of those airplanes to include damage tolerance-based inspections and procedures that include all major structural RAMs. Currently, the ASSIFR requires that these procedures must be established and incorporated within four years after December 8, 2003, the effective date specified by the AASIFR.

Public Technical Meeting

The TAD also held a public meeting regarding standardization of the FAA approach to RAMs in SID/SSID ADs on February 27, 2003, in Seattle, Washington. We presented our views and heard comments from the public concerning issues regarding the standardization of the requirements of ADs for certain transport category airplanes that mandate SSIDs and that address the treatment of RAMs for those certain transport category airplanes. Our presentation included a plan for the standardization of SID/SSID ADs, the results of the SSID Team findings, and the TAD vision of how SID/SSID ADs may support compliance to the AASIFR. We also asked for input from operators on the issues addressing RAMs in SID/SSID ADs. One of the major comments presented at the public meeting was that operators do not have the capability to accomplish the damage tolerance assessments, and they will have to rely on the manufacturers to perform those assessments. Furthermore, the operators believe that the timeframes to accomplish the damage tolerance assessments will not permit manufacturers to support the operators. Another major comment presented was from the Airworthiness Assurance Working Group (AAWG) of the Aviation Rulemaking Advisory Committee (ARAC). The AAWG requested that we withdraw the damage tolerance requirements from the final rule and task AAWG to develop a new RAM damage tolerance based program with timelines to be developed by ARAC. The public meeting presentations can be accessed at *http://www.faa.gov/certification/aircraft/transport.htm.*

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Report No. L26–022, ''MD–80 Supplemental Inspection Document (SID),'' Revision B, dated March 2003, which provides a description of Principal Structural Elements (PSEs) and Non Destructive Inspection (NDI) procedures and thresholds with repetitive inspection intervals for inspections of PSEs. For the purposes of this AD, a PSE is defined as an element that contributes significantly to the carrying of flight, ground or pressurization loads, and the integrity of that element is essential in maintaining the overall structural integrity of the airplane.

The FAA also has reviewed and approved McDonnell Douglas Report No. MDC 91K0263, ''DC–9/MD–80 Aging Aircraft Repair Assessment Program Document,'' dated July 1997, which provides procedures to determine the appropriate inspection or replacement program for certain repairs to the fuselage pressure boundary. These repairs and inspection/replacement programs are acceptable alternative methods of compliance for the repair and repair inspection programs specified in this proposed AD.

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 implementation of a structural inspection program of baseline structure to detect and correct fatigue cracking in order to ensure the continued airworthiness of airplanes as they approach the manufacturer's original fatigue design life goal.

Revision of the Maintenance Program

Paragraph (a) of the proposed AD would require a revision of the maintenance inspection program that provides for inspection(s) of the PSE per Boeing Report No. L26–022, ''MD–80 SID,'' Revision B, dated March 2003. PSEs are also defined and specified in the SID. All references in this AD to the ''SID'' are to Revision B dated March 2003.

Supplemental Inspection Program (SIP)

Paragraph (b) of the proposed AD would specify that the supplemental inspection program be implemented on a PSE-by-PSE basis before structure exceeds its 75% fatigue life threshold ($\frac{3}{4}N_{th}$), and its full fatigue life threshold (N_{th}). The threshold value is defined as the life of the structure measured in total landings, when the probability of failure reaches one in a billion. The MD–80 SID program is not a sampling program. All airplanes would be inspected once prior to reaching both PSE thresholds (once by $\frac{3}{4}N_{th}$ and once by N_{th}). In order for the inspection to have value, no PSE would be inspected prior to half of the fatigue life threshold, $\frac{1}{2}N_{th}$. The additional $\frac{3}{4}N_{th}$ threshold aids in advancing the threshold for some PSEs as explained in Section 3 of Volume I, of the SID. Inspection of each PSE should be accomplished in

accordance with the NDI procedures set forth in Section 2 of Volume II, Revision B, dated March 2003.

Once threshold N_{th} is passed, the PSE would be inspected at repetitive intervals not to exceed ΔNDI/2 as specified in Section 3 of Volume I of the SID per the NDI procedure, which is specified in Section 2 of Volume II of the SID. ΔNDI/2 is defined as half of the life for a crack to grow from a given NDI detectable crack size to instability.

SIP Inspection Requirements

Paragraph (b) of this proposed AD also would require, for airplanes that have exceeded the N_{th}, that each PSE be inspected prior to reaching the established thresholds (¾N_{th} and N_{th}) or within 18 months after the effective date of this AD. The entire PSE must be inspected regardless of whether or not it has been repaired, altered, or modified. If any PSE is repaired, altered, or modified, it must be reported as ''discrepant.'' A discrepant report indicates that a PSE could not be completely inspected because the NDI procedure could not be accomplished due to differences on the airplane from the NDI reference standard (*i.e.*, RAMs).

Reporting Requirements

Paragraph (c) of this proposed AD would require that all negative, positive, or discrepant findings of the inspection accomplished in paragraph (b) of the AD must be reported to Boeing at the times specified, and in accordance with, the instructions contained in Section 3 of Volume 1 of the SID.

Corrective Action

Paragraph (d) of this proposed AD would require that any cracked structure detected during any inspection required per paragraph (b) of this AD must be repaired before further flight. Additionally, paragraph (d) of this AD would require accomplishment of follow-on actions as specified in paragraphs (d)(1), (d)(2), and (d)(3) of this proposed AD, at the times specified below.

(1) Within 18 months after repair, accomplish a damage tolerance assessment (DTA) that defines the threshold for inspection and submit the assessment for approval to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) Prior to reaching 75% of the threshold, submit the inspection methods and repetitive inspections intervals for the repair for approval by the Manager of the LAACO.

(3) Prior to the threshold, the inspection method and repetitive inspection intervals are to be incorporated into the FAA-approved structural maintenance or inspection program for the airplane.

For the purposes of this proposed AD, the FAA anticipates that submissions of the damage tolerance assessment of the repair, if acceptable, should be approved within six months after submission.

Transferability of Airplanes

Paragraph (e) of this proposed AD specifies the requirements of the inspection program for transferred airplanes. Before any airplane that is subject to this proposed AD can be added to an air carrier's operations specifications, a program for the accomplishment of the inspections required by this proposed AD must be established. Paragraph (e) of the proposed AD would require accomplishment of the following:

1. For airplanes that have been inspected per this proposed AD, the inspection of each SSI must be accomplished by the new operator per the previous operator's schedule and inspection method, or per the new operator's schedule and inspection method, at whichever time would result in the earlier accomplishment date for that SSI inspection. The compliance time for accomplishment of this inspection must be measured from the last inspection accomplished by the previous operator. After each inspection has been performed once, each subsequent inspection must be performed per the new operator's schedule and inspection method.

2. For airplanes that have not been inspected per this proposed AD, the inspection of each SSI must be accomplished either prior to adding the airplane to the air carrier's operations specification, or per a schedule and an inspection method approved by the FAA. After each inspection has been performed once, each subsequent inspection must be performed per the new operator's schedule.

Accomplishment of these actions will ensure that: (1) an operator's newly acquired airplanes comply with its SSIP before being operated; and (2) frequently transferred airplanes are not permitted to operate without accomplishment of the inspections defined in the SSID.

Inspections Accomplished Previously

Paragraph (f) of this proposed AD merely provides approval of Revision A of the SID, dated September 2000, as acceptable compliance with the requirements of paragraph (b) of this proposed AD for inspections accomplished prior to the effective date of the proposed AD.

Acceptable for Compliance

Paragraph (g) of this proposed AD also provides approval of McDonnell Douglas Report No. MDC 91K0263, ''DC–9/MD–80 Aging Aircraft Repair Assessment Program Document,'' dated July 1997, as acceptable compliance with the requirements of paragraphs (b) and (d) of this proposed AD for repairs and inspection/replacement for certain repairs to the fuselage pressure shell accomplished prior to the effective date of the proposed AD.

Interim Action

This is considered to be interim action. The FAA is currently considering requiring damage tolerance-based inspections and procedures that include all major structural RAMs, which may result in additional rulemaking. That rulemaking may include appropriate recommendations from the previously mentioned FAA team and a public meeting on how to address RAMs.

Cost Impact

There are approximately 1,167 Model DC–9–80 and MD–88 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 665 airplanes of U.S. registry and 18 U.S. operators would be affected by this proposed AD.

Incorporation of the SID program into an operator's maintenance program is estimated to necessitate 1,062 work hours (per operator), at an average labor rate of $65 per work hour. Based on these figures, the cost to the 18 affected U.S. operators to incorporate the SID program is estimated to be $1,242,540.

The recurring inspection costs in this proposed AD are estimated to be 362 work hours per airplane per year, at an average labor rate of $65 per work hour. Based on these figures, the recurring inspection costs are estimated to be $25,530 per airplane, per inspection, or $15,647,450 for the affected U.S. fleet.

Based on the above figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,242,540 for the first year, and $15,647,450 for each year thereafter. These ''total cost impact'' figures assume that no operator has yet accomplished any of the requirements of this AD.

Additionally, the number of required work hours for each proposed inspection (and the SID program), as indicated above, is presented as if the accomplishment of those actions were to be conducted as ''stand alone'' actions. However, in actual practice,

these actions for the most part will be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional work hours will be minimal in many instances. Further, any cost associated with special airplane scheduling can be expected to be minimal.

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 2000–NM–110–AD

Applicability: 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, certificated in any category.

Revision of the Maintenance Inspection Program

(a) Within 12 months after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program that provides for inspection(s) of the Principal Structural Elements (PSEs), in accordance with Section 3 of Volume I , Revision B, dated March 2003, of Boeing Report No. L26–022, ''MD–80 Supplemental Inspection Document (SID).'' PSEs are also specified in the SID. Unless otherwise specified, all references in this AD to the ''SID'' are to Revision B dated March 2003.

Non-Destructive Inspections (NDIs)

(b) For all PSEs listed in Section 3 of Volume I of the SID, perform an NDI for fatigue cracking of each PSE in accordance with the NDI procedures specified in Section 2 of Volume II of the SID, at the times specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD, as applicable.

(1) For airplanes that have less than three quarters of the fatigue life threshold ($\frac{3}{4}N_{th}$) as of the effective date of the AD: Perform an NDI for fatigue cracking no earlier than one-half of the threshold ($\frac{1}{2}N_{th}$) but prior to reaching three quarters of the threshold ($\frac{3}{4}N_{th}$), or within 18 months after the effective date of this AD, whichever occurs later. Inspect again prior to reaching the threshold (N_{th}), but no earlier than ($\frac{3}{4}N_{th}$). Thereafter, after passing the threshold (N_{th}), repeat the inspection for that PSE at intervals not to exceed ΔNDI/2.

(2) For airplanes that have reached or exceeded three quarters of the fatigue life threshold ($\frac{3}{4}N_{th}$), but less than the threshold (N_{th}), as of the effective date of the AD: Perform an NDI inspection prior to reaching the threshold (N_{th}), or within 18 months after the effective date of this AD, whichever occurs later. Thereafter, after passing the threshold (N_{th}), repeat the inspection for that PSE at intervals not to exceed ΔNDI/2.

(3) For airplanes that have reached or exceeded the fatigue life threshold (N_{th}) as of the effective date of the AD: Perform an NDI inspection within 18 months after the effective date of this AD. Thereafter, repeat the inspection for that PSE at intervals not to exceed ΔNDI/2.

Reporting Requirements

(c) All negative, positive, or discrepant findings (*e.g.*, differences on the airplane from the NDI reference standard, such as PSEs that have been repaired, altered, or modified) of the inspections accomplished under paragraph (b) of this AD, must be reported to Boeing, at the times specified in, and in accordance with the instructions contained in, Section 3 of Volume I of the SID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Corrective Actions

(d) Any cracked structure of a PSE detected during any inspection required by paragraph (b) of this AD must be repaired before further flight in accordance with an FAA-approved method. Accomplish follow-on actions described in paragraphs (d)(1), (d)(2), and (d)(3) of this AD, at the times specified.

(1) Within 18 months after repair, perform a damage tolerance assessment (DTA) that defines the threshold for inspection of the repair and submit the assessment for approval to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) Prior to reaching 75% of the threshold, submit the inspection methods and repetitive inspection intervals for the repair for approval by the Manager of the Los Angeles ACO.

(3) Prior to the threshold determined in paragraph (d)(1) of this AD, incorporate the inspection method and repetitive inspection intervals into the FAA-approved structural maintenance or inspection program for the airplane.

Note 1: For the purposes of this AD, the FAA anticipates that submissions of the damage tolerance assessment of the repair, if acceptable, should be approved within six months after submission

Inspection for Transferred Airplanes

(e) Before any airplane that is subject to this AD and that has exceeded the applicable compliance times specified in paragraph (b) of this AD can be added to an air carrier's operations specifications, a program for the accomplishment of the inspections required by this AD must be established per paragraph (e)(1) or (e)(2) of this AD, as applicable.

(1) For airplanes that have been inspected per this AD, the inspection of each SSI must be accomplished by the new operator per the previous operator's schedule and inspection method, or the new operator's schedule and inspection method, at whichever time would result in the earlier accomplishment date for that SSI inspection. The compliance time for accomplishment of this inspection must be measured from the last inspection accomplished by the previous operator. After each inspection has been performed once, each subsequent inspection must be performed per the new operator's schedule and inspection method.

(2) For airplanes that have not been inspected per this AD, the inspection of each SSI required by this AD must be accomplished either prior to adding the airplane to the air carrier's operations specification, or per a schedule and an inspection method approved by the Manager, Los Angeles ACO, FAA. After each inspection has been performed once, each subsequent inspection must be performed per the new operator's schedule.

Inspections Accomplished Before the Effective Date of This AD

(f) Inspections per Boeing Report No. L26–022, ''MD–80 Supplemental Inspection Document (SID),'' Revision A, dated September 2000, accomplished prior to the effective date of this AD, are acceptable for

compliance with the requirements of paragraph (b) of this AD.

Acceptable for Compliance

(g) McDonnell Douglas Report No. MDC 91K0263, ''DC–9/MD–80 Aging Aircraft Repair Assessment Program Document,'' dated July 1997, provides inspection/replacement programs for certain repairs to the fuselage pressure shell. These repairs and inspection/replacement programs are considered acceptable for compliance with the requirements of paragraphs (b) and (d) of this AD for repairs subject to that document.

Alternative Methods of Compliance

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

Issued in Renton, Washington, on October 1, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–25493 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–92–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes Equipped with Certain Litton Air Data Inertial Reference Units

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 Airbus Model A319, A320, and A321 series airplanes equipped with certain Litton air data inertial reference units (ADIRU). This proposal would require modifying the shelf (floor panel) above ADIRU 3, and for certain airplanes modifying the polycarbonate guard which covers the ADIRUs, and the ladder located in the avionics compartment, as applicable. This action is necessary to prevent failure of ADIRU 3 during flight, which could result in loss of one source of critical attitude and airspeed data and reduce the ability of the flightcrew to control the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by November 7, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–92–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–92–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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–92–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–92–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes equipped with certain Litton air data inertial reference units (ADIRU). The DGAC advises that operators have reported that ''NAV IR FAULT'' messages have occurred during takeoff on several of these airplanes due to failure of ADIRU 3. Investigation revealed that vibrations during takeoff may cause contact between ADIRU 3 and the shelf (floor panel) above it, due to minimal clearance between the shelf and the ADIRU. Such contact may cause excessive vertical acceleration, which could result in failure of ADIRU 3. Due to its location on the shelf, ADIRU 3 is more sensitive to vibration than the other two ADIRUs. Failure of ADIRU 3 during flight could result in loss of one source of critical attitude and airspeed data and reduce the ability of the flightcrew to control the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–25–1248, dated February 16, 2001, which describes procedures for modifying the shelf (floor panel) above the Litton ADIRUs by installing shims on the webs of the shelf support structure in the avionics rack. In addition, for certain airplanes, the service bulletin includes procedures for modifying the polycarbonate guard

which covers the ADIRUs, and machining the ladder located in the avionics compartment to increase the depth of the slot at the foot of the ladder, as applicable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2002–125(B), dated March 6, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Differences Between the Proposed Rule and the French Airworthiness Directive

Operators should note that, although the French airworthiness directive contains operational dispatch restrictions for airplanes with one ADIRU inoperative, this proposed AD does not include these restrictions because the FAA-approved Master Minimum Equipment List already restricts operations accordingly.

Cost Impact

The FAA estimates that 200 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 modification of the shelf, and that the average labor rate is $65 per work hour. Required parts would cost approximately $300 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $112,000, or $560 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:

Airbus: Docket 2002–NM–92–AD.

Applicability: Model A319, A320, and A321 series airplanes; certificated in any category; equipped with Litton air data inertial reference units (ADIRU) installed per Airbus Modification 24852, 25108, 25336, 26002, or 28218; except those airplanes on which Airbus Modification 30650 or 30872 has been accomplished.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of ADIRU 3 during flight, which could result in loss of one source of critical attitude and airspeed data and reduce the ability of the flightcrew to control the airplane, accomplish the following:

Modification

(a) Within 2 years after the effective date of this AD: Do the modifications specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, as applicable, in accordance with paragraphs A. through D. of the Accomplishment Instructions of Airbus Service Bulletin A320–25–1248, dated February 16, 2001; as applicable.

(1) For all airplanes: Modify the shelf (floor panel) above ADIRU 3 by installing shims between the shelf and the webs of the shelf support structure.

(2) For airplanes with Airbus Modification 25900P3941 or Airbus Service Bulletin A320–25–1200 accomplished as of the effective date of this AD: Modify the polycarbonate guard (umbrella) protecting the ADIRUs by installing shims between the guard and the shelf support structure.

(3) For airplanes with Airbus Modification 23027P2852 or Airbus Service Bulletin A320–52–1038 accomplished as of the effective date of this AD: Modify the ladder located in the avionics compartment by machining the slot at the foot of the ladder to increase the depth by 0.236 inch.

Alternative Methods of Compliance

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

Note 1: The subject of this AD is addressed in French airworthiness directive 2002–125(B), dated March 6, 2002.

Issued in Renton, Washington, on October 2, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–25494 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

RIN 2120–AA66

[Docket No. FAA–2003–15410; Airspace Docket No. 03–AAL–1]

Establishment of Restricted Area 2204, Oliktok Point; AK

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish a restricted area (R–2204) in the vicinity of Oliktok Point, AK, as part of a Department of Energy (DOE) initiative. The DOE has requested the establishment of this airspace to support its Mixed-Phased Arctic Clouds experiment. This experiment utilizes a moored balloon which will fly up to 7,000 feet mean sea level (MSL). This proposed action supports the DOE, Sandia National Laboratories, National Nuclear Security Administration, climate research project.

DATES: Comments must be received on or before December 8, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify ''FAA Docket No. FAA–2003–15529, and Airspace Docket No. 03–AAL–01,'' at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers (FAA Docket No. FAA–2003–15529, and Airspace Docket No. 03–ANM–03) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2003–15410, and Airspace Docket No. 03–AAL–1.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received.

All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register's** Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see address in ''Comments Invited'' section) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, #14, Anchorage, AK 99513.

Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

History

The DOE is conducting the Mixed-Phased Arctic Clouds experiment to improve understanding of the process and uncertainties related to global climate change. The information obtained at this test site will be combined with information from a broad range of climates from other sites. The knowledge gained through these sites will provide a more credible prediction of global climate change.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (CFR) part 73 (part 73) to establish R–2204 at Oliktok Point, AK, as part of the DOE Mixed-Phased Arctic Clouds experiment. The proposed airspace would be established northeast of Oliktok Point, AK, and would consist of a two nautical mile (nm) area radius from the surface up to but not including 7,000 feet MSL. The proposed area would contain an instrumented, moored balloon on a two-kilometer, unlighted cable for the purpose of collecting air samples during instrument flight conditions. The proposed area would be activated starting October 2004 for approximately 30 days a year, and be effective through the year 2009. The area would be activated by NOTAM 24 hours in advance. The restricted area is necessary for safety reasons.

Section 73.22 of Part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8K dated September 26, 2002.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to the appropriate environmental analysis in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

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

§ 73.22 [Amended]

2. § 73.22 is amended as follows:

* * * * *

R–2204, Oliktok Point, AK [New]

Boundaries. Within a 2 nautical mile radius centered at (lat. 70°30′35″ N., long. 149°51′33″ W.).

Designated altitudes. Surface to, but not including, 7,000 feet MSL.

Time of designation. By NOTAM, 24 hours in advance, not to exceed 30 days annually.

Controlling agency. FAA, Anchorage ARTCC.

Using agency. Department of Energy, Sandia National Labs/National Nuclear Security Administration, Albuquerque, NM.

* * * * *

Issued in Washington, DC, on September 17, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–25422 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 514

RIN 3141–AA16

Fees

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule.

SUMMARY: The National Indian Gaming Commission (NIGC or Commission) is proposing to amend its fee regulations. The regulations are being amended to reflect changes in the statutory limit set by Congress.

DATES: Comments must be submitted on or before November 30, 2003.

ADDRESSES: Comments may be mailed to: Fee Change Comments, 1441 L Street, NW., Suite 9100, Washington, DC, 20005, delivered to that address between 8:30 a.m. and 5:30 p.m., Monday through Friday, or faxed to 202/632–7066 (this is not a toll-free number). Comments received may be inspected between 9 a.m. and noon, and between 2 p.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: John R. Hay at 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA), enacted on October 17, 1988, established the National Indian Gaming Commission (Commission). The Commission is funded entirely from fees collected from Indian gaming operations. The Commission is proposing changing its current regulations to reflect changes in the statutory limit imposed by Congress. This regulation is being amended so that the amount of fees imposed by the Commission is directly related to congressional action. Under the current regulation the Commission may only impose fees not exceeding $8,000,000, during any fiscal year. For fiscal year 2004, Congress has increased that amount to a maximum of $12,000,000. The proposed change will allow the Commission to collect up to the statutory maximum and will eliminate the need to regularly amend this regulation as Congress raises or lowers the fee level.

Regulatory Flexibility Act

The Commission certifies that the proposed rule will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The factual basis for this certification is as follows:

Of the 330 Indian gaming operations across the country, approximately 150 have revenues under 10 million. Of these, approximately 90 operations have gross revenues of under 3 million. Those operations that gross less than 1.5 million are exempt from fees. Since fee assessments are based on a percentage of gross revenues until the maximum allowed by Congress is reached, and new gaming operations continue to open, the amount individual tribal gaming operations will pay in fees will likely only increase slightly or may in fact decrease. For these reasons, the Commission has concluded that the proposed rule will not have a significant economic impact on those small entities subject to the rule.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The proposed rule will not result in an annual effect on the economy of more than $100 million per year; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises.

Unfunded Mandates Reform Act

The Commission is an independent regulatory agency, and, as such, is not subject to the Unfunded Mandates Reform Act. Even so, the Commission has determined that this final rule does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector, of more than $100 million per year. Thus, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

Takings

In accordance with Executive Order 12630, the Commission has determined that this rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of General Counsel 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

The proposed rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501–3520) would be required.

National Environmental Policy Act

The Commission has determined that this proposed rule does not constitute a major Federal Action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Dated: October 2, 2003.

Philip N. Hogen,

Chairman, National Indian Gaming Commission.

List of Subjects in 25 CFR Part 514

Gambling, Indians-lands, Reporting and recordkeeping requirements.

Accordingly, 25 CFR part 514 is proposed to be amended as follows:

The authority citation for part 514 continues to read as follows:

Authority: 25 U.S.C. 2702 *et seq.*

Section 514.1(d) is revised to read as follows:

§ 514.1 Annual fees.

* * * * *

(d) The total amount of all fees imposed during any fiscal year shall not exceed the statutory maximum imposed by Congress. The Commission shall credit pro-rata any fees collected in excess of this amount against amounts otherwise due at the end of the quarter following the quarter during which the Commission makes such determination.

(1) The Commission will notify each gaming operation as to the amount of overpayment, if any, and therefore the amount of credit to be taken against the next quarterly payment otherwise due.

(2) The notification required in paragraph (d)(1) of this section shall be made in writing addressed to the gaming operation.

* * * * *

[FR Doc. 03–25472 Filed 10–7–03; 8:45 am]

BILLING CODE 7565–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2002–1D]

Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The Copyright Office of the Library of Congress is requesting public comment on the adoption of regulations for records of use of sound recordings performed pursuant to the statutory license for public performances of sound recordings by means of digital audio transmissions between October 28, 1998, and the effective date of soon-to-be-announced interim regulations.

DATES: Comments are due no later than November 24, 2003. Reply comments are due no later than December 22, 2003.

ADDRESSES: An original and five copies of any comment or reply comment shall be delivered by hand to: Office of the General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE., Washington, DC 20559–6000; or mailed to: Copyright Arbitration Royalty Panel (CARP), PO Box 70977, Southwest Station, Washington, DC 20024–0977.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney, PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380; Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

The Copyright Act grants copyright owners of sound recordings the exclusive right to perform their works publicly by means of digital audio transmissions subject to certain limitations and exceptions. Among the limitations placed on the performance of sound recordings is a statutory license that permits certain eligible subscription, nonsubscription, satellite digital audio radio, business establishment and new subscription services to perform those sound recordings publicly by means of digital audio transmissions. 17 U.S.C. 114.

Similarly, copyright owners of sound recordings are granted the exclusive right to make copies of their works subject to certain limitations and exceptions. Among the limitations placed on the reproduction of sound recordings is a statutory license that permits certain eligible subscription, nonsubscription, satellite digital audio, business establishment and new subscription services to make ephemeral copies of those sound recordings to facilitate their digital transmission. 17 U.S.C. 112(e).

Both the section 114 and 112 licenses require services to, among other things, report to copyright owners of sound recordings on the use of their works. Both licenses direct the Librarian of Congress to establish regulations to give copyright owners reasonable notice of the use of their works and create and maintain records of use for delivery to copyright owners. 17 U.S.C. 114(f)(4)(A) and 17 U.S.C. 112(e)(4). The purpose of the exchange of data is to ensure that the royalties collected under the statutory licenses are distributed to the correct recipients.

The Copyright Office will soon be publishing interim regulations setting forth the categories of information that services making use of sound recordings under the statutory licenses must report. Those interim regulations will require services to identify performances of sound recordings that they transmit pursuant to the statutory license, providing information such as the titles of sound recordings that are transmitted, the names of the recording artists, etc. However, the interim regulations will be prospective in nature, meaning that they will not apply to the period from October 28, 1998, to the effective date of the interim rules. Consequently, there are currently no regulations establishing the requirements for creating and reporting records of use for this earlier time period.[1] While it is certain that many services have maintained few or, in many instances, no records of prior uses, a mechanism must be adopted to account for the performances that occurred during this period in order to distribute the royalty fees collected during this period. Thus, we seek public comment as to the form and content such regulations should take.

Request for Comment

Incomplete and absent records create serious difficulties for the Copyright Office in fashioning regulations that apply to prior uses of sound recordings. If only partial prior records of use are reported, and if only some services are able to submit such reports, the data gathered from those records is likely to skew the royalty distribution process. How should the Office address this problem? Should the Office require licensees to report actual performance data for the historical period, if available; and if so, what elements should be reported, bearing in mind that the information provided must be sufficient to identify the copyright owners and performers who are the beneficiaries of these licenses? What, if any, proxies may be used in lieu of incomplete or missing prior records? Are there costs associated with using proxies, and if so, who should bear the cost of obtaining use of these proxies?

The Copyright Office seeks answers to these questions and encourages interested parties to consider the costs and benefits to both the licensees and the copyright owners when formulating a mechanism for accounting for past performances. In particular, we seek concrete proposals and proposed regulatory language to implement rules for the reporting of prior records of use. Services and copyright owners are encouraged to explore the possibility of joint submissions of comments that represent consensus among interested parties.

Dated: October 3, 2003.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 03–25523 Filed 10–7–03; 8:45 am]

BILLING CODE 1410–33–P

[1] There is one exception. Regulations, codified at 37 CFR 201.36, are already in place for preexisting subscription services, *i.e.*, subscription services in existence before July 31, 1998. See 17 U.S.C. 114(j)(11); see also 67 FR 5791 (February 7, 2002). This notice of inquiry seeks comments on requirements for records of use for all types of services operating under the section 114 statutory license except preexisting subscription services.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 187–1187; FRL–7569–8]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the State Implementation Plan (SIP) submitted by the state of Iowa. The purpose of this revision is to approve the 1998 and 2000 updates to the Polk County Board of Health Rules and Regulations, Air Pollution, Chapter V. These revisions will help to ensure consistency between the applicable local agency rules and Federally-approved rules, and ensure Federal enforceability of the applicable parts of the local agency air programs.

DATES: Comments on this proposed action must be received in writing by November 7, 2003.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Electronic comments should be sent either to Heather Hamilton at *hamilton.heather@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in ''What action is EPA taking'' in the **SUPPLEMENTARY INFORMATION** section of the direct final rule which is located in the rules section of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: September 25, 2003.

Nat Scurry,

Acting Regional Administrator, Region 7.

[FR Doc. 03–25397 Filed 10–7–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 70 and 71

[CA102–OPP; FRL–7571–4]

Proposed Approval of Revision of 34 Clean Air Act Title V Operating Permits Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision of the following 34 Clean Air Act (CAA) title V Operating Permits Programs in the State of California: Amador County Air Pollution Control District (APCD), Bay Area AQMD, Butte County AQMD, Calaveras County APCD, Colusa County APCD, El Dorado County APCD, Feather River AQMD, Glenn County APCD, Great Basin Unified APCD, Imperial County APCD, Kern County APCD, Lake County AQMD, Lassen County APCD, Mariposa County APCD, Mendocino County APCD, Modoc County APCD, Mojave Desert AQMD, Monterey Bay Unified APCD, North Coast Unified AQMD, Northern Sierra AQMD, Northern Sonoma County APCD, Placer County APCD, Sacramento Metro AQMD, San Diego County APCD, San Joaquin Valley Unified APCD, San Luis Obispo County APCD, Santa Barbara County APCD, Shasta County APCD, Siskiyou County APCD, South Coast AQMD, Tehama County APCD, Tuolumne County APCD, Ventura County APCD, and Yolo-Solano AQMD. (EPA's interim approval of Antelope Valley AQMD's title V program expired on January 21, 2003. (Since a full approval of Antelope Valley AQMD's title V program will be necessary to return the program to the District, EPA will address the title V program in that district in a separate rulemaking action.) This program revision is a response to a Notice of Deficiency (NOD) that EPA published in the **Federal Register**. See 67 FR 35990 (May 22, 2002). The NOD explained EPA's finding that the State's agricultural permitting exemption at Health and Safety Code 42310(e) unduly restricted the 34 local districts' ability to adequately administer and enforce their title V programs. Subsequently, we partially withdrew the title V programs of 34 air districts in California. See 67 FR 63551 (October 15, 2002). On September 22, 2003, the Governor of California signed SB 700, which revised State law to remove the agricultural permitting exemption. The legislation eliminates the exemption and therefore corrects the deficiency we identified in the May 22, 2002 NOD. Therefore, today EPA is proposing to approve a revision to the 34 district title V programs because districts now have the authority to permit all major stationary sources, including those agricultural sources that were formerly exempt from title V under State law. Finalization of this approval is contingent upon our receipt of a legal opinion from the California Attorney General that confirms that the elimination of the agricultural permitting exemption from State law provides the 34 districts with authority to issue title V permits to major stationary agricultural sources.

DATES: Comments on this proposed action must be received in writing by November 7, 2003.

ADDRESSES: Written comments on this proposed action should be addressed to Gerardo Rios, Chief, Permits Office, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105, or sent via e-mail to *rios.gerardo@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Gerardo Rios, EPA Region IX, at (415) 972–3974 or *rios.gerardo@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' or ''our'' means EPA.

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I. Background

Title V of the CAA Amendments of 1990 required all State permitting authorities to develop operating permits programs that met certain federal criteria codified at 40 Code of Federal

Regulations (CFR) part 70. On November 30, 2001, we promulgated final full approval of 34 California districts' title V operating permits programs. See 66 FR 63503 (December 7, 2001). Our final rulemaking was challenged by several environmental and community groups alleging that the full approval was unlawfully based, in part, on an exemption in section 42310(e) of the California Health and Safety Code of major agricultural sources from title V permitting. EPA entered into a settlement of this litigation which required, in part, that the Agency propose to partially withdraw approval of the 34 fully approved title V programs in California.

Sections 70.10(b) and 70.10(c) provide that EPA may withdraw a 40 CFR part 70 program approval, in whole or in part, whenever the permitting authority's legal authority does not meet the requirements of part 70 and the permitting authority fails to take corrective action. To commence regulatory action to partially withdraw title V program approval, EPA published the NOD in the **Federal Register**. Pursuant to 40 CFR 70.10(b)(2), publication of the NOD commenced a 90-day period during which the State of California had to take significant action to assure adequate administration and enforcement of the local districts' programs. As described in EPA's NOD, the Agency determined that ''significant action'' in this instance meant the revision or removal of California Health and Safety Code 42310(e), so that the local air pollution control districts could adequately administer and enforce the title V permitting program for stationary agricultural sources that are major sources of air pollution.

During the 90-day period that the State was provided to take the necessary corrective action, EPA proposed to partially withdraw title V program approval in each of the 34 California districts with full program approval. *See* 67 FR 48426 (July 24, 2002). Since the State did not take the necessary action to assure adequate administration and enforcement of the title V program within the required time frame, EPA took final action, pursuant to our authority at 40 CFR 70.10(b)(2)(i), to partially withdraw approval of the title V programs for the 34 local air districts listed above.

II. Description of Proposed Action

We are proposing to approve the program revision of the 34 Clean Air Act title V Operating Permits programs in the State of California. However, finalization of this proposed rulemaking is contingent upon our receipt of a legal opinion from the California Attorney General that confirms that the elimination of the agricultural permitting exemption from State law provides the 34 districts with authority to issue title V permits to major stationary agricultural sources. EPA will not promulgate final approval of the program revision until this legal opinion has been received.

III. Effect of EPA's Rulemaking

Our proposal, if finalized, would result in the 34 districts having title V programs that require all major stationary sources to obtain title V operating permits. It would also terminate EPA's implementation of a part 71 Federal operating permit program for State-exempt major stationary agricultural sources within the jurisdiction of the 34 California air districts listed at the beginning of this proposal. If EPA finalizes this rule, EPA would not issue any permits to these sources, since the 34 districts would have the authority to issue title V permits to major agricultural stationary sources beginning on January 1, 2004. Therefore, if EPA finalizes this rule, EPA will no longer require major stationary agricultural sources to submit part 71 permit applications and will suspend any outstanding application deadlines.

The May 22, 2002, NOD started an 18 month sanctions clock pursuant to CAA section 179(b). CAA Sec. 502(i)(1) and (2), 40 CFR 70.4(k) and 70.10(b)(2)–(4). Finalization of today's proposal would terminate this sanctions clock.

IV. Request for Public Comment

We are soliciting public comment on all aspects of this proposal. Written comments will be considered before taking final action. To comment on today's proposal, you should submit comments by mail (in triplicate if possible) as described in the **ADDRESSES** section listed in the front of this document. We will consider any written comments received by November 7, 2003.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed 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 proposes to approve an existing requirement under state law, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed 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 revisions to state operating permit programs submitted pursuant to Title V of the CAA, EPA will approve such revisions provided that they meet the criteria of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a part 70 program revision for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a part 70 program revision, to use VCS in place of a part 70 program revision 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 proposed 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.*).

Dated: September 29, 2003.

Deborah Jordan,

Acting Regional Administrator, Region 9.

[FR Doc. 03–25545 Filed 10–7–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–7571–7]

RIN 2040–AD37

National Primary Drinking Water Regulations: Long Term 2 Enhanced Surface Water Treatment Rule; Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending by 60 days the public comment period for a proposed National Primary Drinking Water Regulation, the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR), which was published in the Federal Register on August 11, 2003. This extended comment period will afford greater opportunity to all interested parties to review and submit comments on the proposal.

DATES: Comments must be received on or before January 9, 2004.

ADDRESSES: Comments may be submitted by mail to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2002–0039. Comments may also be submitted electronically or through hand delivery/courier by following the instructions provided in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Daniel Schmelling, Office of Ground Water and Drinking Water (MC 4607M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone (202) 564–5281. For general information contact the Safe Drinking Water Hotline, Telephone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding legal holidays, from 9 a.m. to 5:30 p.m., eastern standard time.

SUPPLEMENTARY INFORMATION: The comment period for the proposed LT2ESWTR now ends January 9, 2004. This is an extension of 60 days beyond the comment period established in the **Federal Register** on August 11, 2003. Anyone seeking to submit comments must follow the procedures specified in section I.C. of the proposal as published in the **Federal Register** (68 FR 47640, August 11, 2003).

The LT2ESWTR applies to all public water systems that use surface water or ground water under the direct influence of surface water. This proposed regulation would establish additional risk-targeted treatment requirements for *Cryptosporidium*. It also contains provisions to address risks associated with uncovered finished water storage facilities and to ensure systems maintain microbial protection as they take steps to reduce the formation of disinfection byproducts. See the proposal as published in the **Federal Register** (68 FR 47640, August 11, 2003) for information regarding public health concerns, proposed regulatory requirements, implementation schedules, estimated costs and benefits, implementation tools, and other issues.

Dated: October 2, 2003.

Michael H. Shapiro,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 03–25546 Filed 10–7–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141, 142 and 143

[FRL–7571–8]

RIN 2040–AD38

National Primary Drinking Water Regulations: Stage 2 Disinfectants and Disinfection Byproducts Rule; National Primary and Secondary Drinking Water Regulations: Approval of Analytical Methods for Chemical Contaminants; Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending by 60 days the public comment period for a proposed National Primary Drinking Water Regulation, the Stage 2 Disinfectants and Disinfection Byproducts Rule (DBPR), which was published in the **Federal Register** on August 18, 2003. This extended comment period will afford greater opportunity to all interested parties to review and submit comments on the proposal.

DATES: Comments must be received on or before January 16, 2004.

ADDRESSES: Comments may be submitted by mail to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2002–0043. Comments may also be submitted electronically or through hand delivery/courier by following the instructions provided in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Tom Grubbs, Office of Ground Water and Drinking Water (MC 4607M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone (202) 564–5262. For general information contact the Safe Drinking Water Hotline, Telephone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding legal holidays, from 9 a.m. to 5:30 p.m., eastern standard time.

SUPPLEMENTARY INFORMATION: The comment period for the proposed Stage 2 DBPR now ends January 16, 2004. This is an extension of 60 days beyond the comment period established in the **Federal Register** on August 18, 2003. Anyone seeking to submit comments must follow the procedures specified in section I.C. of the proposal as published in the **Federal Register** (68 FR 49548, August 18, 2003).

The Stage 2 DBPR applies to all public water systems that add a disinfectant other than ultraviolet light. This proposed regulation would establish revised procedures for monitoring and determining compliance with the maximum contaminant levels for trihalomethanes and haloacetic acids. It contains specific provisions for consecutive systems. *See* the proposal as published in the **Federal Register** (68 FR 49548, August 18, 2003) for information regarding public health concerns, proposed regulatory requirements, implementation schedules, estimated costs and benefits, implementation tools, and other issues.

Dated: October 2, 2003.

Michael H. Shapiro,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 03–25547 Filed 10–7–03; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 68, No. 195

Wednesday, October 8, 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

Agricultural Marketing Service

[Doc. No. TM–03–08]

Request for an Extension of and Revision to a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's intention to request approval from the Office of Management and Budget, for an extension of and revision to the currently approved information collection National Organic Program Record Keeping Requirements.

DATES: Comments received by December 8, 2003 will be considered.

ADDITIONAL INFORMATION OR COMMENTS: Contact Toni Strother, National Organic Program, Transportation and Marketing Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 4008-So., Ag Stop 0268, Washington, DC 20250, telephone (202) 720–3252, fax (202) 205–7808.

SUPPLEMENTARY INFORMATION:

Title: National Organic Program.

OMB Number: 0581–0191.

Expiration Date Of ApprovaI: January 31, 2004.

Type of Request: Extension and Revision of a currently approved information collection.

Abstract: The Organic Foods Production Act of 1990 (OFPA) as amended (7 U.S.C. 6501 *et seq.*) mandates that the Secretary develop a National Organic Program (NOP) to accredit eligible State program's governing State officials or private persons as certifying agents who would certify producers or handlers of agricultural products that have been produced using organic methods as provided for in OFPA. This regulation: (1) Established national standards governing the marketing of certain agricultural products as organically produced products; (2) assures consumers that organically produced products meet a consistent standard; and (3) facilitates interstate commerce in fresh and processed food that is organically produced. The NOP requires that agricultural products labeled ''organic'' be from a production or handling operation that is certified by a certifying agent who is accredited by the U.S. Department of Agriculture (USDA).

Proposed rules to implement OFPA were published in December 1997 and March 2000. Both contained information collection requirements, an estimate of the annual economic burden on the organic industry, and a request for comments about the burden. The Agricultural Marketing Service (AMS) addressed these comments in the final rule published on December 21, 2000 (65 FR 80548) to ensure that the least amount of the burden is placed on the public.

Reporting and recordkeeping are essential to the integrity of the organic certification system. They create a paper trail that is a critical element in carrying out the mandate of OFPA and NOP. They serve the AMS mission, program objectives, and management needs by providing information on the efficiency and effectiveness of the program. The information affects decisions because it is the basis for evaluating compliance with OFPA and NOP, for administering the program, for management decisions and planning, and for establishing the cost of the program. It supports administrative and regulatory actions in response to noncompliance with OFPA and NOP.

In general, the information collected is used by USDA, State program governing State officials, and certifying agents. It is created and submitted by State and foreign program officials, peer review panel members, accredited certifying agents, organic inspectors, certified organic producers and handlers, those seeking accreditation or certification, and parties interested in changing the National List. Additionally, it necessitates that all of these entities have procedures and space for recordkeeping. The burden on each entity is discussed below.

USDA. USDA is the accrediting authority. USDA accredits domestic and foreign certifying agents who certify domestic and foreign organic producers and handlers, using information from the agents documenting their business operations and program expertise. USDA also permits State program governing State officials to establish their own organic certification programs after the programs are approved by the Secretary, using information from the States documenting their ability to operate such programs and showing that such programs meet the requirements of OFPA and NOP.

States. State program governing State officials may operate their own organic certification programs. State officials obtain the Secretary's approval of their programs by submitting information to USDA documenting their ability to operate such programs and showing that such programs meet the requirements of OFPA and NOP. To date no State organic certification programs have been approved by USDA. Upon approval State organic certification programs will require reporting and recordkeeping burdens similar to those required by the NOP. The annual burden for each State will be an average of 74 hours or if calculated at a rate of $27 per hour (rounded up to the next dollar) $1,998.

Peer review panels. The panel assists the AMS Administrator in evaluating NOP's adherence to the accreditation procedures in subpart F of the regulations and International Organization for standards/International Electro-technical Commission Guide 61, General requirements for assessment and accreditation of certification/registration bodies, and NOP's accreditation decisions. The American National Standards Institute (ANSI) was selected by the NOP to perform the peer review assessment. The peer review panel consists of three individuals, two ANSI provided assessors and one NOP technical expert. Estimates: Three people participate in the peer review panel. The annual burden for each panel member is an average of 4 hours or if calculated at a rate of $27 per hour (rounded up to the next dollar) $108.

Certifying agents. Certifying agents are State program governing State officials, private entities, or foreign entities who are accredited by USDA to certify

domestic and foreign producers and handlers as organic in accordance with OFPA and NOP. Each entity wanting to be an agent seeks accreditation from USDA, submitting information documenting its business operations and program expertise. Accredited agents determine if a producer or handler meets organic requirements, using detailed information from the operation documenting its specific practices and on-site inspection reports from organic inspectors. Initial estimates were based on 59 entities applying for accreditation (13 State programs, 36 private entities, 10 foreign entities). The initial burden for each State program was an average of 695 hours or if calculated at a rate of $27 per hour (rounded up to the next dollar) $18,765. The initial burden for each private or foreign entity was 700 hours or if calculated at a rate of $27 per hour (rounded up to the next dollar) $18,900. To date 87 certifying agents (15 State programs, 38 private entities, 34 foreign entities) have been accredited. The AMS anticipates receiving an estimated 10 new applications per year. Accredited certifying agents submit annual updates with an annual burden, for each certifying agent, of an average of 3 hours or if calculated at a rate of $27 per hour (rounded up to the next dollar) $81.

Administrative costs for reporting, disclosure of information, and recordkeeping vary among certifying agents. Factors affecting costs include the number and size of clients, the categories of certification provided, and the type of systems maintained.

When an entity applies for accreditation as a certifying agent, it must provide a copy of its procedures for complying with recordkeeping requirements (§ 205.504 (b)(3)). Once certified, agents have to make their records available for inspection and copying by authorized representatives of the Secretary (§ 205.501 (a)(9)). The USDA charges certifying agents for the time required to do these document reviews. Audits require less time when the documents are well organized and centrally located.

Recordkeeping requirements for certifying agents are divided into three categories of records with varying retention periods: (1) Records created by certifying agents regarding applicants for certification and certified operations, maintain 10 years, consistent with OFPA's requirement for maintaining all records concerning activities of certifying agents; (2) records obtained from applicants for certification and certified operations, maintain 5 years, the same as OFPA's requirement for the retention of records by certified operations; and (3) records created or received by certifying agents regarding accreditation, maintain 5 years, consistent with OFPA's requirement for renewal of agent's accreditation (§ 205.5 10 (b)).

Organic inspectors. Inspectors, on behalf of certifying agents, conduct on-site inspections of certified operations and operations applying for certification. They determine whether or not certification should continue or be granted and report their findings to the certifying agent. Inspectors are the agents themselves, employees of the agents, or individual contractors. We estimate that about half are certifying agents and their employees and half are individual contractors. Individuals who apply for positions as inspectors submit to the agents information documenting their qualifications to conduct such inspections. Estimates: 293 inspectors (147 certifying agents and their employees, 146 individual contractors). The annual burden for each inspector is an average of 48 hours or if calculated at $27 per hour (rounded up to the next dollar) $1,296.

Producers and handlers. Producers and handlers, domestic and foreign, apply to certifying agents for organic certification, submit detailed information documenting their specific practices, provide annual updates to continue their certification, and report changes in their practices. Producers include farmers, livestock and poultry producers, and wild crop harvesters. Handlers include those who transport or transform food and include millers, bulk distributors, food manufacturers, processors, repackagers, or packers. Some handlers are part of a retail operation that processes organic products in a location other than the premises of the retail outlet.

The OFPA requires certified operators to maintain their records for 5 years. Initial estimates of: 19,400 total operators (14,253 certified and 5,147 exempt), including 17,150 producers (12,176 certified and 4,974 exempt) and 2,150 handlers (1,977 certified and 173 exempt) have not changed. The annual recordkeeping burden for each certified operator is an average of 5 hours or if calculated at $24 per hour (rounded up to the next dollar) $120.

The NOP exempts certain operations from certification: (1) Producers and handlers whose gross agricultural income from organic sales totals $5,000 or less annually; (2) handlers selling only agricultural products that contain less than 70 percent organic ingredients by total weight of the finished product; (3) handlers that handle agricultural products that contain at least 70 percent organic ingredients and choose to use the word ''organic'' only on the information panel of a packaged product; and (4) handlers that are retail food establishments that handle organic food but do not process it. The NOP also excludes certain operations from certification: (1) Handlers selling only agricultural products labeled as organic or made with organic ingredients that are enclosed in a container prior to being received, remain in the same container, and are not otherwise processed while in the control of the operation; and (2) handlers that are retail food establishments that process or prepare, on the premises, raw and ready-to-eat food from organic agricultural products.

Administrative costs for reporting and recordkeeping vary among certified operators. Factors affecting costs include the type and size of operation, and the type of systems maintained.

Research studies have indicated that operations using product labels containing the term ''organic'' handle an average of 19.5 labels annually and that there are about 16,000 products with the term organic on the label. An estimate of the time needed to develop labels for products sold, labeled, or represented as ''100 percent organic,'' ''organic,'' ''made with organic (specified ingredients),'' or which use the term organic to modify an ingredient in the ingredients statement is included. Also included is the time spent deciding about use of the USDA seal, a State emblem, or the seal, logo, or other identifying marks of a private certifying agent (Sec. 205.300–Sec. 205.310). Because the labeling requirements are in addition to Food and Drug Administration and Food Safety and Inspection Service requirements, the burden measurement does not include the hours necessary to develop the entire label. For purposes of calculating the burden, it is estimated that each handler develops 20 labels annually. Estimates: 1,977 certified handlers. The annual burden for each certified handler is an average of 1 hour per product label times 20 product labels per handler or if calculated at a rate of $27 per hour (rounded up to the next dollar) $540.

Interested parties. Any interested party may petition the NOSB for the purpose of having a substance evaluated for recommendation to the Secretary for inclusion on or deletion from the National List. Estimates: 25 interested parties may petition the NOSB. The annual burden for each interested party is an average of 104 hours or if calculated at $24 per hour (rounded up to the next dollar) $2,496.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.72 hours per response.

Respondents: Producers, handlers, certifying agents, inspectors and State, Local or Tribal governments and interested parties.

Estimated Number of Respondents: 19,766.

Estimated Number of Responses: 345,912.

Estimated Number of Responses Per Respondent: 17.5.

Estimated Total Annual Burden on Respondents: 593,523.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Richard H. Mathews, Program Manager, National Organic Program, USDA–AMS–TM–NOP, 1400 Independence Ave., SW., Room 4008–S0., Ag Stop 0268, Washington, DC 20250 or via the Internet at: *Paperwork@usda.gov,* or by fax at: (202) 205–7808. All comments received will be available for public inspection during regular business hours at the same address. Also, all comments to this notice will be available for viewing on the NOP homepage at *http://www.ams.usda.gov/nop.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Authority: 7 U.S.C. 6501–6522.

Dated: October 2, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–25459 Filed 10–7–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–034N]

Codex Alimentarius Commission: Meeting of the Codex Committee on Food Import and Export Inspection and Certification Systems

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice.

SUMMARY: The Office of the Under Secretary for Food Safety, United States Department of Agriculture and the United States Department of Health and Human Services, Food and Drug Administration (FDA), are sponsoring two public meetings. The first meeting will be held on October 22, 2003, to review and receive comments in preparation to develop draft U.S. positions, and the second will be held on November 12, 2003, to provide information and receive public comments on the U.S. Draft positions for agenda items that will be discussed at the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS), which will be held in Brisbane, Australia, December 1–5, 2003. The Under Secretary and FDA recognize the importance of providing interested parties with information on the Twelfth Session of CCFICS and to address items on the Agenda.

DATES: The public meetings are scheduled for Wednesday, October 22, 2003, from 1 p.m. to 4 p.m., and Wednesday, November 12, 2003, from 1 p.m. to 3 p.m.

ADDRESSES: The public meetings will be held in Room 1A001 of the Harvey W. Wiley Federal Building, 5100 Paint Branch Pkwy, College Park, MD (green line, College Park Metro stop).

To receive copies of the documents referenced in this notice, contact the Food Safety and Inspection Service (FSIS) Docket Clerk, U.S. Department of Agriculture, FSIS, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also become available via the World Wide Web at the following address: *http://codexalimentarius.net/current.asp.* If you have comments, please send an original and two copies to the FSIS Docket Clerk and reference Docket #03–034N. All comments submitted will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Edith Kennard, Staff Officer, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250–3700, telephone (202) 720–5261, Fax: (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, FDA, and EPA manage and carry out U.S. Codex.

The Codex Committee on Food Import and Export Inspection and Certification Systems was established to develop principles and guidelines for food import and export inspection and certification systems to facilitate trade through harmonization and to supply safe and quality foods to consumers. The CCFICS develops principles and guidelines for the application of measures by competent authorities to provide assurance that food comply with essential requirements. Additionally, the CCFICS develops guidelines for quality assurance systems to ensure that foods conform with essential requirements.

The following issues will be discussed during the public meetings:

1. Proposed Draft Revision to the Codex Guidelines for the Exchange of Information on Food Control Emergency Situations.
2. Discussion Paper on Traceability/Product Tracing in the Context of Food Import and Export Inspection and Certification Systems.
3. Discussion Paper on the Judgment of Equivalence of Technical Regulations Associated with Food Inspection and Certification Systems.

Additional Public Notification

Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice and informed about the mechanism for providing their

comments, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on line through the Internet at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents and stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information, contact the Congressional and Public Affairs Office at (202) 720–9113. To be added to the free e-mail subscription service (Listserv), go to the ''Constituent Update'' page on the FSIS web site at *http://www.fsis.usda.gov/oa/update.htm.* Click on the ''Subscribe to the Constituent Update Listserv'' link, then fill out and submit the form.

Done at Washington, DC, on October 2, 2003.

F. Edward Scarbrough,

U.S. Manager for Codex.

[FR Doc. 03–25460 Filed 10–7–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted petitions filed by the Catfish Farmers of America, Indianola, Mississippi; Rutledge & Rutledge, Newport, Arkansas; and the Western Regional Chapter of Kentucky Aquaculture Association, Farmington, Kentucky, for trade adjustment assistance. The groups represent catfish producers in the states of Alabama, Arkansas, Florida, Georgia, Idaho, Illinois, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nevada, North Carolina, Ohio, Oklahoma, South Carolina, Texas, and Utah. The Administrator will determine within 40 days whether or not imports of fresh, chilled, or frozen catfish fillets, contributed importantly to a decline in domestic producer prices of 20 percent or more during calendar 2002. If the determination is positive, all catfish farmers represented by the petitioners will be eligible to apply to the Farm Service Agency for technical assistance at no cost and adjustment assistance payments.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: October 2, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–25522 Filed 10–7–03; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Kirkwood Mountain Resort's 2003 Mountain Master Development Plan; Eldorado National Forest, Placer County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Eldorado National Forest, Amador Ranger District is preparing an Environmental Impact Statement (EIS) analyzing proposed improvements outlined in Kirkwood Mountain Resort's *2003 Mountain Master Development Plan,* which provides for long-range planning on National Forest System lands with Kirkwood's Special Use Permit (SUP) area. The *August 2001 Mountain Master Development Plan* was slightly revised in September 2003 in order to accurately reflect Kirkwood's *2003 Specific Plan,* which was recently approved via the California Environmental Policy Act review process, and provides for long-range development of private lands within the Kirkwood community. Therefore, the *August 2001 Mountain Master Development Plan* will be referred to as the 2003 MMDP. The projects detailed within the 2003 MMDP were evaluated cumulatively within the *2003 Kirkwood Recirculated Revised Final Environmental Impact Report.*

The 2003 MMDP provides a detailed account of the Kirkwood's existing and potential recreational assets, constraints, and future needs. Kirkwood is seeking site-specific NEPA review of all projects identified in the 2003 MMDP which, if approved, could be implemented within five to eight years.

The 2003 MMDP focuses on enhancing the recreational experience at Kirkwood by providing for improvements to: the lift and terrain network; on-mountain guest services; snowmaking coverage; infrastructure; and non-skiing/riding activities. Due to the nature of Kirkwood's lift and terrain network, some of the proposals contained in the 2003 MMDP overlap onto adjacent, private property; however, all proposals for NFS lands are confined to Kirkwood's existing SUP area, and the SUP area is not proposed for expansion or modification.

DATES: Comments concerning the scope and implementation of this proposal should be received by November 7, 2003.

ADDRESSES: Send comments to Anthony Botello, Project Leader, Eldorado National Forest, 26820 Silver Drive, Pioneer, CA 95666, (209) 295–5998 Fax

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Anthony Botello, at the above address, or call him at (209) 295–5960.

SUPPLEMENTARY INFORMATION: Kirkwood's Alpine comfortable carrying capacity (CCC—defined as the optimum number of guests accommodated by a resort at any one time, which affords a high quality recreational experience) is derived from the resort's combined uphill hourly capacity and the estimated demand for vertical transport. The 2003 MMDP proposes to increase Alpine CCC at Kirkwood from 6,460 guests to 9,300 guests.

Six existing aerial lifts are proposed for upgrades and/or realignments, including: Caples Crest (Chair 2)—which would be renamed ''Flying Carpet'' with full implementation of the 2003 MMDP; Iron Horse (Chair 3); Sunrise (4); Solitude (Chair 5); Wagon Wheel (Chair 10); and Reut (Chair 11). Two new chairlifts are proposed—Caples Crest Express and Thimble Peak (lifts A and C, respectively), as well as four new surface lifts—Look Out Vista (Lift B), Covered Wagon (Lift D), Red Cliffs (Lift E) and a snowplay lift. Proposed aerial and surface lifts would provide access to existing hike-to terrain within Kirkwood's SUP area.

Proposed terrain additions and improvements are proposed within Kirkwood's SUP area which would increase Kirkwood's formalized (*i.e.,* named) trail network from approximately 567 acres to approximately 781 acres. (Off-piste (*i.e.,* natural/ungroomed) terrain is not

accounted for in this trail inventory or acreage). Seasonal construction (*i.e.,* from snow only) of a terrain park under Chair 4 and miscellaneous trail widening and improvements are proposed to improve the quality and diversity of the recreational experience offered at Kirkwood. The majority of terrain additions are proposed in open bowls, natural glades, and above treeline areas. Minor amounts of vegetation removal are proposed in association with new lift access and trails.

The Proposed Action includes installation of additional snowmaking infrastructure as well as re-analysis of previously approved, unimplemented snowmaking infrastructure. At full build-out, Kirkwood would offer approximately 192 acres of snowmaking coverage (56 acres of existing plus proposed/previously approved).

An on-mountain lodge near the summit of Caples Crest with year-round casual and fine dining, 700 indoor and 500 outdoor seats, restrooms, and ski patrol facilities, is proposed.

New ski patrol duty stations would be constructed atop the Covered Wagon, Thimble Peak, and the Red Cliffs lifts. In addition, the Proposed Action provides for modifications to the Chair 10 ski patrol duty station; and replacement of the Chair 2 ski patrol duty station with ski patrol space allocated in the Caples Crest Lodge. An overnight snowcat storage facility (for one machine) atop the Wagon Wheel Chairlift (Chair 10) and storage for an additional snowcat atop the Cornice Chairlift (Chair 6) is also proposed.

Non-skiing/riding improvements include: relocation and redesign of Kirkwood's snowtubing area to a mix of NFS/private lands near the Village; a paragliding program with launch sites accessed via the Caples Crest Express, Cornice Express, and Wagon Wheel chairlifts; improved access to Kirkwood's multiple use trails and a modified scenic ride program are also proposed; and improvement of two existing Nordic trails (*Agony* and *Ecstasy*) by using limited rock blasting within the existing trail corridor.

Infrastructural improvements include updating on-mountain utilities including power, water, sewer and communication lines.

A number of other projects on private lands at Kirkwood are addressed in Kirkwood's *2003 Specific Plan.* While facilities and projects located on private lands will not be analyzed in detail in this EIS, they have been incorporated into the overall planning and will be discussed cumulatively.

The Proposed Action is consistent with the 1989 Eldorado National Forest Land and Resource Management Plan as amended by the Sierra Nevada Forest Plan Amendment Record of Decision (2001).

The decision to be made is whether to adopt and implement the Proposed Action, an alternative to the Proposed Action, or take no action.

Other alternatives will be developed based on significant issues identified during the scoping process for the Environmental Impact Statement. All alternatives will need to respond to the states Purpose and Need. Alternatives being considered at this time include: (1) No Action and (2) the Purposed Action.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from the Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the Proposed Action. To facilitate public participation, information about the Proposed Action is being mailed to all who have expressed interest in the Proposed Action and notification of the public scoping period will be published in the Mountain Democrat, Placerville, CA.

Comments submitted during the scoping process should be specific to this proposed action. The comments should describe as clearly and completely as possible any issues the commenter has with the proposal. The scoping process includes:

(a) Identifying potential issues;

(b) Identifying issues to be analyzed in depth.

(c) Eliminating non-significant issues or those previously covered by a relevant previous environmental analysis;

(d) Exploring additional alternatives;

(e) Identifying potential environmental effects of the Proposed Action and alternatives;

The draft EIS will be filed with the Environmental Protection Agency (EPA) and is expected to be available for public review by late Spring/early Summer 2004. EPA will publish a Notice of Availability (NOA) of the draft EIS in the Federal Register at that time. The comment period on the draft EIS will be 45 days from the date the EPA NOA appears in the Federal Register. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. It is very important that those interested in the management of the Eldorado National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. (*Vermont Yankee Nuclear Power Corp.* v. *NRDC.,* 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until after completion of the final EIS may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the Proposed Action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The final EIS is anticipated to be completed in fall 2004. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal.

Judith Yandoh, Amador District Ranger, Eldorado National Forest is the responsible official. As the responsible official she will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR part 215).

Dated: September 30, 2003.

Anthony Botello,

Acting Amador District Ranger.

[FR Doc. 03–25486 Filed 10–7–03; 8:45 am]

BILLING CODE 3410–11–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act; Closed Meeting

DATE AND TIME: October 14, 2003; 1 p.m.–5 p.m.

PLACE: Broadcasting Board of Governors, 330 Independence Avenue, SW, Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

FOR FURTHER INFORMATION CONTACT: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: October 6, 2003.

Carol Booker,

Legal Counsel.

[FR Doc. 03–25646 Filed 10–6–03; 2:04 pm]

BILLING CODE 8230–01–M

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

In connection with its investigation into a violent explosion that occurred in a chemical distillation tower at First Chemical Corporation in Pascagoula, Mississippi, on October 13, 2002, the United States Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 9:30 a.m. local time on October 15, at the LaFont Inn, Highway 90, Pascagoula, Mississippi 39595.

The explosion occurred in a chemical distillation tower, sending heavy debris over a wide area. No one was seriously injured or killed in the incident, which occurred early on a Sunday morning. One nitrotoluene storage tank at the site was punctured by explosion debris, igniting a fire that burned for several hours. Three out of the 23 workers on site at the time of the incident received minor injuries, and nearby residents were temporarily sheltered in place. A producer of aniline and nitrotoluene derivatives and intermediates, First Chemical Corp. is a subsidiary of ChemFirst Inc., which was acquired by Dupont after the accident.

At the meeting CSB staff will present to the Board the results of their investigation into this incident, including an analysis of the incident together with a discussion of the key findings, root and contributing causes, and draft recommendations.

Recommendations are issued by a vote of the Board and address an identified safety deficiency uncovered during the investigation, and specify how to correct the situation. Safety recommendations are the primary tool used by the Board to motivate implementation of safety improvements and prevent future incidents. The CSB uses its unique independent accident investigation perspective to identify trends or issues that might otherwise be overlooked. CSB recommendations may be directed to corporations, trade associations, government entities, safety organizations, labor unions and others.

After the staff presentation, the Board will allow a time for public comment. Following the conclusion of the public comment period, the Board will consider whether to vote to approve the final report and recommendations. When a report and its recommendations are approved, this will begin CSB's process for disseminating the findings and recommendations of the report not only to the recipients of recommendations but also to other public and industry sectors. The CSB believes that this process will ultimately lead to the adoption of recommendations and the growing body of safety knowledge in the industry, which, in turn, should save future lives and property.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in this case. No factual analyses, conclusions or findings should be considered final. Only after the Board has considered the staff presentation and approved the staff report will there be an approved final record of this incident.

The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, at least 5 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board at (202)–261–7600, or visit our Web site at: *http://www.csb.gov.*

Christopher Warner,

General Counsel.

[FR Doc. 03–25597 Filed 10–6–03; 10:38 am]

BILLING CODE 6350–01–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Appointment of Members of Senior Executive Service Performance Review Board

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Notice.

SUMMARY: This notice announces the membership of the Senior Executive Service Performance Review Board for the Chemical Safety and Hazard Investigation Board (CSB).

DATES: Effective October 8, 2003.

FOR FURTHER INFORMATION CONTACT: Raymond C. Porfiri, Office of the General Counsel, (202) 261–7600.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, a performance review board (PRB). The PRB reviews initial performance ratings of members of the Senior Executive Services (SES) and makes recommendations on performance ratings and awards for senior executives. Because the CSB is a small independent Federal agency, the SES members of the CSB's PRB are being drawn from other Federal agencies.

The Chairperson of the CSB has appointed the following individuals to the CSB Senior Executive Service Performance Review Board:

Chair of the PRB—John S. Bresland (CSB Board Member).

PRB Member—Dan Campbell (Managing Director, National Transportation Safety Board).

PRB Member—Kathleen O'Brien Ham (Office of Strategic Planning and Policy Analysis, Federal Communications Commission).

This notice is published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4).

Dated: October 1, 2003.

Raymond C. Porfiri,

Deputy General Counsel.

[FR Doc. 03–25478 Filed 10–7–03; 8:45 am]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review; Final Rescission, in Part; and Intent to Rescind, in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) in response to requests from the Crawfish Processors Alliance, its members, and the Domestic Parties (collectively, the Domestic Interested Parties); and from respondents Qingdao Rirong Foodstuff Co., Ltd. (Qingdao Rirong), Weishan Fukang Foodstuffs Co., Ltd. (Weishan Fukang), and Weishan Zhenyu Foodstuff Co., Ltd. (Weishan Zhenyu). The period of review (POR) is from September 1, 2001 through August 31, 2002.

We preliminarily determine that sales have been made below normal value (NV). The preliminary results are listed below in the section titled ''Preliminary Results of Review.'' If these preliminary results are adopted in our final results, we will instruct the U.S. Bureau of Customs and Border Protection (BCBP) to assess antidumping duties based on the difference between the export price (EP) or constructed export price (CEP), as applicable, and NV. Interested parties are invited to comment on these preliminary results. *See* the ''Preliminary Results of Review'' section of this notice.

EFFECTIVE DATE: October 8, 2003.

FOR FURTHER INFORMATION CONTACT: Doug Campau or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1395 or (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** an antidumping duty order on freshwater crawfish tail meat from the PRC on September 15, 1997. *See Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat from the People's Republic of China*, 62 FR 48218 (September 15, 1997). Based on timely requests from various interested parties, the Department initiated an administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC for the period of September 1, 2001 through August 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 65336 (October 24, 2002) (*Notice of Initiation*).

The Domestic Interested Parties requested a review of the following companies: China Everbright; China Kingdom Import & Export Co., Ltd., aka China Kingdoma Import & Export Co., Ltd., aka Zhongda Import & Export Co., Ltd. (China Kingdom); Fujian Pelagic Fishery Group Co. (Fujian Pelagic); Huaiyin Foreign Trade Corporation (5) (Huaiyin 5); Huaiyin Foreign Trade Corporation (30) (Huaiyin 30); Jiangsu Cereals, Oils, & Foodstuffs Import & Export Corp. (Jiangsu Cereals); Jiangsu Hilong International Trading Co., Ltd. (Jiangsu Hilong); Nantong Delu Aquatic Food Co., Ltd. (Nantong Delu); Nantong Shengfa Frozen Food Co., Ltd. (Nantong Shengfa); Ningbo Nanlian Frozen Foods Co., Ltd. (Ningbo Nanlian); North Supreme Seafood (Zhejiang) Co., Ltd. (North Supreme); Qingdao Rirong Foodstuff Co., Ltd., aka Qingdao Rirong Foodstuffs (Qingdao Rirong); Qingdao Zhengri Seafood Co., Ltd., aka Qingdao Zhengri Seafoods (Qingdao Zhengri); Shanghai Taoen International Trading Co., Ltd. (Shanghai Taoen); Shantou SEZ Yangfeng Marine Products Co. (Shantou SEZ); Shouzhou Huaxiang Foodstuffs Co., Ltd. (Shouzhou Huaxiang); Suqian Foreign Trade Corp., aka Suqian Foreign Trading (Suqian Foreign Trade); Weishan Fukang Foodstuffs Co., Ltd. (Weishan Fukang); Weishan Zhenyu; Yancheng Baolong Biochemical Products Co., Ltd. (YBBP); Yancheng Foreign Trade Corp., aka Yancheng Foreign Trading, aka Yang Chen Foreign Trading (YFTC); Yancheng Haiteng Aquatic Products & Foods Co., Ltd. (Yancheng Haiteng); Yancheng Yaou Seafoods (Yancheng Yaou); and Yangzhou Lakebest Foods Co., Ltd. (Yangzhou Lakebest). In addition, the Domestic Interested Parties requested review, for the same POR, of '''the single PRC entity,' within the meaning of that term as it was used in the Department's previous *Notice of Initiation*, 66 FR 54195, 54196 (October 26, 2001).'' *See Letter from Domestic Interested Parties* (September 30, 2002).

On September 30, 2002, Qingdao Rirong, Weishan Fukang, and Weishan Zhenyu, which were included in the Domestic Interested Parties' request for review, also requested review of their shipments of subject merchandise. The Department published a notice of initiation of this antidumping duty administrative review on October 24, 2002. *See Notice of Initiation*. We did not specifically initiate a review of the PRC entity. *See Memorandum to Barbara E. Tillman: Domestic Parties Request for a Review of the Non-Market Economy Entity* (September 30, 2003).

On June 3, 2003, the Department determined that it was not practicable to complete the preliminary results of this review within the statutory time limit. Consequently, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) and section 351.213(h)(2) of the Department's regulations, the Department extended the deadline for completion of the preliminary results to September 30, 2002. *See Notice of Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review: Freshwater Crawfish Tail Meat from the People's Republic of China*, 68 FR 33098 (June 3, 2003).

Final Rescission of Administrative Review, in Part

Pursuant to the Department's regulations, the Department will rescind an administrative review ''if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' *See* 19 CFR 351.213(d)(1). Since Domestic Interested Parties submitted a timely withdrawal of its request for review of China Everbright, China Kingdom, Fujian Pelagic, Huaiyin 5, Huaiyin 30, Jiangsu Cereals, Jiangsu Hilong, Nantong Delu, Ningbo Nanlian, North Supreme, Qingdao Zhengri, Shantou SEZ, Suqian Foreign Trade, YBBP, YFTC, Yancheng Haiteng, and Yancheng Yaou, and no other interested party requested a review of these companies, the Department is rescinding its antidumping administrative review of these companies, in accordance with 19 CFR 351.213(d)(1).

Intent to Rescind Administrative Review, in Part

The Department's regulations provide that the Department ''may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be.'' *See* 19 CFR 351.213(d)(3). On December 11, 2002, Nantong Shengfa informed the Department that it did not export or produce for export to the United States, nor did it produce and sell subject merchandise through others to the United States, during the POR. In addition, on January 2, 2002, Weishan Zhenyu informed the Department that it did not have any direct or indirect export sales of the subject merchandise to the United States during the POR. The Department reviewed data on entries under the order during the period of review from the BCBP, and found no reportable U.S. entries, exports, or sales of subject merchandise by Nantong Shengfa or Weishan Zhenyu during the POR. Therefore, absent the submission of any evidence that these companies had reportable U.S. entries, exports, or sales of subject merchandise, the Department intends to rescind the administrative review with respect to these companies, in accordance with 19 CFR 351.213(d)(3).

Scope of the Antidumping Duty Order

The product covered by this antidumping duty order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by the BCBP in 2000, and HTS numbers 0306.19.00.10 and 0306.29.00.00, which are reserved for fish and crustaceans in general. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

Shanghai Taoen

The Department has identified a significant discrepancy between the quantity and value data Shanghai Taoen reported in its questionnaire response and the quantity and value information that the Department identified through BCBP data queries. The Department contacted BCBP about this issue and will be working closely with it to determine the cause of this discrepancy. In addition, the Department will further examine this issue for the final results by requesting additional information from Shanghai Taoen.

Application of Facts Available

1. Shouzhou Huaxiang

As further discussed below, pursuant to sections 776(a)(2)(A),(B) and (D) and section 776(b) of the Act, the Department determines that the application of total adverse facts available is warranted for respondent Shouzhou Huaxiang. Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts otherwise available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. Section 776(a)(2)(D) of the Act warrants the use of facts otherwise available in reaching a determination when information is provided, but cannot be verified. Shouzhou Huaxiang requested an extension of the August 8, 2003 deadline for responding to the second supplemental questionnaire on August 6, 2003. *See Letter from Shouzhou Huaxiang*, at 1 (August 6, 2003). The Department granted a 12-day extension, to August 20, 2003. *See Letter to Shouzhou Huaxiang*, at 1 (August 8, 2003). However, Shouzhou Huaxiang never submitted its response. Thus, because Shouzhou Huaxiang failed to respond to the Department's second supplemental questionnaire, pursuant to sections 776(a)(2)(A) and (B) of the Act, the Department determines that the application of facts otherwise available is warranted.

The Department further finds that the application of facts available is also warranted pursuant to section 776(a)(2)(D) of the Act, because Shouzhou Huaxiang's questionnaire responses could not be verified. On June 4, 2002, Shouzhou Huaxiang informed the Department that ''due {sic} the continuing impact of the recent flooding of the Huaihe river, Shouzhou Huaxiang, the company {sic} will not be able to participate in the verification scheduled to begin on August 29, 2003.'' *See Letter from Shouzhou Huaxiang*, at 1 (August 18, 2003). On August 15, 2003, the Department left messages with counsel for Shouzhou Huaxiang to convey the Department's continued willingness to try to work with Shouzhou Huaxiang, and to offer to consider any alternative proposals for conducting verification (such as by shuffling the order in which each of the three entities Shouzhou Huaxiang, and its two producers would be visited). *See Memorandum to the File: Shouzhou Huaxiang Foodstuffs Co., Ltd.'s Refusal to Allow Verification*, (September 29, 2003) (*Shouzhou Huaxiang Memo*).

On August 18, 2003, prior to the extended deadline for responding to the second supplemental questionnaire, the Department again contacted counsel for Shouzhou Huaxiang, to convey the Department's continued willingness to try to work with Shouzhou Huaxiang, and to offer to consider any alternative proposals for conducting verification. The Department also asked whether Shouzhou Huaxiang's producers, Yancheng Yaou and Hubei Houhu, could still be verified. *Id.* at 3. Counsel for Shouzhou Huaxiang indicated that they would discuss the matter with Shouzhou Huaxiang, and then get back to the Department on August 19, 2003. *Id.* On August 19, 2003, the Department again contacted counsel for Shouzhou Huaxiang to find out whether they had received any feedback from Shouzhou Huaxiang, concerning the Department's offer to consider any alternative proposals for conducting verification, or whether Shouzhou Huaxiang's producers, Yancheng Yaou and Hubei Houhu, would agree to be verified. *Id.*

Shouzhou Huaxiang never offered any alternative proposals for conducting verification, and never changed its position that it would not participate in verification. This decision prevented the verification of information placed on the record. Thus, the information submitted by Shouzhou Huaxiang cannot serve as a reliable basis for reaching a determination since verification provides the Department with an opportunity to check the accuracy of the information submitted by the respondent. Because Shouzhou Huaxiang did not respond to the Department's second supplemental questionnaire, and refused to allow verification, sections 782(d) and (e) of the Act are not applicable.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a respondent, if it determines that a party has failed to cooperate to the best of its ability. The Department finds that

Shouzhou Huaxiang has failed to cooperate to the best of its ability because evidence on the record of this review indicates that it could have complied with the Department's request for supplemental information and could have participated in verification. Information on the record indicates that the flooding referred to by Shouzhou Huaxiang was not so severe that verification could not proceed by August 29, 2003, or that the company could not respond to the Department's second supplemental questionnaire by the extended August 20, 2003 deadline. *See Shouzhou Huaxiang Memo* at 3–4. Shouzhou Huaxiang's main business is selling crawfish tail meat, and during the period of review it dealt with a limited number of crawfish tail meat processors. As such, Shouzhou Huaxiang was in a position to respond to the Department's supplemental questionnaire. The Department's determination that Shouzhou Huaxiang failed to act to the best of its ability is further supported by Shouzhou Huaxiang's failure to participate in, and even propose any alternatives to, the Department's request for verification. Shouzhou Huaxiang participated in a previous review, and was therefore aware of the Department's interest in conducting verification of Shouzhou Huaxiang's questionnaire responses. Shouzhou Huaxiang was further put on notice that the Department intended to conduct verification by the Department's letter of August 6, 2003, and by the Department's verification outline issued on August 11, 2003. *Id.* at 1–2. While Shouzhou Huaxiang initially raised concerns regarding the location and timing of the verification due to flooding in the area, Shouzhou Huaxiang failed to respond to the Department's requests that Shouzhou Huaxiang propose alternative arrangements. The Department therefore concludes that Shouzhou Huaxiang failed to cooperate to the best of its ability by refusing to allow verification, as well as for failing to respond to the Department's second supplemental questionnaire, as discussed above.

Because the Department concludes that Shouzhou Huaxiang failed to cooperate to the best of its ability, in applying the facts otherwise available, the Department finds that an adverse inference is warranted, pursuant to section 776(b) of the Act. Since Shouzhou Huaxiang did not allow verification of its questionnaire responses, the Department was unable to examine Shouzhou Huaxiang's eligibility for a separate rate. In the absence of verifiable information establishing Shouzhou Huaxiang's entitlement to a separate rate, we have preliminarily determined that it is subject to the PRC-wide rate. As AFA, and as the PRC-wide rate, the Department is assigning the rate of 223.01 percent-the highest rate determined in the current or any previous segment of this proceeding. *See Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002) (*1999–2000 Final Results*). As discussed further below, this rate has been corroborated.

2. Yangzhou Lakebest

As further discussed below, pursuant to sections 776(a)(2)(A) and (B) and section 776(b) of the Act, the Department determines that the application of total adverse facts available is warranted for respondent Yangzhou Lakebest. Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. Yangzhou Lakebest failed to properly file its response to the Department's May 2, 2003 supplemental questionnaire. *See Memorandum to the File: Details of Communications with Yangzhou Lakebest Foods Co. Ltd.* (September 30, 2003). The Department received Yangzhou Lakebest's response to the May 2, 2003 supplemental questionnaire on June 6, 2003. We examined the response and found numerous deficiencies. The response contained numerous errors regarding the bracketing of information for which proprietary treatment was requested in the response, and the factors of production information was incomplete and unusable. In addition, Yangzhou Lakebest did not file the required number of copies with the Department or serve the other interested parties. Therefore, we returned the response to Yangzhou Lakebest. In the accompanying letter, the Department requested that Yangzhou Lakebest remedy the procedural errors in its response and refile it and explain a number of substantive deficiencies in its response. *See Letter to Yangzhou Lakebest* (June 20, 2003). However, Yangzhou Lakebest failed to re-file its response to the Department's supplemental questionnaire, or to provide any explanation for its deficiencies. The Department received no further responses, correspondence, or other filings from Yangzhou Lakebest after the company submitted its deficient response to the Department's supplemental response on June 6, 2003. Because Yangzhou Lakebest stopped responding to the Department, section 782(e) of the Act is not applicable.

Yangzhou Lakebest failed to provide information explicitly requested by the Department; therefore, we must resort to the facts otherwise available. Section 782(c)(1) of the Act does not apply because Yangzhou Lakebest did not indicate that it was unable to submit the information required by the Department.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of the respondent, if it determines that a party has failed to cooperate to the best of its ability. The Department finds that, by not providing the necessary responses to the questionnaires issued by the Department, and not providing any explanation, Yangzhou Lakebest failed to cooperate to the best of its ability. The information requested by the Department is integral to its antidumping analysis. Without complete and reliable factors of production information, the Department cannot calculate normal value, and, therefore, a dumping margin. Yangzhou Lakebest is the only party which has access to the information requested by the Department and therefore is the only party which could have complied with the Department's supplemental request for information and provided the necessary factors of production data.

Therefore, in selecting from the facts available, the Department determines that an adverse inference is warranted. In accordance with sections 776(a)(2)(A) and (B), as well as section 776(b) of the Act, because of the breadth of the missing, unsupported and unverifiable data, we are applying total adverse facts available to Yangzhou Lakebest. As part of this adverse facts available determination, we find that Yangzhou Lakebest did not demonstrate its eligibility for a separate rate, and have preliminarily determined that it is subject to the PRC-wide rate. As noted above, as AFA, and as the PRC-wide rate, the Department is assigning the rate of 223.01 percent-the highest rate determined in the current or any previous segment of this proceeding. See 1999–2000 Final Results. As discussed below, this rate has been corroborated.

3. Weishan Fukang

As further discussed below, pursuant to sections 776(a)(2)(D) and section

776(b) of the Act, the Department determines that the application of total adverse facts available is warranted for respondent Weishan Fukang because Weishan Fukang failed to allow the Department to verify its questionnaire responses. Section 776(a)(2)(D) warrants the use of facts otherwise available in reaching a determination when information is provided, but cannot be verified. Verification of the questionnaire responses of Weishan Fukang was scheduled for August 27 through August 29, 2003. On August 28, 2003, Weishan Fukang withdrew from verification. *See Memorandum to the File: Verification of Weishan Fukang Foodstuffs Co., Ltd.* (September 26, 2003). Verification is integral to the Department's analysis because it allows the Department to satisfy itself that the information that the Department relies upon in calculating a margin is accurate and therefore enables the Department to comply with the statutory mandate to calculate the dumping margin as accurately as possible. Since Weishan Fukang withdrew from verification, the Department cannot rely on Weishan Fukang's questionnaire responses to calculate a margin for Weishan Fukang.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a respondent, if it determines that a party has failed to cooperate to the best of its ability. The Department concludes that Weishan Fukang failed to cooperate to the best of its ability when it withdrew from verification. In applying the facts otherwise available, the Department finds that an adverse inference is warranted, pursuant to section 776(b) of the Act. Because Weishan Fukang did not demonstrate, using verifiable information, its eligibility for a separate rate, we have preliminarily determined that it is subject to the PRC-wide rate. As noted above, as AFA, and as the PRC-wide rate, the Department is assigning the rate of 223.01 percent - the highest rate determined in the current or any previous segment of this proceeding. *See 1999–2000 Final Results*. As discussed further below, this rate has been corroborated.

4. Qingdao Rirong

As further discussed below, pursuant to sections 776(a)(2)(A) and (B) and section 776(b) of the Act, the Department determines that the application of total adverse facts available is warranted for respondent Qingdao Rirong. On April 21, 2003, the Department published *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review* (*2000–2001 Final Results*), 68 FR 19504, for the review period covering September 1, 2000 through August 31, 2001 (2000/2001 POR). In the *2000–2001 Final Results*, and accompanying *Issues and Decision Memorandum*, which the Department has placed on the record of this review, the Department determined that Qingdao Rirong and its U.S. importer, Y&Z International (Y&Z), should be treated as affiliated parties for purposes of the 2000/2001 POR. In that determination, we also found that Qingdao Rirong was affiliated with Y&Z until at least December 16, 2002. *See 2000–2001 Final Results*, at comment 3.

On November 20, 2002, the Department issued its initial antidumping duty questionnaire in the instant administrative review to Qingdao Rirong. *See Qingdao Rirong Questionnaire*. In Section C of the Department's questionnaire, the Department requested that Qingdao Rirong identify its sales as either EP or CEP. *See Qingdao Rirong Questionnaire*, dated November 20, 2002, at Section C. On January 22, 2003 (and resubmitted on May 20, 2003), Qingdao Rirong responded to the Department's questionnaire. *See Qingdao Rirong Questionnaire Response*, dated May 20, 2003. In its response, Qingdao Rirong stated that ''{d}uring the POR, all Rirong sales to the United States were EP sales.''

Based on our determination in the *2000–2001* Final Results that Qingdao Rirong and Y&Z were affiliated throught at least December 16, 2002, the Department requested that Qingdao Rirong report U.S. sales for the current review period on a CEP basis. *See Supplemental Questionnaire from the Department to Qingdao Rirong*, dated June 10, 2003. The Department noted that ''should {Qingdao Rirong} choose not to provide sales data on a CEP basis, and should the Department conclude that Qingdao Rirong and Y&Z should be considered affiliated for this period of review, and that, as a result, U.S. sales should be classified as CEP sales, the Department may apply facts available for purposes of this review.'' *Id*. In its July 1, 2003 response to the Department's June 10, 2003 supplemental questionnaire, Qingdao Rirong claimed that it was not affiliated with Y&Z ''in any form for this fifth administrative review.'' *See Qingdao Rirong Supplemental Questionnaire Response*, dated July 1, 2003 at page 2.

On August 4, 2003, the Department placed on the record of this review its affiliation analysis for the current POR, incorporating information obtained during both the current and previous administrative reviews, in which it again determined that, at least through December 16, 2002, Qingdao Rirong was affiliated with Y&Z under section 771(33) of the Act. *See Memorandum to Barbara E. Tillman: Analysis of Relationship between Qingdao Rirong Foodstuff, Co., Ltd., and Y&Z International Trade Inc*. Thus, Qingdao Rirong's CEP sales data was necessary in order for the Department to be able to calculate Qingdao Rirong's antidumping margin, in accordance with sections 771(33) and 772(b) of the Act, and 19 CFR 351.402 of the Department's regulations. In light of this determination, the Department sent Qingdao Rirong a letter in which it again requested that Qingdao Rirong report its U.S. sales on a CEP basis. *See Letter to Qingdao Rirong* (August 4, 2003). On August 11, Qingdao Rirong submitted a letter to the Department indicating that it would not report its U.S. sales on a CEP basis. *See Letter from Qingdao Rirong* (August 11, 2003).

As further discussed below, pursuant to sections 776(a)(2)(A) and (B) and section 776(b) of the Act, the Department determines that the application of total adverse facts available is warranted for respondent Qingdao Rirong. Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in the form required. Qingdao Rirong refused to provide its U.S. sales data on the appropriate CEP basis. As the Department has determined that Qingdao Rirong and Y&Z are affiliated for purposes of this administrative review, the CEP sales data (i.e., the sales price from Y&Z to the first unaffiliated customer in the United States, and all the CEP adjustment information) requested by the Department would provide the only reliable basis for calculating a dumping margin for Qingdao Rirong. Qingdao Rirong failed to provide information explicitly requested by the Department; therefore, we must resort to the facts otherwise available. Because Qingdao Rirong refused to provide its U.S. sales data on the appropriate basis, sections 782(d) and (e) of the Act are not applicable.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of the respondent, if it determines that a party has failed to cooperate to the best of its ability. The Department

concludes that Qingdao Rirong failed to cooperate to the best of its ability by refusing to provide its U.S. sales data on the appropriate basis. Without CEP sales data, none of the information submitted by Qingdao Rirong can serve as a reliable basis for reaching a determination because we do not have the appropriate U.S. sales to compare to NV. This information was in the sole possession of Qingdao Rirong, and could not be obtained otherwise. Thus, the Department is precluded from calculating a margin for Qingdao Rirong. Because the Department concludes that Qingdao Rirong failed to cooperate to the best of its ability, in applying the facts otherwise available, the Department finds that an adverse inference is warranted, pursuant to section 776(b) of the Act. Because Qingdao Rirong did not demonstrate its eligibility for a separate rate, we have preliminarily determined that it is subject to the PRC-wide rate. As AFA, and as the PRC-wide rate, the Department is assigning the rate of 223.01 percent-the highest rate determined in the current or any previous segment of this proceeding. This is a calculated dumping margin from the 1999–2000 administrative review. *See 1999–2000 Final Results*. As discussed further below, this rate has been corroborated.

Corroboration of Secondary Information Used As Adverse Facts Available

Section 776(c) of the Act provides that when the Department relies on the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The *Statement of Administrative Action*, H.R. Doc. 103–316 (SAA), states that ''corroborate'' means to determine that the information used has probative value. *See* SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for calculated margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from the current or a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. *See, e.g., Grain-Oriented Electrical Steel From Italy; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 36551, 36552 (July 11, 1996). The information used in calculating this margin was based on sales and production data of a respondent in a prior review, and on the most appropriate surrogate value information available to the Department, chosen from submissions by the parties in that review, as well as information gathered by the Department itself. Furthermore, the calculation of this margin was subject to comment from interested parties in the proceeding. *See 1999–2000 Final Results*. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co.* v. *United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present here. As there is no information on the record of this review that indicates that this rate is not relevant as adverse facts available for the PRC-entity, including Shouzhou Huaxiang, Yangzhou Lakebest, Weishan Fukang, and Qingdao Rirong, we determine that this rate has probative value. Accordingly, we determine that the highest rate from any segment of this administrative proceeding (*i.e.*, 223.01 percent) is in accord with section 776(c)'s requirement that secondary information be corroborated (*i.e.*, that it have probative value).

Verification

As provided in section 782(i) of the Act, we verified the responses of Shanghai Taoen. We used standard verification procedures, including on-site inspection of the manufacturers' facilities and the examination of relevant sales and financial records. Verification of the questionnaire responses of Shanghai Taoen took place from August 18 through August 21, 2003. *See Antidumping Duty Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China (PRC) (A-570–848): Verification Report for Shanghai Taoen International Trading Co., Ltd.* (September 29, 2003).

Verification of the questionnaire responses of Weishan Fukang was scheduled for August 27 through August 29, 2003. However, as described in the ''Application of Facts Available'' section above, on August 28, 2003, Weishan Fukang withdrew from verification. *See Memorandum to the File: Verification of Weishan Fukang Foodstuffs Co., Ltd.* (September 26, 2003). Our verification results are on file in the CRU, Room B-099 of the main Department building.

Separate Rates Analysis for Shanghai Taoen

To establish whether a company operating in a non-market economy country (NME) is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). Under this policy, exporters in NMEs are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: 1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the

government regarding the selection of management.

De Jure Control

In its questionnaire responses, Shanghai Taoen stated that it is an independent legal entity. Evidence on the record indicates that the government does not have *de jure* control over Shanghai Taoen's export activities. Shanghai Taoen submitted evidence of its legal right to set prices independent of all government oversight. Furthermore, the business license of Shanghai Taoen indicates that it is permitted to engage in the exportation of crawfish. We also found no evidence of *de jure* government control restricting Shanghai Taoen's exportation of crawfish.

In its responses, Shanghai Taoen stated that no export quotas apply to crawfish. Prior verifications have confirmed that there are no commodity-specific export licenses required and no quotas for the seafood category ''Other,'' which includes crawfish, in *China's Tariff and Non-Tariff Handbook* for 1996. In addition, we have previously confirmed that crawfish is not on the list of commodities with planned quotas in the 1992 PRC Ministry of Foreign Trade and Economic Cooperation document entitled *Temporary Provisions for Administration of Export Commodities. See Freshwater Crawfish Tail Meat From the People's Republic of China; Preliminary Results of New Shipper Review*, 64 FR 8543 (February 22, 1999) and *Freshwater Crawfish Tail Meat From the People's Republic of China; Final Results of New Shipper Review*, 64 FR 27961 (May 24, 1999) (*Ningbo New Shipper Review*).

The following laws, which have been placed on the record of this review, indicate a lack of *de jure* government control. The *Company Law of the People's Republic of China*, effective as of July 1, 1994 states that a company is an enterprise legal person, that shareholders shall assume liability towards the company to the extent of their shareholdings, and that the company shall be liable for its debts to the extent of all its assets. Shanghai Taoen also provided copies of the *Foreign Trade Law of the PRC*, which identifies the rights and responsibilities of organizations engaged in foreign trade dealings, grants autonomy to foreign trade operators in management decisions, and establishes the foreign trade operator's accountability for profits and losses. Shanghai Taoen also provided a copy of its business license. We therefore preliminarily determine that there is an absence of *de jure* control over the export activities of Shanghai Taoen.

De Facto Control

With respect to the absence of *de facto* control over export activities, information on the record indicates that, for Shanghai Taoen, company management is responsible for all decisions concerning export strategies, export prices, profit distribution, and contract negotiations, and that there are no governmental policy directives that affect management's decisions. Furthermore, Shanghai Taoen's pricing and export strategy decisions are not subject to any outside entity's review or approval. Information on the record also indicates that there is no government involvement in the daily operations or the selection of management for Shanghai Taoen.

There are no restrictions on the use of Shanghai Taoen's export earnings. Shanghai Taoen's general manager has the right to negotiate and enter into contracts, and may delegate this authority to employees within the company. There is no evidence that this authority is subject any level of governmental approval. Shanghai Taoen has stated that its management is selected by its board of directors and/or its employees, and that there is no government involvement in the management selection process. Lastly, decisions made by Shanghai Taoen concerning purchases of subject merchandise from other suppliers are not subject to government approval. We therefore preliminarily determine that there is an absence of *de facto* control over the export activities of Shanghai Taoen.

Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over its export activities, we preliminarily determine that Shanghai Taoen is eligible for a separate rate.

Normal Value Comparisons

To determine whether Shanghai Taoen's sales of the subject merchandise to the United States were made at prices below NV, we compared its United States prices to NV, as described in the *United States Price* and *Normal Value* sections of this notice.

United States Price

For Shanghai Taoen, we based United States price on EP in accordance with section 772(a) of the Act, because the first sales to unaffiliated purchasers were made prior to importation, and CEP was not otherwise warranted by the facts on the record. We calculated EP based on packed prices from the exporter to the first unaffiliated purchaser in the United States. Where applicable, we deducted foreign inland freight, brokerage and handling expenses in the home market, and ocean freight, from the starting price (gross unit price) in accordance with Section 772(c) of the Act.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the respondents contested such treatment in this review. Accordingly, we have applied surrogate values to the factors of production to determine NV. *See Factor Values Memo for the Preliminary Results of the Antidumping Duty Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China*, dated September 30, 2003 (Factor Values Memo).

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and 19 CFR 351.408(c). Consistent with the original investigation and subsequent administrative reviews of this order, we determined that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. With the exceptions of the whole live crawfish input and the crawfish scrap by-product, for which Indian data were not available, we valued the factors of production using publicly available information from India. We adjusted the Indian import prices by adding foreign inland freight expenses to make them delivered prices.

We valued the factors of production as follows:

To value the input of whole crawfish we used publicly available data for Spanish imports of whole live crawfish from Portugal. As noted above, Indian data were not available and this data was all that was available on the record of this review. We adjusted the values of whole live crawfish to include freight costs incurred between the supplier and the factory. For transportation distances

used in the calculation of freight expenses on whole live crawfish, we added, using surrogate values from India, a surrogate freight cost of the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. (*See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China*, 62 FR 51410 (October 1, 1997) (*Roofing Nails*).)

To value a by-product, wet crawfish scrap, we used a price quote from Indonesia for wet crab and shrimp shells. (*See* Attachment 5 of the *Factor Values Memo*.) Again, Indian data were not available, and this was the best information available.

To value coal, we used Indian import data, concurrent with the POR, from the *World Trade Atlas*. We adjusted the cost of coal to include an amount for transportation. To value electricity, we used the 2001 total cost per kilowatt hour (KWH) for ''Electricity for Industry'' as reported in the International Energy Agency's publication, *Key World Energy Statistics*, 2002. For water, we relied upon public information from the October 1997 *Second Water Utilities Data Book: Asian and Pacific Region*, published by the Asian Development Bank.

To achieve comparability of water prices to the factors reported for the POR, we adjusted this factor value to reflect inflation through the POR using the Wholesale Price Index (WPI) for India, as published in the 2002 *International Financial Statistics*(*IFS*) by the International Monetary Fund (IMF).

To value packing materials (plastic bags, cardboard boxes and adhesive tape), we used Indian import data from the *World Trade Atlas*, concurrent with the POR. We adjusted the values of packing materials to include freight costs incurred between the supplier and the factory. For transportation distances used in the calculation of freight expenses on packing materials, we added, to surrogate values from India, a surrogate freight cost using the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. (*See Roofing Nails*.)

To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we continued to use simple averages derived from the publicly available 1996–97 financial statements of four Indian seafood processing companies. We applied these rates to the calculated cost of manufacture. (*See Factor Values Memo*, at 6.)

For labor, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2002, and corrected in February 2003. *See http://ia.ita.doc.gov/wages/*. Because of the variability of wage rates in countries with similar per capita gross domestic products, 19 CFR 351.408(c)(3) requires the use of a regression-based wage rate. The source of these wage rate data on the Import Administration's web site is the *Year Book of Labour Statistics 2000*, International Labour Office (Geneva: 2001), Chapter 5: Wages in Manufacturing.

To value truck freight expenses we used an average of nineteen Indian price quotes as reported in the February 14, 2000 issue of *The Financial Express* (an Indian business publication), which were used in the antidumping duty investigation of certain circular welded carbon-quality steel pipe from the PRC. *See Notice of Final Determination of Sales at Less than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China*, 67 FR 36570 (May 24, 2002) (*China Pipe*). We adjusted the rates to reflect inflation through the POR using the WPI for India from the *IFS*.

To value foreign brokerage and handling, we used a publicly summarized version of the average value for brokerage and handling expenses reported in *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 50406 (October 3, 2001) (*Hot-Rolled from India*), which was also used in *China Pipe*. We used the average of the foreign brokerage and handling expenses reported in the U.S. sales listing of the public questionnaire response submitted in the antidumping investigation of Essar Steel Ltd. in *Hot-Rolled from India*. Charges were reported on a per metric ton basis, which we converted to a per pound basis. We adjusted these values to reflect inflation through the POR using the WPI for India from the *IFS*. *See Factor Values Memo*.

To value ocean freight we used September 2000 quotes from Maersk Sealand and TransOceanic from Shanghai to various U.S. ports, adjusted for inflation. *See Factor Values Memo*.

Currency Conversions

We made currency conversions using exchange rates obtained from the website of Import Administration at *http://ia.ita.doc.gov/exchange/index.html*.

Preliminary Results of Review

We preliminarily determine that the following dumping margins exist:

Manufacturer and exporter	Period of review	Margin (percent)
Shanghai Taoen	9/1/01 – 8/31/02	57.73
PRC-Wide Rate[1]	9/1/01 – 8/31/02	223.01

Shouzhou Huaxiang, Yangzhou Lakebest, Weishan Fukang, and Qingdao Rirong are included in the PRC-wide rate.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For Shanghai Taoen, a per kilogram cash deposit rate will be established (*see Memorandum to Barbara E. Tillman through Maureen Flannery, from Mark Hoadley: Collection of Cash Deposits and Assessment of Duties on Freshwater Crawfish from the PRC*, August 27, 2001, and placed on the record of this review (*Cash Deposits Memo*)) ; (2) For all other exporters with separate rates, the deposit rate will be the company-specific per-kilogram or *ad valorem* rate established for the most recent period, as applicable; (3) For all other PRC exporters, the rate will be the PRC-wide rate, 223.01 percent; (4) For all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that exporter.

Assessment Rates

Upon completion of this administrative review, the Department shall determine, and the U.S. Customs

Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the BCBP upon completion of this review. For assessment purposes, for Shanghai Taoen, where appropriate, we will calculate importer-specific assessment rates for freshwater crawfish tail meat from the PRC. We will divide the total dumping margins (calculated as the difference between NV and EP) for each importer by the total quantity of subject merchandise sold by Shanghai Taoen to that importer during the POR. *See Cash Deposits Memo*. Upon the completion of this review, we will direct Customs to assess the resulting quantity-based rates against the weight in kilograms of each entry of the subject merchandise by the importer during the POR. Also upon completion of this review, for all other exporters covered by this review, we will direct BCBP to assess the resulting *ad valorem* rates against the entered value of each entry of the subject merchandise during the POR. The Department will issue appropriate assessment instructions directly to BCBP within 15 days of publication of the final results of review.

Comments and Hearing

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Normally, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, not later than 120 days after publication of these preliminary results, unless extended.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are published in accordance with section 751(a)(1) of the Act, and 19 CFR 351.213 and 351.221.

Dated: September 30, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–25517 Filed 10–7–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Rescission of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of the Antidumping Duty New Shipper Review.

SUMMARY: In response to requests from Xiamen Zhongjia Imp. & Exp. Co., Ltd. and Zhangzhou Longhai Minhui Industry and Trade Co., Ltd., the Department of Commerce initiated a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China. The period of review is February 1, 2002, through July 31, 2002.

For the reasons discussed below, this review has now been rescinded. No party submitted comments in response to our intent to rescind this review.

EFFECTIVE DATE: October 8, 2003.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith or James Mathews, Office of AD/CVD Enforcement 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230; telephone: (202) 482–1766 and (202) 482–2778, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (''the Department'') initiated a new shipper review covering Xiamen Zhongjia Imp. & Exp. Co., Ltd. (''Zhongjia'') and Zhangzhou Longhai Minhui Industry and Trade Co., Ltd. (''Minhui'') on September 30, 2002. This initiation was based on, among other things, each company's certification that it was both the exporter and producer of the subject merchandise for which it requested a new shipper review. *See Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review*, 67 FR 62438 (October 7, 2002) (''*Initiation Notice*''). On July 28, 2003, we notified parties of our intent to rescind this review because during the course of conducting this review, both Zhongjia and Minhui revealed that they were not the producer of the subject merchandise they exported to the United States during the period of review (''POR'') (*see Certain Preserved Mushrooms from the People's Republic of China: Intent to Rescind Antidumping Duty New Shipper Review*, 68 FR 45792 (August 4, 2003). Therefore, neither respondent provided the Department with the producer certification required for initiating this review. *See* 19 CFR 351.214(b)(2)(ii).

Scope of the Order

The products covered by this order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species

of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[1]

The merchandise subject to this order is classifiable under subheading: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, and 0711.51.0000 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Rescission of Review

As mentioned above, both Minhui and Zhongjia stated in their respective requests for a new shipper review that each company was an exporter and producer of the subject merchandise during the POR. Therefore, for purposes of initiating this review and based on the certifications provided by both Zhongjia and Minhui in accordance with 19 CFR 351.214(b)(2)(i), the Department was led to believe that both companies also produced the merchandise for which each requested a review. However, in the course of conducting this review, both Minhui and Zhongjia's responses to the Department's antidumping questionnaire indicated that neither company is a producer of the subject merchandise. Consequently, Zhongjia and Minhui misstated the facts when each claimed in its respective new shipper review request that it was both the exporter and producer of the merchandise subject to this review.

In order to qualify for a new shipper review under 19 CFR 351.214(b)(2)(ii), a company that exports but does not produce the subject merchandise for which it requests such a review must provide, among other things, (1) a certification that it did not export subject merchandise to the United States during the period of investigation (''POI''), and (2) a certification from the person or company which produced or supplied the subject merchandise that the producer or supplier did not export the subject merchandise to the United States during the POI. *See* 19 CFR 351.214(b)(2)(ii)(A) and (B).

Because Zhongjia and Minhui did not provide a certification from the respective producers of the subject merchandise they sold or exported to the United States during the POR in accordance with 19 CFR 351.214(b)(2)(ii)(B), neither respondent met the minimum requirements for an entitlement to a new shipper review.

Therefore, for the reasons stated above and absent comments submitted by the parties in this segment of the proceeding, we have rescinded this new shipper review with respect to Zhongjia and Minhui.

Notification

Bonding will no longer be permitted to fulfill security requirements for shipments from Minhui or Zhongjia of certain preserved mushrooms from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final rescission notice. The cash-deposit rate required for subject merchandise from the PRC NME entity (including Zhongjia and Minhui), entered, or withdrawn from warehouse, for consumption on or after the publication of the final rescission notice will continue to be the PRC-wide rate of 198.63 percent. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This rescission notice is in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214.

Dated: October 2, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–25518 Filed 10–7–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of quarterly update to annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty.

SUMMARY: The Department of Commerce (''the Department''), in consultation with the Secretary of Agriculture, has prepared its quarterly update to the annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period April 1, 2003 through June 30, 2003. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: October 8, 2003.

FOR FURTHER INFORMATION CONTACT: Alicia Kinsey, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) (''the Act'') requires the Department to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on articles of cheese that were imported during the period April 1, 2003 through June 30, 2003.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration,

[1] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* ''Recommendation Memorandum-Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China,'' dated June 19, 2000.

U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: October 2, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

APPENDIX—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross [1] subsidy ($/lb)	Net [2] subsidy ($/lb)
Austria	European Union (EU) Restitution Payments	0.08	0.08
Belgium	EU Restitution Payments	0.01	0.01
Canada	Export Assistance on Certain Types of Cheese	0.24	0.24
Denmark	EU Restitution Payments	0.05	0.05
Finland	EU Restitution Payments	0.15	0.15
France	EU Restitution Payments	0.12	0.12
Germany	EU Restitution Payments	0.05	0.05
Greece	EU Restitution Payments	0.08	0.08
Ireland	EU Restitution Payments	0.04	0.04
Italy	EU Restitution Payments	0.06	0.06
Luxembourg	EU Restitution Payments	0.07	0.07
Netherlands	EU Restitution	0.05	0.05
Norway	Indirect (Milk) Subsidy	0.35	0.35
	Consumer Subsidy	0.16	0.16
		0.51	0.51
Portugal	EU Restitution Payments	0.05	0.05
Spain	EU Restitution Payments	0.03	0.03
Switzerland	Deficiency Payments	0.06	0.06
U.K.	EU Restitution	0.06	0.06

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 03–25519 Filed 10–7–03; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first Request for Panel Review.

SUMMARY: On October 1, 2003, CEMEX, S.A. de C.V. (''CEMEX'') filed a first Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. A second request was received on behalf of GCC Cementos, S.A. de C.V. (''GCCC''). Panel review was requested of the 12th administrative review made by the International Trade Administration, respecting Gray Portland Cement and Clinker from Mexico. This determination was published in the **Federal Register** (68 FR 54203) on September 16, 2003. The NAFTA Secretariat has assigned Case Number USA–MEX–2003–1904–03 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on October 1, 2003, requesting panel review of the determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is October 31, 2003);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is November 17, 2003); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: October 2, 2003.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 03–25454 Filed 10–7–03; 8:45 am]
BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Call for Application for a Representative and Alternate to the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve is seeking applicants for the following vacant primary seat on its Reserve Advisory Council (Council): (1) Native Hawaiian and also for the following vacant alternate seat on the Council: (1) Research. Council Representatives and Alternates are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the State of Hawaii. The applicant who is chosen as the Native Hawaiian Representative should expect to serve the remainder of this seat's term which is due to expire in February 2004. The applicant who is chosen as the Research Alternate should expect to serve a concurrent term with the existing Research Member, which will expire in September 2006, pursuant to the Council's Charter. Persons who are interested in applying on the Council as either a Representative or Alternate may obtain an application from the person or website identified under the **ADDRESSES** section below. This notice extends and original application period that began September 8 and ended on September 19 for the Native Hawaiian Representative but also opens the application period for the Research Alternate.

DATES: Completed applications must be postmarked no later than November 15, 2003.

ADDRESSES: Applications may be obtained from Moani Pai, 6700 Kalanianaole Highway, Suite 215, Honolulu, Hawaii 96825, (808) 397–2661 or online at *http://hawaiireef.noaa.gov.* Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Aulani Wilhelm, 6700 Kalanianaole Highway, Suite 215, Honolulu, Hawaii 96825, (808) 397–2657, *Aulani.Wilhelm@noaa.gov.*

SUPPLEMENTARY INFORMATION: The NWHI Coral Reef Ecosystem Reserve is a new marine protected area designed to conserve and protect the coral reef ecosystem and related natural and cultural resources of the area. The Reserve was established by Executive Order pursuant to the National Marine Sanctuaries Amendments Act of 2000 (Pub. L. 106–513). The NWHI Reserve was established by Executive Order 13178 (12/00), as finalized by Executive Order 13196 (1/01).

The Reserve encompasses an area of the marine waters and submerged lands of the Northwestern Hawaiian Islands, extending approximately 1200 nautical miles long and 100 nautical miles wide. The Reserve is adjacent to and seaward of the seaward boundary of Hawaii State waters and submerged lands and the Midway Atoll National Wildlife Refuge, and includes the Hawaiian Islands National Wildlife Refuge to the extent that any such refuge waters extends beyond Hawaii State waters and submerged lands. The Reserve is managed by the Secretary of Commerce pursuant to the National Marine Sanctuaries Act and the Executive Orders. The Secretary has also initiated the process to designate the Reserve as a National Marine Sanctuary. The management principles and implementation strategy and requirements for the Reserve are found in the enabling Executive Orders, which are part of the application kit and can be found on the website listed above.

In designating the Reserve, the Secretary of Commerce was directed to establish a Coral Reef Ecosystem Reserve Advisory Council, pursuant to section 315 of the National Marine Sanctuaries Act, to provide advice and recommendations on the development of the Reserve Operations Plan and the proposal to designate and manage a Northwestern Hawaiian Islands National Marine Sanctuary by the Secretary.

The National Marine Sanctuary Program (NMSP) has established the Reserve Advisory Council and is now accepting applications from interested individuals for a Council Representative for the following citizen/constituent position on the Council:

1. One (1) representative from the Native Hawaiian community with experience or knowledge regarding Native Hawaiian subsistence, cultural, religious, or other activities in the Northwestern Hawaiian Islands.

Current Reserve Council Representatives and Alternates may apply for this vacant seat.

The Council consists of 25 members, 14 of which are non-government voting members (the State of Hawaii representative is a voting member) and 10 of which are government non-voting members. The voting members are representatives of the following constituencies: Conservation, Citizen-At-Large, Ocean-Related Tourism, Recreational Fishing, Research, Commercial Fishing, Education, State of Hawaii and Native Hawaiian. The government non-voting seats are represented by the following agencies: Department of Defense, Department of the Interior, Department of State, Marine Mammal Commission, NOAA's Hawaiian Islands Humpback Whale National Marine Sanctuary, NOAA's National Marine Fisheries Service, National Science Foundation, U.S. Coast Guard, Western Pacific Regional Fishery Management Council, and NOAA's National Ocean Service.

Authority: 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: October 2, 2003.

Jamison S. Hawkins,

Deputy Assistant Administrator for Management, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03–25484 Filed 10–7–03; 8:45 am]

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DEPARTMENT OF ENERGY

Cumberland System of Projects

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: The Deputy Secretary of the Department of Energy, confirmed and approved, on an interim basis, Rate Schedules CBR–1–E, CSI–1–E, CEK–1–E, CM–1–E, CC–1–F, CK–1–E, CTV–1–E, and SJ–1–B. The rates were approved on an interim basis, effective on October 1, 2003 and expire on September 30, 2008, and are subject to confirmation and final approval by the Federal Energy Regulatory Commission.

DATES: Approval of rate on an interim basis is effective through September 30, 2008.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance & Marketing, Southeastern Power Administration,

Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711, (706) 213–3800.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission, by Order issued March 17, 2000, in Docket No. EF99–3021–000 (rehearing denied), confirmed and approved Wholesale Power Rate Schedules CBR–1–D, CSI–1–D, CK–1–D, CM–1–D, CC–1–E, CK–1–D, CEK–1–D, CTV–1–D, and SJ–1–A. Rate schedules CBR–1–E, CSI–1–E, CEK–1–E, CM–1–E, CC–1–F, CK–1–E, CTV–1–E, and SJ–1–B replace these schedules.

Dated: September 26, 2003.

Kyle E. McSlarrow,

Deputy Secretary.

Order Confirming and Approving Power Rates on an Interim Basis

[Rate Order; No. SEPA–43]

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern), were transferred to and vested in the Secretary of Energy. By Delegation Order No. 00–037.00 (December 6, 2001), the Secretary of Energy delegated to the Administrator of Southeastern the authority to develop power and transmission rates, and delegated to the Deputy Secretary of the Department of Energy the authority to confirm, approve, and place in effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. This rate order is issued by the Deputy Secretary pursuant to said delegation.

Background

Power from the Cumberland System of Projects is presently sold under Wholesale Power Rate Schedules CBR–1–D, CSI–1–D, CEK–1–D, CM–1–D, CC–1–E,CK–1–D, CTV–1–D, and SJ–1–A. These rate schedules were approved by the FERC on March 17, 2000 (90 FERC 61266).

Discussion

System Repayment

An examination of Southeastern's revised system power repayment study, prepared in July 2003, for the Cumberland System shows that with an annual revenue increase of $6,230,000 over the revenues in the current repayment study using current rates, all system power costs are paid within the 50-year repayment period required by existing law and DOE Procedure RA 6120.2. The Administrator of Southeastern has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Public Notice and Comment

Opportunities for Public Review and Comment on Wholesale Power Rate Schedules CBR–1–E, CSI–1–E, CEK–1–E, CM–1–E, CC–1–F, CK–1–E, CTV–1–E, and SJ–1–B, was announced by notice published in the **Federal Register** on March 25, 2003. A Public Information and Comment Forum was held May 1, 2003, in Nashville, Tennessee, and written comments were invited through June 23, 2003. The notice proposed rates with a revenue increase of $8,063,000 in Fiscal Year 2004 and all future years. Based on comments received, Southeastern revised the proposed rates. The proposed rate adjustment now shows a revenue increase of $6,230,000. Transcripts of the Public Information and Comment Forums are included as Exhibit A–4. A review of comments is included as Exhibit A–5. The following is a summary of the comments.

Staff Evaluation of Public Comments

Notice of proposed rate adjustment was published in the **Federal Register** March 25, 2003 (68 FR 14418). The notice advised interested parties of a public information and comment forum that would be held in Nashville, Tennessee on May 1, 2003. Written comments were accepted on or before June 23, 2003. Written comments were received from six sources pursuant to this notice.

A. Comments Regarding Cost Estimates

1. Many comments pertained to the inclusion of a plan of rehabilitation for the Cumberland Projects provided by the Corps of Engineers. The Customers, the Corps of Engineers, and Southeastern are in the process of drafting a Memorandum of Agreement (MOA) that would provide for Customer funding of Renewals and Replacements. Many of the comments stated that the customers did not believe it was appropriate to include costs in the Cumberland System rates until the MOA was executed. These comments include the following:

- The proposed rate over collects funds for the Corps Operations and Maintenance (''O&M'') and Renewals and Replacements (''R&R'') activities. (SeFPC, SMEPA)
- The members of the SeFPC believe that Southeastern should only include those amounts in rates for O&M and R&R that reflect the amounts that the Corps actually allocates to hydropower activities in the Cumberland System of Projects. (SeFPC)
- Unless and until an MOA is in place, the Customers believe that only those amounts that Corps will receive in appropriations should be included in the rates. (SeFPC)
- The SeFPC submits that the proposed rate increase should only include those amounts where Southeastern can verify that the funds provided to the Corps are actually spent for hydropower purposes. (SeFPC)
- If Congress does not intend to provide Construction General funds in the Fiscal Year 2004 Appropriations for the Corps and there is no MOA to provide funding of renewals, replacements, and rehabilitation work, the Customers contend that Southeastern cannot legally recover the amounts in the rates for these activities. (SeFPC)
- In light of the fact that the President's budget request does not contain any construction general funds for the projects on the Cumberland River Basin, the SeFPC notes that Southeastern should not recover any joint capitalized cost from the hydropower customers. (SeFPC)
- Only in the event that the Customers, Southeastern, and the Corps find consensus for an MOA should Southeastern include amounts in the 20-rates for renewals and replacements. Unless this occurs prior to the implementation of the rate[s] on an interim basis Southeastern should not include these amounts in the proposed rate schedule[s]. (SeFPC)
- Southeastern will be collecting revenue for capital improvements that do not have guaranteed funds available. Southeastern customers may end up paying more for less reliable power. (KU Municipals)
- TVA strongly recommends that Southeastern make the implementation of the Rehabilitation funding components of the proposed rate increase, and the proposed changes in Southeastern's billing of TVA, conditioned upon mutual agreement being reached by the various parties on a funding mechanism that will result in the Corps actually receiving the funding generated by the Rehabilitation funding component of the proposed rate increase for those Rehabilitation work items which have been approved by Southeastern customers. (TVA)
- Southeastern has included in its rates future costs of replacements or

other capital costs when Southeastern is fully aware that under the current state of affairs there is no reasonable certainty that such capital costs will be incurred. TVPPA, on behalf of the TVA area preference customers, cannot support the continued collection of funds through the Southeastern rates that simply are sent to the U.S. Treasury, and ultimately either never used, or used for some purpose other than rehabilitating the projects for which they were collected. The inclusion in the rate design of such Phantom Capital Costs is contrary to statute. (TVPPA)

• By including the Phantom Capital Costs as stated above, Southeastern fails to charge the lowest possible rates to consumers consistent with sound business practices as required by statute. (TVPPA)

• We do not see any basis for attempting to recover, in the form of proposed increases in Southeastern rates in accordance with section 5 of the Flood Control Act of 1944, costs that have not yet been incurred (and which may never be incurred unless a contractual funding mechanism is implemented), except where Southeastern customers have agreed in accordance with the type of funding mechanisms referenced earlier. It seems challenging to justify use of rate-setting methodology that is based upon amortization and repayment of appropriation investments to recover, in rates charged to TVA, investments that have not yet been made, and which might never be made. (TVA)

• Given the financial impacts that assuming the financing responsibility for as much as $260 million of Rehabilitation capital expenditures over the next 20 or more years will have on Southeastern customers, it appears appropriate that, as part of any funding mechanism, Southeastern customers should have approval and oversight rights with regard to those Cumberland Basin Project work items they would be financing. (TVA)

• Under any funding mechanism, it also would be more appropriate for the Rehabilitation funding component of Southeastern rates for any given year to be governed by the funding requirements of work items approved by Southeastern customers, and not by the amount of funding proposed for work items that are not yet approved. (TVA)

• Southeastern customers, by virtue of their assuming of future financing responsibility under a funding mechanism that offers no prospect of their being financially repaid, deserve a role in:

1. Helping determine what specific work items at the Cumberland Basin Projects warrant the funding they will provide;

2. Exercising reasonable oversight over the performance of such work to help assure that it is completed as intended; and

3. Having appropriate guarantees to help assure that they will ultimately receive the intended value from the funding they will provide. (TVA)

Response: Based on the comments received, Southeastern has revised the projected hydropower replacement costs for the Cumberland System. The revised projections for the cost evaluation period will reflect the amount the Corps actually allocated to hydropower activities in the Cumberland System. After the cost evaluation period, projections will be based on a statistical projection of replacements from a Corps of Engineers depreciation study.

Section 10 (l.) of DOE Procedure RA 6120.2 requires that ''Future replacement costs will be included in the repayment studies by adding the estimated capital cost of replacement to the unpaid Federal Investment in the year each replacement is estimated to go into service, and adding it to the allowable unamortized investment.''

If an MOA is executed and the customers agree to fund the Corps' plan to rehabilitate the Cumberland projects, it may be necessary for Southeastern to file another rate adjustment.

2. It is TVA's understanding that approximately three-fourths of the proposed rate increase is designed to recover amounts to fund, over the next 20 or more years, approximately $260 million of new projects for renewals, rehabilitations, and replacements (Rehabilitation) work at Corps hydroelectric projects in the Cumberland Basin System. (TVA)

Response: The comment overstates the impact of the Corps' Rehabilitation program on Southeastern's rates. Without including the Corps' 20-year plan for renewals, rehabilitations, and replacements, Southeastern will propose a rate increase of about fifteen percent (15%). The proposed rate adjustment, with the Corps' 20-year plan of renewals, rehabilitations, and replacements, is an increase of about twenty percent (20%). As such, the Corps' plan for rehabilitation of the Cumberland projects accounts for about one-fourth of the rate adjustment proposed in the **Federal Register** on March 25, 2003, (68 FR 14419).

3. Southeastern is proposing a rate that will satisfy expense and repayment requirements for capital additions over the next 50 years. However, Southeastern is not offering a 50 year contract or any guarantee that the improvements will be made or the power will be available over the next 50 years. It would be more appropriate to propose a rate for a five-year period that provides revenue for projected expenses and repayment requirements over that same 5 years. (KU Municipals)

Response: To conform to requirements of RA 6120.2, the repayment study must extend to the end of the repayment life of the repayment period for the last investment in service. It is Southeastern's opinion that the proposal in this comment does not conform to the requirements of RA 6120.2.

B. Comments Regarding Purchased Power Costs

4. Southeastern received comments that Southeastern overstated the impact of replacement energy costs on the proposed rates. These comments included the following:

• There is little evidence to support the claim in the **Federal Register** Notice that the rate adjustment is driven by increased purchased power costs. (SeFPC)

• The SeFPC understands replacement energy expenditures have only amounted to a little over $3.5 million since the implementation of the last rate increase in 1999. There appears to be little foundation therefore for Southeastern to raise rates over $40 million for a five year period to account for purchased power costs that have averaged a little over $1 million in each year since the last rate increase. (SeFPC)

Response: The **Federal Register** Notice reads ''Existing rates have been in effect since July 1, 1999. The Cumberland System region has incurred a severe drought since that time. This has impacted repayment in two ways. First, revenues have been reduced because Southeastern has had less energy available for sale. Second, expenses have increased because it has been necessary for Southeastern to purchase replacement energy to meet its minimum energy obligations.''

The notice further states, ''The Corps of Engineers has provided Southeastern with a plan of capital expenditures necessary to rehabilitate the projects in the Cumberland System. These costs are included in the proposed rates.''

Cumberland System purchased power totaled about $3.5 million since rates for the Cumberland System were last adjusted in 1999. The 1999 rate adjustment for the Cumberland System included no estimate for purchased power. As such, the purchased power costs are a factor in the proposed rate adjustment. However, Southeastern does not claim that this proposed rate

adjustment is driven exclusively by purchased power costs. Purchased power costs are among the factors causing this rate adjustment.

5. Some comments requested Southeastern implement a pass-though charge for purchases of replacement energy. These comments included the following:

- The SeFPC would encourage Southeastern to implement a rate recovery mechanism that would allow immediate pass through of purchased power costs for the Cumberland System of Projects. (SeFPC, SMEPA)
- When the Southeastern anticipates making expenditures for purchased power, the Customers would ask Southeastern to work with Team Cumberland Group to minimize high costs. In the event Southeastern expects to make extended replacement power purchases, the Customers would ask Southeastern to implement a consultation process that involves more frequent coordination with the Customers so that replacement power purchases are the lowest possible consistent with sound business principles. (SeFPC)
- Because of the need to raise rates in light of previous purchases of replacement energy, the SeFPC submits that Southeastern needs to revise the rate proposal to account for the purchased power costs in a more transparent manner so that the Customers can accurately measure the costs in the Customers' individual resource portfolios. In this regard, the SeFPC recommends changing the rate schedule to provide for the immediate pass through of purchased power cost and coordination with the Team Cumberland Group to ensure that such costs are incurred in a manner consistent with sound business principles. (SeFPC)

Response: Southeastern implemented a pass-through mechanism to recover purchases of replacement energy in Southeastern's Georgia-Alabama-South Carolina System starting in fiscal year 2003. However, marketing arrangements and rate design issues make implementation of a replacement energy pass-through rate on the Cumberland System complex. As the rates are proposed, most of the customers outside the TVA system have no energy charge. Most of Southeastern's Cumberland customers outside the TVA system receive a firm energy allocation of 1500 kilowatt-hours of energy for each kilowatt of capacity. TVA and the 160 preference entities on the TVA system receive the residual output of the Cumberland Projects.

Southeastern believes it is inappropriate to propose a pass-through to attempt to implement a replacement energy pass-through without soliciting comments from all interested parties. Southeastern will consider developing a proposed pass-through mechanism for comment from all interested parties. As such, Southeastern will give consideration to the comment and may propose a pass-through of replacement energy costs with the next proposed rate adjustment for the Cumberland Projects.

C. Comments Regarding Sales of Water Storage

6. The proposed rate does not accurately capture the revenues that the Corps should be receiving from sale of water storage at Corps projects. The Southeastern should verify whether the Corps has executed all necessary contracts for water storage at facilities in the Cumberland River Basin system. To remain consistent with the Flood Control Act, Southeastern must factor into rates the recovery of the revenues to be provided in Water Storage contracts. In the event that Southeastern is aware of non-authorized use of water storage at the projects for which the Corps has not executed a water storage contract, the members of the SeFPC believe that Southeastern has an obligation to disclose such use in the rate schedules. (SeFPC, SMEPA)

Response: The Corps expects to execute and collect new water storage agreements for projects in the Cumberland System in the near future. When the Corps has executed these agreements and collects funds for the sale of water storage, Southeastern will include these revenues as part of the cost recovery for the Cumberland System projects.

D. Comments Regarding TVA Transmission

7. The proposed rate includes Tennessee Valley Authority (''TVA'') transmission charges that have not been deemed to be just and reasonable. As the Customers have held longstanding concerns regarding the appropriateness of the TVA transmission rate, the detailed concerns of the SeFPC on this specific topic, which were not addressed in Southeastern's prior rate proposal, are incorporated herein by reference. (SeFPC, SMEPA)

Response: The review of public comments in Southeastern's prior rate proposal states ''Section 9.1 of the TVA-Southeastern Contract, executed October 1, 1997, allows TVA to adjust rates for delivering power to the points of delivery to the ''Other Customers'' defined as customers outside the TVA area. Section 9.1 does not provide any means for Southeastern to determine an appropriate transmission rate. TVA and ''Other Customers'' are disagreeing over the appropriateness of the rate increase.'' The comments further state ''Southeastern will support discussions between TVA and the customers outside the TVA system in an effort to reach a negotiated settlement on an appropriate amount for the TVA transmission charge.''

As such, Southeastern's role in this issue is as a facilitator. Southeastern remains willing to support discussions between TVA and the customers outside the TVA system in an effort to reach a negotiated settlement on an appropriate amount for the TVA transmission charge.

E. Comments Regarding Marketing

8. In Southeastern's forum exhibit 6 the base energy shown for East Kentucky Power Cooperative (EKPC) is 251,618 MWh. Based on EKPC's entitlement to 1500 kWh/kW capacity (170 MW), this should be 255,000 MWh. (East Kentucky)

Response: Southeastern's marketing arrangements with East Kentucky provide that East Kentucky receive the entire output of the Laurel Project (70 megawatt), plus 100 megawatt from the other projects in the Cumberland System. East Kentucky receives 36,900 megawatt-hours of additional energy from the other Cumberland projects to supplement the generation available at the Laurel Project. With the additional energy from the other Cumberland projects, the Laurel Project was expected to provide an average of 1500 megawatt-hours of energy per megawatt of capacity per contract year. In actual operation during the past few years, the Laurel Project has produced less energy, on average, than was forecast. The average energy available to East Kentucky has been 251,618 megawatt-hours per year. Southeastern has revised the repayment study to show that East Kentucky is expected to receive an estimated average of 255,000 megawatt-hours of energy per contract year.

9. Since 70 MW of EKPC's total Southeastern allocation of 170 MW and related energy is to be produced by the Laurel Project, EKPC is at the mercy of the actual annual rainfall in the Laurel Lake watershed and resulting power production. EKPC asks that provisions be made to guarantee that EKPC receive its entitlement of a minimum of 255,000 MWh each and every year. (East Kentucky)

Response: The comment relates to Southeastern's marketing arrangements with East Kentucky, and is not pertinent

to the proposed rates. Southeastern's marketing arrangements with East Kentucky are discussed in the response to comment 8 above. Southeastern is willing to consider any revisions to the contract between Southeastern and East Kentucky that East Kentucky may propose. Such revisions would have to be evaluated for their impact on other customers of the Cumberland System.

F. Comments Regarding Rate Design

10. East Kentucky Power Cooperative requests that Southeastern revise its Proposed Wholesale Power Rate Schedule CEK–1–E as follows: [The design includes an energy charge for energy from the Laurel Project and reduces the capacity charge for capacity from the Laurel Project by the anticipated 1500 hours energy per year] (East Kentucky)

Response: Southeastern will revise the proposed rate schedule CEK–1–E to provide no energy with the capacity charge. All energy provided under this rate schedule will be billed at the additional energy rate.

Order

In view of the foregoing and pursuant to the authority vested in me as the Deputy Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 2003, attached Wholesale Power Rate Schedules CBR–1–E, CSI–1–E, CEK–1–E, CM–1–E, CC–1–F, CK–1–E, CTV–1–E, and SJ–1–B.

The Rate Schedules shall remain in effect on an interim basis through September 30, 2008, unless such period is extended or until the FERC confirms and approves them or substitutes Rate Schedules on a final basis.

Dated: September 26, 2003

Kyle E. McSlarrow,

Deputy Secretary.

Wholesale Power Rate Schedule CBR–1–E

Availability: This rate schedule shall be available to Big Rivers Electric Corporation and includes the City of Henderson, Kentucky, (hereinafter called the Customer).

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission system of Big Rivers Electric Corporation.

Points of Delivery: Capacity and energy delivered to the Customer will be delivered at points of interconnection of the Customer at the Barkley Project Switchyard, at a delivery point in the vicinity of the Paradise steam plant and at such other points of delivery as may hereafter be agreed upon by the Government and TVA.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge: $3.373 per kilowatt/month of total contract demand.

Energy Charge: None.

Energy to be Furnished by the Government: The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all Southeastern customers outside TVA and served by TVA does not exceed 240 hours per kilowatt of the total contract demands of these customers.

Billing Month: The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Conditions of Service: The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of TVA on its side of the delivery point.

Service Interruption: When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\begin{array}{c}\text{Number of Days in}\\ \text{Billing Month}\end{array}}\right)$$

Wholesale Power Rate Schedule CSI–1–E

Availability: This rate schedule shall be available to Southern Illinois Power Cooperative (hereinafter the Customer).

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission system of Big Rivers Electric Corporation.

Points of Delivery: Capacity and energy delivered to the Customer will be

delivered at points of interconnection of the Customer at the Barkley Project Switchyard, at a delivery point in the vicinity of the Paradise steam plant and at such other points of delivery as may hereafter be agreed upon by the Government and TVA.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge: $3.373 per kilowatt/month of total contract demand

Energy Charge: None

Energy to be Furnished by the Government: The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all Southeastern customers outside TVA and served by TVA does not exceed 240 hours per kilowatt of the total contract demands of these customers.

Billing Month: The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Service Interruption: When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\begin{array}{c}\text{Number of Days in}\\ \text{Billing Month}\end{array}}\right)$$

Wholesale Power Rate Schedule CEK–1–E

Availability: This rate schedule shall be available to East Kentucky Power Cooperative (hereinafter called the Customer).

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and power available from the Laurel Project and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of the Customer.

Points of Delivery: The points of delivery will be the 161,000 volt bus of the Wolf Creek Power Plant and the 161,000 volt bus of the Laurel Project. Other points of delivery may be as agreed upon.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge: $2.232 per kilowatt/month of total contract demand

Energy Charge: 9.13 mills per kilowatt-hour

Energy to be Furnished by the Government: The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand plus 369 kilowatt-hours of energy delivered for each kilowatt of contract demand to supplement energy available at the Laurel Project. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all Southeastern customers outside TVA and served by TVA does not exceed 240 hours per kilowatt of the total contract demands of these customers.

Billing Month: The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Conditions of Service: The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of TVA on its side of the delivery point.

Service Interruption: When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\begin{array}{c}\text{Number of Days in}\\ \text{Billing Month}\end{array}}\right)$$

Wholesale Power Rate Schedule CM–1–E

Availability: This rate schedule shall be available to the South Mississippi Electric Power Association, Municipal Energy Agency of Mississippi, and Mississippi Delta Energy Agency (hereinafter called the Customers).

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of Mississippi Power and Light.

Points of Delivery: The points of delivery will be at interconnection points of the Tennessee Valley Authority system and the Mississippi Power and Light system. Other points of delivery may be as agreed upon.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge: $3.373 per kilowatt/month of total contract demand

Energy Charge: None

Energy to be Furnished by the Government: The Government shall make available each contract year to the Customer from the Projects through the Customer's interconnections with TVA and the Customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all Southeastern Customers outside TVA and served by TVA does not exceed 240 hours per kilowatt of the total contract demands of these Customers.

In the event that any portion of the capacity allocated to the Customers is not initially delivered to the Customers as of the beginning of a full contract year, the 1500 kilowatt hours shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

Billing Month: The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective on the last day of each calendar month.

Service Interruption: When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\begin{array}{c}\text{Number of Days in}\\ \text{Billing Month}\end{array}}\right)$$

Wholesale Power Rate Schedule CC–1–F

Availability: This rate schedule shall be available to public bodies and cooperatives served through the facilities of Carolina Power & Light Company, Western Division (hereinafter called the Customers).

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission system of Carolina Power & Light Company, Western Division.

Points of Delivery: The points of delivery will be at interconnecting points of the Tennessee Valley Authority system and the Carolina Power & Light Company, Western Division system. Other points of delivery may be as agreed upon.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge: $3.839 per kilowatt/month of total contract demand

Energy Charge: None

CP&L Transmission Charge: $1.2493 per kilowatt/month of total contract demand

The CP&L transmission rate is subject to annual adjustment on April 1 of each year and will be computed subject to the formula in Appendix A attached to the Government—Carolina Power & Light Company contract.

Energy to be Furnished by the Government: The Government will sell to the customer and the customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to Carolina Power & Light Company (less six percent (6%) losses). The Customer's contract demand and accompanying

energy allocation will be divided pro rata among its individual delivery points served from the Carolina Power & Light Company's, Western Division transmission system.

Billing Month: The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Wholesale Power Rate Schedule CK–1–E

Availability: This rate schedule shall be available to public bodies served through the facilities of Kentucky Utilities Company, (hereinafter called the Customers.)

Applicability: This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of Kentucky Utilities Company.

Points of Delivery: The points of delivery will be at interconnecting points between the Tennessee Valley Authority system and the Kentucky Utilities Company system. Other points of delivery may be as agreed upon.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge: $3.373 per kilowatt/month of total contract demand

Energy Charge: None

Additional Energy Charge: 9.13 mills per kilowatt-hour

Energy to be Furnished by the Government: The Government shall make available each contract year to the Customer from the Projects and the Customer will accept an allocation of 1,500 kilowatt-hours of energy for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 240 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 240 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all Southeastern Customers outside TVA and served by TVA does not exceed 240 hours per kilowatt of the total contract demands of these Customers.In the event that any portion of the capacity allocated to the Customers is not initially delivered to the Customers as of the beginning of a full contract year, the 1500 kilowatt hours shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

For billing purposes, each kilowatt of capacity will include 1500 kilowatt-hours energy per year. Customers will pay for additional energy at the additional energy rate.

Billing Month: The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective on the last day of each calendar month.

Wholesale Power Rate Schedule CTV–1–E

Availability: This rate schedule shall be available to the Tennessee Valley Authority (hereinafter called TVA).

Applicability: This rate schedule shall be applicable to electric capacity and energy generated at the Dale Hollow, Center Hill, Wolf Creek, Old Hickory, Cheatham, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereafter called collectively the ''Cumberland Projects'') and the Laurel Project sold under agreement between the Department of Energy and TVA.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a frequency of approximately 60 Hertz at the outgoing terminals of the Cumberland Projects' switchyards.

Monthly Rates: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $1.907 per kilowatt/month of total demand as determined by the agreement between the Department of Energy and TVA.

Energy Charge: None

Additional Energy Charge: 9.13 mills per kilowatt-hour

Energy to be Made Available: The Department of Energy shall determine the energy that is available from the projects for declaration in the billing month.

To meet the energy requirements of the Department of Energy's customers outside the TVA area (hereinafter called Other Customers), 768,000 megawatt-hours of net energy shall be available annually (including 36,900 megawatt-hours of annual net energy to supplement energy available at Laurel Project). The energy requirement of the Other Customers shall be available annually, divided monthly such that the maximum available in any month shall not exceed 240 hours per kilowatt of total Other Customers contract demand, and the minimum amount available in any month shall not be less than 60 hours per kilowatt of total Other Customers demand.

In the event that any portion of the capacity allocated to Other Customers is not initially delivered to the Other Customers as of the beginning of a full contract year, (July through June), the 1500 hours, plus any such additional energy required as discussed above, shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

The energy scheduled by TVA for use within the TVA System in any billing month shall be the total energy delivered to TVA less (1) an adjustment for fast or slow meters, if any, (2) an adjustment for Barkley-Kentucky Canal of 15,000 megawatt-hours of energy each month which is delivered to TVA under the agreement from the Cumberland Projects without charge to TVA, (3) the energy scheduled by the Department of Energy in said month for the Other Customers plus losses of two (2) percent, and (4) station service energy furnished by TVA.

Each kilowatt of capacity will include 1500 kilowatt-hours of energy per year, which is defined as base energy. Energy received in excess of 1500 kilowatt-hours per kilowatt will be subject to an additional energy charge identified in the monthly rates section of this rate schedule.

Billing Month: The billing month for capacity and energy sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Contract Year: For purposes of this rate schedule, a contract year shall be as in Section 13.1 of the Southeastern Power Administration—Tennessee Valley Authority Contract.

Service Interruption: When delivery of capacity to TVA is interrupted or reduced due to conditions on the Department of Energy's system that are beyond its control, the Department of Energy will continue to make available the portion of its declaration of energy that can be generated with the capacity available.

For such interruption or reduction (exclusive of any restrictions provided

in the agreement) due to conditions on the Department of Energy's system which have not been arranged for and agreed to in advance, the demand charge for scheduled capacity made available to TVA will be reduced as to the kilowatts of such scheduled capacity which have been so interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\begin{array}{c}\text{Number of Days in}\\ \text{Billing Month}\end{array}}\right)\times\left(\frac{\text{Contract Demand}}{\text{880,000 Kilowatts}}\right)$$

Power Factor: TVA shall take capacity and energy from the Department of Energy at such power factor as will best serve TVA's system from time to time; provided, that TVA shall not impose a power factor of less than .85 lagging on the Department of Energy's facilities which requires operation contrary to good operating practice or results in overload or impairment of such facilities.

Wholesale Power Rate Schedule SJ–1–B

Availability: This rate schedule shall be available to Monongahela Power Company for energy from the Stonewall Jackson Project (hereinafter called the Project).

Applicability: This rate schedule shall be applicable to energy made available by the Government from the Project and sold in wholesale quantities.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 cycles per second delivered at the delivery points of the customer.

Monthly Rate: The monthly rate for energy made available or delivered under this rate schedule shall be the lower of:

(a) The energy equivalent rate of Cumberland Rate Schedule CC–1–F, which is 38.1 mills per kwh, or;

(b) The sum, as reasonably determined by Monongahela Power Company (Buyer), of (1) and (2) below calculated for each period as to which the determination is being made, (normally monthly) based on costs and net generation of Buyer and other regulated subsidiaries of Allegheny Power System, Inc. to produce energy from: Ft. Martin Units Nos. 1 and 2, Hatfield Ferry Units Nos. 1, 2, and 3, Harrison Units Nos. 1, 2, 3, and Pleasants Units Nos. 1 and 2.

(1) The accrued expense in FERC Account 501 (fuel expense) or such appropriate similar account as the FERC may from time to time establish for fuel expense for steam power generation, divided by the actual net generation in kilowatt-hours, exclusive of plan use, plus

(2) One-half of the accrued expenses in FERC Accounts 510–514 (maintenance expense), inclusive, of such other appropriate similar accounts as FERC may from time to time establish for maintenance expense for steam power generation, divided by the actual net generation in kilowatt-hours, exclusive of plant use.

Energy Made Available: Project energy generated by the District at the Project except energy use in the production of such energy or utilized by the District for its operations at the location of the project.

Billing Month: Buyer shall read the metering devices within three business days of the end of each calendar month and will render payment within 15 days of such reading.

Conditions of Service: The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Monongahela Power Company on its side of the delivery point.

[FR Doc. 03–25501 Filed 10–7–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Georgia-Alabama-South Carolina System

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of Rate Order.

SUMMARY: The Deputy Secretary of the Department of Energy, confirmed and approved, on an interim basis, Rate Schedules SOCO–1–B, SOCO–2–B, SOCO–3–B, SOCO–4–B, ALA–1–K, MISS–1–K, Duke-1–B, Duke-2–B, Duke-3–B, Duke-4–B, Santee-1–B, Santee-2–B, Santee-3–B, Santee-4–B, SCE&G–1–B, SCE&G–2–B, SCE&G–3–B, SCE&G–4–B, Regulation-1, Replacement-1, Pump-1–A, and Pump-2. The rates were approved on an interim basis, effective on October 1, 2003, and through September 30, 2007, and are subject to confirmation and final approval by the Federal Energy Regulatory Commission.

DATES: Approval of rate on an interim basis is effective through September 30, 2007.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance & Marketing, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711, (706)–213–3800.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission, by Order issued July 15, 2003, in Docket No. EF02–3011–000, confirmed and approved Wholesale Power Rate Schedules SOCO–1–A, SOCO–2–A, SOCO–3–A, SOCO–4–A, ALA–1–J, MISS–1–J, Duke-1–A, Duke-2–A, Duke-3–A, Duke-4–A, Santee-1–A, Santee-2–A, Santee-3–A, Santee–4–A, SCE&G–1–A, SCE&G–2–A, SCE&G–3–A, SCE&G–4–A, Regulation-1, Replacement-1, Pump-1–A, and Pump-2. Rate schedules SOCO–1–B, SOCO–2–B, SOCO–3–B, SOCO–4–B, ALA–1–K, MISS–1–K, Duke-1–B, Duke-2–B, Duke-3–B, Duke-4–B, Santee-1–B, Santee-2–B, Santee-3–B, Santee-4–B, SCE&G–1–B, SCE&G–2–B, SCE&G–3–B, SCE&G–4–B, Regulation-1, Replacement-1, Pump-1–A, and Pump-2 replace these schedules.

Dated: September 26, 2003.

Kyle E. McSlarrow,

Deputy Secretary.

In the Matter of Southeastern Power Administration B;—Georgia-Alabama-South Carolina Rates; Rate Order; No. Southeastern-44

Order Confirming and Approving Power Rates on an Interim Basis

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern) were transferred to and

vested in the Secretary of Energy. By Delegation Order No. 00–037.00 (December 6, 2001), the Secretary of Energy delegated to the Administrator of Southeastern the authority to develop power and transmission rates, and delegated to the Deputy Secretary of the Department of Energy the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. This rate order is issued by the Deputy Secretary pursuant to said delegation.

Background

Power from the Georgia-Alabama-South Carolina System is presently sold under Wholesale Power Rate Schedules SOCO–1–A, SOCO–2–A, SOCO–3–A, SOCO–4–A, ALA–1–J, MISS–1–J, Duke-1–A, Duke-2–A, Duke-3–A, Duke-4–A, Santee-1–A, Santee-2–A, Santee-3–A, Santee-4–A, SCE&G–1–A, SCE&G–2–A, SCE&G–3–A, SCE&G–4–A, Regulation-1, Replacement-1, Pump-1–A, and Pump-2. These rate schedules were approved by the FERC on July 15, 2003, for a period ending September 30, 2007 (104 FERC 62028).

Public Notice and Comment

Notice of proposed rate adjustment was published in the **Federal Register** April 16, 2003 (68 FR 18619). In the notice, Southeastern proposed a rate increase of about twenty per cent. The notice advised interested parties of a public information and comment forum to be held in Atlanta, Georgia on May 29, 2003 Written comments were accepted on or before July 15, 2003. The following is a summary of the comments:

Staff Review of Public Comments

Notice of proposed rate adjustment was published in the **Federal Register** April 16, 2003 (68 FR 18619). The notice advised interested parties of a proposed rate increase of about twenty percent (20%). A public information and comment forum was scheduled for May 29, 2003. Written comments were accepted on or before July 15, 2003. Written comments were received from two sources pursuant to this notice.

The following comments were received during the public comment period. Southeastern response follows each comment.

Comment 1: With respect to the Richard B. Russell Project, the Customers reserve the right to comment on the final cost allocation, once it is completed.

Response 1: Southeastern will support the Customers right to respond to the cost allocation, once the Corps has provided a completed draft to Southeastern.

Comment 2: The Customers would like to commend Southeastern for its decision to exclude from its proposed rates Interest During Construction (''IDC'') costs associated with the Russell Project from Fiscal Year 1993 going forward. These interest costs have accumulated as a result of protracted litigation between local and national environmental groups, the South Carolina Department of Natural Resources (''SCDNR''), and the Federal Government. The Customers neither initiated nor participated in the litigation, nor were they responsible for the decision to proceed with construction when there was no certainty as to whether or not the project would become commercially operable. The Customers should not be held responsible for paying the interest that has accumulated as a result of this litigation.

There is an important precedent for Southeastern's proposed exclusion of Russell Project costs that are not properly considered used and useful for hydropower generation: the Southwestern Power Administration's (Southwestern) treatment of hydropower's cost allocation share at the Harry S. Truman Project in Missouri. The Customers understand that Southwestern and the Corps have completed an arrangement whereby a significant portion of hydropower's original cost allocation has been reallocated away from hydropower, because some of the costs are not properly borne by hydropower. The Southwestern-Corps agreement for the Truman Project is based on the important concept that costs incurred for project construction that are neither used nor useful for hydropower should not be included in customer rates. For these reasons, we support the methodology that Southeastern has selected in excluding IDC costs from its rate base in the present repayment study and urge Southeastern to support permanent exclusion of IDC costs to resolve the question.

Response 2: Southeastern believes that IDC costs are legitimate costs that should be recovered. The question is when should the IDC computation end and to what purpose the IDC should be allocated. The portion of the IDC costs at the Richard B. Russell Project of concern to Southeastern are the IDC costs that accumulated over the nine-year period, from 1993 to 2002. These costs occurred when the pump-back units at the project were available for use; however, a Federal District Court enjoined their operation until 2002. Southeastern is in discussion with the Corps of Engineers on how these particular costs should be treated. Southeastern does not comment on the Customers' characterization of the treatment of IDC costs at the Harry S. Truman Project.

Comment 3: Several comments pertained to the appropriateness and accuracy of the estimates for Corps Operation & Maintenance Expenses (O&M) and Renewals & Replacements (R&R). Examples are as follows:

- The SeFPC is particularly concerned about the Corps' cost estimates of O&M Expenses, as reflected in its proposed rates. Southeastern's Rate and Repayment study dated May 29, 2003, assumes an increase from $36,591,149 in fiscal year 2004 to $37,949,000 in fiscal year 2005 for Corps' O&M expenses. We believe these projections do not accurately reflect the Corps' annual appropriations, as provided by Congress. Proposed O&M funding for Corps' projects in the Georgia-Alabama-South Carolina System has decreased significantly in the President's budget request for the upcoming fiscal year. Unless Congress ignores the President's request and increases O&M funding levels across-the-board for these projects, we fear that Southeastern's customers may be charged for costs that will never be incurred for actual O&M.
- The Customers believe Southeastern should take a closer look at the differences between the projected R&R expenses provide by the Corps in its repayment study and the proposed Congressional appropriations for Corps' Construction General funds in the upcoming fiscal year.
- [The Customers] would like to work closely with Southeastern and the Corps to ensure that the O&M and R&R projections in Southeastern's rates are consistent with funds appropriated by Congress. For example, one method Southeastern may use is a three-year historical average of the amounts the Corps was appropriated.

Response 3: Southeastern is using projections of Corps O&M expenses provided by the Corps in April 2002. Southeastern believes these earlier estimates are more reasonable than those provided most recently.

However, capitalized cost projections used in developing these proposed rates are those most recently provided by the Corps. Southeastern is concerned with the disparity between the capitalized

projections included in the system repayment study and the funding for capitalized item actually provided by the Corps. Section 10 (l.) of DOE Procedure RA 6120.2 requires that ''Future replacement costs will be included in the repayment studies by adding the estimated capital cost of replacement to the unpaid Federal Investment in the year each replacement is estimated to go into service, and adding it to the allowable unamortized investment.'' As such, Southeastern must include the best available projection of Corps replacements in the repayment study.

Comment 4: The Customers understand that at the Walter F. George project, capital additions for 2003 are projected to be in excess of $24 million. The Customers understand that portions of these costs may be for purposes other than hydropower, and therefore should be excluded from the repayment study.

Response 4: The comment refers to the costs of construction of a Secant Wall at the Walter F. George Project. This wall is necessary to prevent seepage of water under the Walter F. George Dam. Southeastern considers this investment to qualify as ''Dam Safety''. Therefore, under 33 U.S.C. 467n; 100 STAT. 4263, fifteen per cent (15%) of the project cost should qualify for cost recovery as a joint cost while the remainder should be considered non-reimbursable. As of the time of this rate adjustment, the Corps has not concurred with Southeastern in this opinion. Until the Corps concurs with Southeastern in this opinion, Southeastern will include 100 percent of the joint costs allocated to power in the Repayment Study for the Georgia-Alabama-South Carolina System.

Discussion

System Repayment

An examination of Southeastern's revised system power repayment study, prepared in July 2003, for the Georgia-Alabama-South Carolina System, shows that with the proposed rates, all system power costs are paid within the 50-year repayment period required by existing law and DOE Procedure RA 6120.2. The Administrator of Southeastern has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded that, because the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding these rates, including studies, and other supporting materials is available for public review in the offices of Southeastern Power Administration, 1166 Athens Tech Road, Elberton, Georgia 30635–6711.

Submission to the Federal Energy Regulatory Commission

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period beginning October 1, 2003, and ending no later than September 30, 2007.

Order

In view of the foregoing and pursuant to the authority vested in me as the Deputy Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 2003, attached Wholesale Power Rate Schedules SOCO–1–B, SOCO–2–B, SOCO–3–B, SOCO–4–B, ALA–1–K, MISS–1–K, Duke-1–B, Duke-2–B, Duke-3–B, Duke-4–B, Santee-1–B, Santee-2–B, Santee-3–B, Santee-4–B, SCE&G–1–B, SCE&G–2–B, SCE&G–3–B, SCE&G–4–B, Regulation-1, Replacement-1, Pump-1–A, and Pump-2. The rate schedules shall remain in effect on an interim basis through September 30, 2007, unless such period is extended or until the FERC confirms and approves them or substitute rate schedules on a final basis.

Dated: September 26, 2003.

Kyle E. McSlarrow,

Deputy Secretary.

Wholesale Power Rate Schedule SOCO–1–B

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida to whom power may be transmitted and scheduled pursuant to contracts between the Government and Southern Company Services, Incorporated (hereinafter called the Company) and the Customer. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission: $2.08 Per kilowatt of total contract demand per month as of March 2003 is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the Transmission and Distribution Charges paid by the Government. The initial monthly transmission demand charge shall be determined by multiplying the Government's Load Ratio Share time one twelfth (1/12) of Southern Companies' Annual Transmission Costs as specified in Schedule 1 of the Government-Company Contract. The transmission charges are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) involving Southern Companies' Open Access Transmission Tariff (OATT). The distribution charges may be modified by FERC pursuant to application by the Company under Section 205 of the Federal Power Act or

the Government under Section 206 of the Federal Power Act.

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all Southeastern rate transmission and distribution charges paid by the Government in behalf of the Customer.

Scheduling, System Control and Dispatch Service: $0.0806 Per kilowatt of total contract demand per month.

Reactive Supply and Voltage Control from Generation Sources Service: $0.11 Per kilowatt of total contract demand per month.

Regulation and Frequency Response Service: $0.0483 Per kilowatt of total contract demand per month.

Transmission, System Control, Reactive, and Regulation Services: The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will see to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. As of March 2003, applicable energy losses are as follows:

Transmission Facilities 3.0%
Distribution Substations 0.9%
Distribution Lines 2.25%

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by Southern Companies under Section 205 of the Federal Power Act or Southeastern under Section 206 of the Federal Power Act or otherwise.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule SOCO–2–B

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida to whom power may be transmitted pursuant to contracts between the Government and Southern Company Services, Incorporated (hereinafter called the Company) and the Customer. The Customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission: $2.08 Per kilowatt of total contract demand per month as of March 2003 is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the Transmission and Distribution Charges paid by the Government. The initial monthly transmission demand charge shall be determined by multiplying the Government's Load Ratio Share time one twelfth (1/12) of Southern Companies' Annual Transmission Costs as specified in Schedule 1 of the Government-Company Contract. The transmission charges are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) involving Southern Companies' Open Access Transmission Tariff (OATT). The distribution charges may be modified by FERC pursuant to application by the Company under Section 205 of the Federal Power Act or the Government under Section 206 of the Federal Power Act.

Proceedings before FERC involving the OATT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all Southeastern rate transmission and distribution charges paid by the Government in behalf of the Customer.

Reactive Supply and Voltage Control from Generation Sources Service: $0.11 Per kilowatt of total contract demand per month.

Transmission, System Control, Reactive, and Regulation Services: The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. As of March 2003, applicable energy losses are as follows:

Transmission facilities 3.0%
Distribution Substations 0.9%
Distribution Lines 2.25%

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by Southern Companies under Section 205 of the Federal Power Act or Southeastern under Section 206 of the Federal Power Act or otherwise.

Billing Month: The billing month for power sold under this schedule shall

end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule SOCO–3–B

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida to whom power may be scheduled pursuant to contracts between the Government and Southern Company Services, Incorporated (hereinafter called the Company) and the Customer. The Customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects (hereinafter referred to collectively as the Projects) and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Scheduling, System Control and Dispatch Service: $0.0806 Per kilowatt of total contract demand per month.

Regulation and Frequency Response Service: $0.0483 Per kilowatt of total contract demand per month.

Transmission, System Control, Reactive, and Regulation Services: The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule SOCO–4–B

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida served through the transmission facilities of Southern Company Services, Inc. (hereinafter called the Company) or the Georgia Integrated Transmission System. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects (hereinafter referred to collectively as the Projects) and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission, System Control, Reactive, and Regulation Services: The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule ALA–1–K

Availability: This rate schedule shall be available to Alabama Electric Cooperative, Incorporated (hereinafter called the Cooperative).

Applicability: This rate schedule shall be applicable to power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under contract between the Cooperative and the Government. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz and and shall be delivered at the Walter F. George, West Point, and Robert F. Henry Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation

services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission, System Control, Reactive, and Regulation Services: The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Energy to be Furnished by the Government: The Government will sell to the Cooperative and the Cooperative will purchase from the Government those quantities of energy specified by contract as available to the Cooperative for scheduling on a weekly basis.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule MISS–1–K

Availability: This rate schedule shall be available to the South Mississippi Electric Power Association (hereinafter called the Customer) to whom power may be wheeled pursuant to contracts between the Government and Alabama Electric Cooperative, Inc. (hereinafter called AEC).

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be three phase alternating current at a nominal frequency of 60 Hertz delivered at the delivery points of the Customer on AEC's transmission and distribution system. The voltage of delivery will be maintained within the limits established by the state regulatory commission.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission: $1.88 Per kilowatt of total contract demand per month as of March 2003 is presented for illustrative purposes.

This rate is subject to annual adjustment on January 1, and will be computed subject to the Appendix A attached to the Government-AEC contract.

Transmission, System Control, Reactive, and Regulation Services: The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Cooperative and the Cooperative will purchase from the Government those quantities of energy specified by contract as available to the Cooperative for scheduling on a weekly basis.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Duke-1–B

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be transmitted and scheduled pursuant to contracts between the Government and Duke Power Company (hereinafter called the Company) and the Customer. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission: $0.87 Per kilowatt of total contract demand per month is presented for illustrative purposes.

The initial transmission charge will be the Customers' ratable share of the Transmission Distribution Charges paid by the Government. The initial monthly transmission demand charge shall reflect the Government's Load Ratio Share Responsibility. The Load Ratio Share shall be computed each month and shall be the ratio of the Network Load to the average of the Company's Transmission System load for each of the 12 preceding months. The Company's Transmission System Load shall be the load as determined in

Section 34.3 of the Company's Pro Forma Open Access Transmission Tariff (the Tariff). The Government shall pay a monthly demand charge which shall be determined by multiplying its Load Ratio Share by 1/12 of the Annual Transmission Revenue Requirement set forth in Attachment H of the Company's Tariff.

Proceedings before FERC involving the Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses of three per cent (3%) as of March 2003). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company under Section 205 of the Federal Power Act or Southeastern under Section 206 of the Federal Power Act or otherwise.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Duke-2-B

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be transmitted pursuant to contracts between the Government and Duke Power Company (hereinafter called the Company) and the Customer. The Customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission: $0.87 Per kilowatt of total contract demand per month is presented for illustrative purposes.

The initial transmission charge will be the Customers ratable share of the Transmission Distribution Charges paid by the Government. The initial monthly transmission demand charge shall reflect the Government's Load Ratio Share Responsibility. The Load Ratio Share shall be computed each month and shall be the ratio of the Network Load to the average of the Company's Transmission System load for each of the 12 preceding months. The Company's Transmission System Load shall be the load as determined in Section 34.3 of the Company's Pro Forma Open Access Transmission Tariff (the Tariff). The Government shall pay a monthly demand charge which shall be determined by multiplying its Load Ratio Share by 1/12 of the Annual Transmission Revenue Requirement set forth in Attachment H of the Company's Tariff.

Proceedings before FERC involving the Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses of three per cent (3%) as of March 2003). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company under Section 205 of the Federal Power Act or Southeastern under Section 206 of the Federal Power Act or otherwise.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Duke-3-B

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be scheduled pursuant to contracts between the Government and Duke Power Company (hereinafter called the Company) and the Customer. The Customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the Savannah River Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Duke-4–B

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina served through the transmission facilities of Duke Power Company (hereinafter called the Company) and the Customer. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement with the Company. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the Savannah River Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Santee-1–B

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter call the Customer) in South Carolina to whom power may be wheeled and scheduled pursuant to contracts between the Government and South Carolina Public Service Authority (hereinafter called the Authority). Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Authority's transmission and distribution system.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Authority's rate.

Transmission: $1.52 Per kilowatt of total contract demand per month as of March 2003 is presented for illustrative purposes.

The initial transmission rate is subject to annual adjustment on July 1 of each year, and will be computed subject to the formula contained in Appendix A to the Government-Authority Contract.

Proceedings before the Federal Energy Regulatory Commission involving the Authority's Open Access Transmission Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses of two per cent

(2%) as of March 2003). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Authority's system.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Service Interruption: When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in}\\ \text{any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}}\right)$$

Wholesale Power Rate Schedule Santee-2–B

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter call the Customer) in South Carolina to whom power may be wheeled pursuant to contracts between the Government and South Carolina Public Service Authority (hereinafter called the Authority). The customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Authority's transmission and distribution system.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Authority's rate.

Transmission: $1.52 Per kilowatt of total contract demand per month as of March 2003 is presented for illustrative purposes.

The initial transmission rate is subject to annual adjustment on July 1 of each year, and will be computed subject to the formula contained in Appendix A to the Government-Authority Contract.

Proceedings before the Federal Energy Regulatory Commission involving the Authority's Open Access Transmission Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses of two per cent (2%) as of March 2003). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Authority's system.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Service Interruption: When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in}\\ \text{any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}}\right)$$

Wholesale Power Rate Schedule Santee-3–B

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter call the Customer) in South Carolina to whom power may be scheduled pursuant to contracts between the Government and South Carolina Public Service Authority (hereinafter called the Authority). The customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Authority's rate.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses).

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Service Interruption: When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in}\\ \text{any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}}\right)$$

Wholesale Power Rate Schedule Santee-4–B

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter call the Customer) in South Carolina served through the transmission facilities of South Carolina Public Service Authority (hereinafter called the Authority). The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Authority's rate.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses).

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Service Interruption: When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\left(\begin{array}{c}\text{Number of kilowatts unavailable}\\ \text{for at least 12 hours in}\\ \text{any calendar day}\end{array}\right)\times\left(\frac{\text{Monthly Capacity Charge}}{\text{Number of Days in Billing Month}}\right)$$

Wholesale Power Rate Schedule SCE&G–1–B

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina to whom power may be wheeled and scheduled pursuant to contracts between the Government and the South Carolina Electric & Gas Company (hereinafter called the Company). Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from

pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission: $1.01 Per kilowatt of total contract demand per month is presented for illustrative purposes.

The initial rate will be subject to monthly adjustment and will be computed subject to Section 7 of the Government-Company contract.

Proceedings before the Federal Energy Regulatory Commission involving the Company's Open Access Transmission Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Conditions of Service: The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Wholesale Power Rate Schedule SCE&G–2–B

Availability: This rate schedule shall be available public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina to whom power may be wheeled pursuant to contracts between the Government and the South Carolina Electric & Gas Company (hereinafter called the Company). The customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission: $1.01 Per kilowatt of total contract demand per month is presented for illustrative purposes.

The initial rate will be subject to monthly adjustment and will be computed subject to Section 7 of the Government-Company contract.

Proceedings before the Federal Energy Regulatory Commission involving the Company's Open Access Transmission Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Conditions of Service: The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Wholesale Power Rate Schedule SCE&G–3–B

Availability: This rate schedule shall be available public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina to whom power may be scheduled pursuant to contracts between the Government and the South Carolina Electric & Gas Company (hereinafter called the Company). The customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of

power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Conditions of Service: The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Wholesale Power Rate Schedule SCE&G–4–B

Availability: This rate schedule shall be available public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina served through the transmission facilities of South Carolina Electric & Gas Company (hereinafter called the Company). The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability: This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service: The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate: The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge: $3.39 Per kilowatt of total contract demand per month.

Energy Charge: 8.39 Mills per kilowatt-hour.

Generation Services: $0.12 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract that the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Conditions of Service: The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Wholesale Power Rate Schedule Pump-1–A

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom power is provided pursuant to contracts between the Government and the customer.

Applicability: This rate schedule shall be applicable to the sale at wholesale energy generated from pumping operations at the Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. The energy will be segregated from energy from other pumping operations.

Character of Service: The energy supplied hereunder will be delivered at the delivery points provided for under appropriate contracts between the Government and the Customer.

Monthly Rate: The rate for energy sold under this rate schedule for the months specified shall be:

$$\text{Energy Rate} = \left(C_{wav} \div F_{wav}\right) \div \left(1 - L_d\right)$$

[computed to the nearest $.00001 (1/100 mill) per kwh]

(The weighted average cost of energy for pumping divided by the energy conversion factor, quantity divided by one minus losses for delivery.)

Where:

$$C_{wav} = C_{T1} \div E_{T1}$$

(The weighted average cost of energy for pumping for this rate schedule is equal to the cost of energy purchased or supplied for the benefit of the customer for pumping divided by the total energy for pumping.)

$$C_{T1} = C_P + C_S$$

(Cost of energy for pumping for this rate schedule is equal to the cost of energy purchased or supplied for the benefit of

the customer plus the cost of energy in storage carried over from the month preceding the specified month.)

$$E_{T1} = E_p \times \left(1 - L_p\right) + E_s^{t-1}$$

(Energy for pumping for this rate schedule is equal to the energy purchased or supplied for the benefit of the customer, after losses, plus the energy for pumping in storage as of the end of the month preceding the specified month.)

$$C_s = C_{wav}^{t-1} \times E_s^{t-1}$$

(Cost of energy in storage is equal to the weighted average cost of energy for pumping for the month preceding the specified month times the energy for pumping in storage at the end of the month preceding the specified month.)

$$C_p$$

= Dollars cost of energy purchased or supplied for the benefit of the customer for pumping during the specified month, including all direct costs to deliver energy to the project.

$$E_p$$

= Kilowatt-hours of energy purchased or supplied for the benefit of the customer for

$$L_p$$

pumping during the specified month.

= Energy loss factor for transmission on energy purchased or supplied for the benefit of the customer for pumping (Expected to be .03 or three percent.)

$$E_s^{t-1}$$

= Kilowatt-hours of energy in storage as of the end of the month immediately preceding the specified month.

$$C_{wav}^{t-1}$$

= Weighted average cost of energy for pumping for the month immediately preceding the specified month.

$$F_{wav} = E_G \div E_T$$

(Weighted average energy conversion factor is equal to the energy generated from pumping divided by the total energy for pumping)

$$E_G$$

= Energy generated from pumping.

$$L_d$$

= Weighted average energy loss factor on energy delivered by the facilitator to the customer.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Facilitator (less any losses required by the Facilitator). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Facilitator's system.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Pump-2

Availability: This rate schedule shall be available to public bodies and cooperatives who provide their own scheduling arrangement and elect to allow Southeastern to use a portion of their allocation for pumping (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom power is provided pursuant to contracts between the Government and the customer.

Applicability: This rate schedule shall be applicable to the sale at wholesale energy generated from pumping operations at the Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This energy will be segregated from energy from other pumping operations.

Character of Service: The energy supplied hereunder will be delivered at the delivery points provided for under appropriate contracts between the Government and the Customer.

Monthly Rate: The rate for energy sold under this rate schedule for the months specified shall be:

$$\text{Energy Rate} = \left(C_{wav} \div F_{wav}\right) \div \left(1 - L_d\right)$$

[computed to the nearest $.00001 (1/100 mill) per kwh]

(The weighted average cost of energy for pumping divided by the energy conversion factor, quantity divided by one minus losses for delivery.)

Where:

$$C_{wav} = C_{T2} \div E_{T2}$$

(The weighted average cost of energy for pumping for this rate schedule is equal to the cost of energy purchased or supplied for the benefit of the customer for pumping divided by the total energy for pumping.)

$$C_{T2} = C_p + C_s$$

(Cost of energy for pumping for this rate schedule is equal to the cost of energy purchased or supplied for the benefit of the customer plus the cost of energy in storage carried over from the month preceding the specified month.)

$$E_{T2} = E_p \times \left(1 - L_p\right) + E_s^{t-1}$$

(Energy for pumping for this rate schedule is equal to the energy purchased or supplied for the benefit of the customer, after losses, plus the energy for pumping in storage as of the end of the month preceding the specified month.)

$$C_s = C_{wav}^{t-1} \times E_s^{t-1}$$

(Cost of energy in storage is equal to the weighted average cost of energy for pumping for the month preceding the specified month times the energy for pumping in storage at the end of the month preceding the specified month.)

$$C_p$$

= Dollars cost of energy purchased or supplied for the benefit of the customer for pumping during the specified month, including all direct costs to deliver energy to the project.

$$E_p$$

= Kilowatt-hours of energy purchased or supplied for the benefit of the customer for

$$L_p$$

pumping during the specified month.

= Energy loss factor for transmission on energy purchased or supplied for the benefit of the customer for pumping (Expected to be .03 or three percent.)

$$E_s^{t-1}$$

= Kilowatt-hours of energy in storage as of the end of the month immediately preceding the specified month.

$$C_{wav}^{t-1}$$

= Weighted average cost of energy for pumping for the month immediately preceding the specified month.

$$F_{wav} = E_G \div E_T$$

(Weighted average energy conversion factor is equal to the energy generated from pumping divided by the total energy for pumping)

E_G

= Energy generated from pumping.

L_d

= Weighted average energy loss factor on energy delivered by the facilitator to the customer.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Facilitator (less any losses required by the Facilitator). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Facilitator's system.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Rate Schedule Regulation-1

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom service is provided pursuant to contracts between the government and the customer.

Applicability: This rate schedule shall be applicable to the sale of regulation services provided from the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters, and Richard B. Russell Projects (hereinafter called the Projects) and sold under appropriate contracts between the Government and the Customer.

Character of Service: The service supplied hereunder will be delivered at the Projects.

Monthly Rate: The rate for service supplied under this rate schedule for the period specified shall be:

$0.05 per kilowatt of total contract demand per month.

Contract Demand: The contract demand is the amount of capacity in kilowatts stated in the contract to which the Government is obligated to supply and the Customer is entitled to receive regulation service.

Billing Month: The billing month for services provided under this schedule shall end at 12 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Replacement-1

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom power is provided pursuant to contracts between the Government and the customer.

Applicability: This rate schedule shall be applicable to the sale at wholesale energy purchased to meet contract minimum energy and sold under appropriate contracts between the Government and the Customer.

Character of Service: The energy supplied hereunder will be delivered at the delivery points provided for under appropriate contracts between the Government and the Customer.

Monthly Rate: The rate for energy sold under this rate schedule for the months specified shall be:

$$\text{Energy Rate} = \left(C_{wav} \div F_{wav}\right) \div \left(1 - L_d\right)$$

[computed to the nearest $.00001 (1/100 mill) per kwh]

(The weighted average cost of energy for replacement energy divided by one minus losses for delivery.)

Where:

$$C_{wav} = C_P \div \left(E_P \times \left(1 - L_P\right)\right)$$

(The weighted average cost of energy for replacement energy is equal to the cost of replacement energy purchased divided by the replacement energy purchased, net losses.)

C_P

= Dollars cost of energy purchased for replacement energy during the specified month, including all direct costs to deliver energy to the project.

E_P

= Kilowatt-hours of energy purchased for replacement energy during the specified month.

L_P

= Energy loss factor for transmission on replacement energy purchased (Expected to be 0 or zero percent.)

L_d

= Weighted average energy loss factor on energy delivered by the facilitator to the customer.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Facilitator (less any losses required by the Facilitator). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Facilitator's system.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

[FR Doc. 03–25502 Filed 10–7–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7571–5]

Good Neighbor Environmental Board Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The next meeting of the Good Neighbor Environmental Board, a Federal advisory committee that reports to the President and Congress on environmental and infrastructure projects along the U.S. border with Mexico, will take place in Imperial Beach, California, on October 22–23, 2003. It is open to the public.

DATES: On October 22, the meeting will begin at 8:30 a.m. (registration at 8 a.m.) and end at 6 p.m. On October 23, the Board will hold a routine business meeting from 8 a.m. until 12 noon (registration at 7:30 a.m.).

ADDRESSES: The meeting site is the Dempsey Holder Safety Center, 950 Ocean Lane, Imperial Beach, California.

FOR FURTHER INFORMATION CONTACT: Elaine M. Koerner, Designated Federal Officer for the Good Neighbor Environmental Board, U.S. Environmental Protection Agency Region 9 Office, 75 Hawthorne St., San Francisco, California 94105. Tel: (415) 972–3437; E-mail: *koerner.elaine@epa.gov.*

SUPPLEMENTARY INFORMATION:

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the Designated Federal Officer at least five business days prior to the meeting so that appropriate arrangements can be made.

Agenda: On the morning of October 22, the first day of the meeting, guest speakers will discuss the meeting theme of ''U.S.-Mexico Border Cooperation'' as it relates to the activities of their organizations. The morning session will begin at 8:30 a.m. and conclude with a public comment session from 12–12:30

p.m. For this session, the Board invites comments on a wide range of issues, including the topic for its upcoming Seventh Report: Links between children's health in the border region and the region's environmental infrastructure. During the afternoon of October 22, beginning at 2 p.m., guest speakers will continue to address the meeting theme until 3 p.m. From 3–3:45 p.m., Board members will report out on the activities of their organizations. After a fifteen minute break, there will be a two-hour Joint Session with Consejos Consultivos during which the Board will discuss mutual areas of interest with two counterpart Mexican advisory groups for the northern border. The first day of the meeting will conclude at 6:00 p.m. The second day of the meeting, October 23, will begin at 8 a.m. and conclude at noon. The format will be a routine business meeting, with agenda items including approval of minutes, planning for upcoming meetings, and status of reports.

Public Attendance: The public is welcome to attend all portions of the meeting. Members of the public who plan to file written statements and/or make brief (suggested 5-minute limit) oral statements at the public comment session are encouraged to contact the Designated Federal Officer for the Board prior to the meeting.

Background: The Good Neighbor Environmental Board meets three times each calendar year at different locations along the U.S.-Mexico border and also holds an annual strategic planning session. It was created by the Enterprise for the Americas Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the governments of the States of Arizona, California, New Mexico and Texas; and private organizations with expertise on environmental and infrastructure problems along the southwest border. The U.S. Environmental Protection Agency gives notice of this meeting of the Good Neighbor Environmental Board pursuant to the Federal Advisory Committee Act (Pub. L. 92–463).

Dated: September 29, 2003.

Oscar Carrillo,

Acting Designated Federal Officer.

[FR Doc. 03–25549 Filed 10–7–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Agency Information Collection Activities: Proposed Extension of Information Collection; Comment Request

AGENCIES: Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision (OTS), Treasury.

ACTION: Joint notice and request for comment.

SUMMARY: The FDIC and OTS (collectively, the Agencies), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed revision to an existing information collection as required by the Paperwork Reduction Act of 1995. The Agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the Agencies are soliciting comment concerning their plans to require electronic filing by directors, officers, and principal shareholders of institutions (insiders) of beneficial ownership of equity securities. Electronic filing of the reports is mandated by the Securities Exchange Act of 1934, as amended by the Sarbanes-Oxley Act of 2002.

DATES: Comments should be submitted by December 8, 2003.

ADDRESSES: Comments should be directed to the Agencies and the OMB Desk Officer for the Agencies as follows:

FDIC: Steven F. Hanft, Paperwork Clearance Officer, Legal Division, Room MB–3064, Attention: Comments/Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to ''beneficial ownership reports.'' Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. FAX number (202) 898–3838; Internet address: *comments@fdic.gov.* Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC between 9 a.m. and 4:30 p.m. on business days.

OTS: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: 1550–0019, FAX number (202) 906–6518, or e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

OMB Desk Officer for the Agencies: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or e-mail to *jlackeyj@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT:

FDIC: Steven F. Hanft, Paperwork Clearance Officer, (202) 898–3907, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Marilyn K. Burton, OTS Clearance Officer, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Type of Review: Revision of a currently approved collection.

Titles:

FDIC: Beneficial Ownership Reports.

OTS: 34 Act Disclosures.

OMB Control Numbers:

FDIC: 3064–0030.

OTS: 1550–0019.

Form Numbers:

FDIC: Forms 3, 4, and 5.

OTS: SEC Schedules 13D, 13G, 14A, 14C, 14D–1, and TO; SEC Forms 3, 4, 5, 10, 10–SB, 10–K, 10–KSB, 8–K, 8–A, 12b–25, 10–Q, 10–QSB, 15, and annual report.

Abstract: This notice seeks public comment on a planned change in filing method for reports of beneficial ownership by insiders whose equity securities are registered with the Agencies. In the past, the Agencies have required paper filings. The Securities Exchange Act of 1934 (''Exchange Act''), as amended by the Sarbanes-Oxley Act of 2002, changed this requirement to electronic filing. Currently, the Agencies

are authorizing voluntary electronic filing through an electronic system, which has been available since July 30. Electronic filing will be made mandatory by a separate, later action by the Agencies. The new electronic system is an important step in the Agencies' ongoing efforts to streamline the filing and retrieval of reports filed with the Agencies under the Securities Exchange Act of 1934. It will also reduce burden on insiders who must file these reports within two business days of completing a transaction in equity securities of the institution.

Additionally, OTS collects other periodic disclosure documents required to be filed by savings associations pursuant to the Exchange Act on forms promulgated by the U.S. Securities and Exchange Commission for its registrants. In addition to seeking public comment on the planned change in filing method for reports of beneficial ownership, OTS also seeks public comment on its proposed renewal of this collection.

The Agencies' burden estimates follow.

Affected Public:

FDIC: Directors, officers and principal shareholders of insured financial institutions (insiders).

OTS: Directors, officers and principal shareholders of insured financial institutions (insiders); savings associations.

Burden Estimates:

Estimated Number of Respondents:

FDIC: 1,755.

OTS: 128.

Estimated Number of Responses:

FDIC: 2,370.

OTS: 401.

Estimated Annual Burden Hours:

FDIC: 1,896 hours.

OTS: 14,759 hours.

Frequency of Response:

FDIC: On occasion.

OTS: On occasion; quarterly; annually.

Comments

Comments submitted in response to this notice will be summarized in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the 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 agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated at Washington, DC, this 22 day of September, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: October 2, 2003.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 03–25476 Filed 10–7–03; 8:45 am]

BILLING CODE 6714–01–P AND 6720–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011075–063.

Title: Central America Discussion Agreement.

Parties: A.P. Moller-Maersk A/S; APL Co. PTE Ltd.; Crowley Liner Services, Inc.; Dole Ocean Cargo Express; King Ocean Services Limited; and Seaboard Marine, Ltd.

Synopsis: The amendment eliminates the separate geographic sections under the agreement, makes technical corrections to eliminate obsolete or repetitive language, and updates Maersk's name.

Agreement No.: 201110–006.

Title: Berths 55–56 Agreement.

Parties: Port of Oakland and Total Terminals International, LLC, as Hanjin Shipping Company, Ltd.'s assignee.

Synopsis: The modification clarifies the primary and secondary use provisions and the completion dates for the improvements of the premises. It also provides for the use of port-owned cranes.

By Order of the Federal Maritime Commission.

Dated: October 3, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–25527 Filed 10–7–03; 8:45 am]

BILLING CODE 6730–01–P

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 : 3981NF.

Name : All-Cargo Express Inc.

Address : Lakeview Professional Village, 12558 West Atlantic Blvd., Coral Springs, FL 33071.

Date Revoked : September 14, 2003.

Reason : Failed to maintain valid bonds.

License Number : 13243N.

Name : Clark Overseas Shipping, Inc.

Address : 121 New York Avenue, P.O. Box 438, Trenton, NJ 08603.

Date Revoked : September 4, 2003.

Reason : Surrendered license voluntarily.

License Number : 17466N.

Name : Compass Shipping, Inc.

Address : 525 Empire Blvd., Brooklyn, NY 11225.

Date Revoked : September 5, 2003.

Reason : Failed to maintain a valid bond.

License Number : 2274F.

Name : David K. Lindemuth Co., Inc.

Address : 154 South Spruce Avenue, So. San Francisco, CA 94080.

Date Revoked : August 27, 2003.

Reason : Failed to maintain a valid bond.

License Number: 3183F.

Name : DRW Transportation Services, Inc.

Address : P.O. Box 15993, North Little Rock, AR 72231.

Date Revoked : August 24, 2003.

Reason : Failed to maintain a valid bond.

License Number : 17507F.

Name : ECO Freight International Corporation.

Address : 5422 W. Rosecrans Avenue, Hawthorne, CA 90250.

Date Revoked : August 21, 2003.

Reason : Surrendered license voluntarily.

License Number : 8410N.

Name : Eugenia Shilling Shaw dba Nantrans.
Address : 978 Shoreline Drive, San Mateo, CA 94404.
Date Revoked : August 30, 2003.
Reason : Failed to maintain a valid bond.

License Number : 16199N.
Name : Global Container Line, Inc. dba Global Ocean Air Solutions.
Address : 2013 NW. 79th Avenue, Miami, FL 33122.
Date Revoked : August, 24, 2003.
Reason : Failed to maintain a valid bond.

License Number : 17945N.
Name : Jury Trans, Inc.
Address : 8244 NW. 14th Street, Miami, FL 33126.
Date Revoked : August 20, 2003.
Reason : Failed to maintain a valid bond.

License Number : 16763N.
Name : MTL Worldwide Agency, Inc.
Address : 228 51st Street, 2nd Floor, Brooklyn, NY 11220.
Date Revoked : August 30, 2003.
Reason : Failed to maintain a valid bond.

License Number : 12539N.
Name : Miller Intermodal Logistics Services, Inc.
Address : 5500 Highway 80 West, P.O. Box 1123, Jackson, MS 32915–1123.
Date Revoked : August 14, 2003.
Reason : Surrendered license voluntarily.

License Number : 16035N.
Name : Piscataqua Global Logistics, L.L.C.
Address : 583 Old Portsmouth Avenue, Greenland, NH 03840.
Date Revoked : July 19, 2003.
Reason : Failed to maintain a valid bond.

License Number : 12190N.
Name : Reliable Overseas Shipping & Trading, Inc.
Address : 239–241 Kingston Avenue, Brooklyn, NY 11213.
Date Revoked : September 5, 2003.
Reason : Failed to maintain a valid bond.

License Number : 18043F.
Name : PK Logistics Inc.
Address : 114 Maple Avenue, Red Bank, NJ 07701.
Date Revoked : September 9, 2003.
Reason : Surrendered license voluntarily.

License Number : 17251N.
Name : Shanghai Aaron Shipping & Enterprises Co., Ltd.
Address : 300 Davey Glen Road, #3429, Belmont, CA 94002.
Date Revoked : November 9, 2002.
Reason : Failed to maintain a valid bond.

License Number : 15847F.
Name : Straightline Logistics, Inc.
Address : Cargo Bldg., 80, Suite 2A, JFK Int'l.Airport, Jamaica, NY 11430.
Date Revoked : August 29, 2003.
Reason : Failed to maintain a valid bond.

License Number : 4216F.
Name : U.S. International Forwarding Agency, Inc.
Address : 10680 NW. 37th Terrace, Miami, FL 33178.
Date Revoked : August 17, 2003.
Reason : Failed to maintain a valid bond.

License Number : 14037N.
Name : Vladimir G. Manegdeg dba VGM Movers.
Address : 3836 Fenn Way, Santa Cruz, CA 95062.
Date Revoked : September 11, 2003.
Reason : Failed to maintain a valid bond.

License Number : 3972F.
Name : World Cargo Corporation.
Address : 12159 SW. 132nd Court, Suite 202, Miami, FL 33186.
Date Revoked : August 29, 2003.
Reason : Failed to maintain a valid bond.

License Number : 3116NF.
Name : Zust Bachmeier of Switzerland dba Vectura Ocean Lines.
Address : 3700 Commerce Drive, Suite 908, Baltimore, MD 21227.
Date Revoked : August 21, 2003.
Reason : Failed to maintain valid bonds.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–25528 Filed 10–7–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

Caribbean Express Shipping Company, Inc., 2706 NW. 31 Avenue, Lauderdale Lakes, FL 33311. Officers: Chijioki Azuogu, President (Qualifying Individual), Eberechukwu Azuogu, Vice President.

R & S Trading, Lerida 310, Urb. Valencia, Rio Piedras, PR 00924, Carlos B. Sanchez, Sole Proprietor.

Air Trans Logistics (USA) Inc., 148–36 Guy R Brewster Blvd., #211, Jamaica, NY 11434. Officers: Kwok Keung Wong, Secretary (Qualifying Individual), Yim Chi Wong, Vice President.

Sta. Lucia Cargo, 765 E. Yucca Street, Oxnard, CA 93033. Officer: Paulino J. Gerardo, CFO (Qualifying Individual).

New Cargo Express Corp., 133–40 Lefferts Blvd., S. Ozone Park, NY 11420. Officers: Estervina Rodriguez, President (Qualifying Individual), Persio Rodriguez, Secretary.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Skysea Freight International USA LLC, 1400 Elmhurst Road, Elk Grove Village, IL 60007. Officers: Sherry Lynn Gocal, Member Manager (Qualifying Individual), Syed Abdul Cader, Member.

Global Express Shipping & Delivery, Inc., 433 Red Oak Lane, Lawrenceville, GA 30045. Officer: Alfred M. Khannu, President/Chairman (Qualifying Individual).

Freight Systems Inc., 147–14 182nd Street, Jamaica, NY 11413. Officers: Sandford Lobo, Vice President (Qualifying Individual), David Phillips, President.

Consolidated Shipping Line, Inc., 535 Eight Avenue, New York, NY 10018. Officer: Albert Panelli, Vice President (Qualifying Individual).

Barrow Freight System, Inc., 522 Woodlake Drive, Fairfield, CA 94534. Officer: David Wang, Vice President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Argo Cargo, Inc., 10044 Premier Parkway, Miramar, FL 33025. Officers: Jason John Propsom, Vice President (Qualifying Individual), Daniel F. Murray, III, President.

International Freight Experts Inc., 8006 Collingwood Court, Bradenton, FL 34201–2350. Officer: Christine Ann Aron, President (Qualifying Individual).

Gorham Export Packing LLC, 7516

Lawndale, Houston, TX 77012. Officer: Gerson D. Sosa, Managing Director (Qualifying Individual).

Globe Express International, LLC, 17902 Kay Ct., Cerritos, CA 90703. Officers: Eduardo D. Flores, Vice President (Qualifying Individual), Linne D. Flores, President.

Dated: October 3, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–25526 Filed 10–7–03; 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 515.

License no.	Name/address	Date reissued
16805F	E.I.B. Brokers, Inc., 2550 NW. 72nd Avenue, Miami, FL 33122	June 26, 2003.
4407F	JCC International, Inc., 6275 N. State Road 7, Madison, IN 47250	July 17, 2003.
4478F	Marina Ocean Air International, LLC, 811 Grandview Drive, South San Francisco, CA 94083	July 23, 2003.
12539F	Miller Intermodal Logistics Services, Inc., 5500 Highway 80 West, P.O. Box 1123, Jackson, MS 32915–1123.	August 14, 2003.
4217F	Reliable Van & Storage Co., Inc., 550 Division Street, Elizabeth, NJ 07201	January 15, 2003.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–25529 Filed 10–7–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals.

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before December 8, 2003.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Reports:

1. Report title: Semiannual Report of Derivatives Activity.

Agency form number: FR 2436.

OMB control number: 7100–0286.

Frequency: Semiannual.

Reporters: Large U.S. dealers of over–the–counter (OTC) derivatives.

Annual reporting hours: 1,400.

Estimated average hours per response: 100.

Number of respondents: 7.

General description of report: This information collection is voluntary (12 U.S.C. §§ 248(a), 353–359, and 461) and is given confidential treatment (5 U.S.C. § 552(b)(4)).

Abstract: The FR 2436 collects derivatives market statistics from seven large U.S. dealers of over–the–counter (OTC) derivatives. Data are collected on notional amounts and gross market values of the volumes outstanding of broad categories of foreign exchange, interest rate, equity– and commodity–linked over–the–counter derivatives contracts across a range of underlying currencies, interest rates, and equity markets.

This collection of information complements the ongoing triennial Survey of Foreign Exchange and Derivatives Market Activity (FR 3036; OMB No. 7100–0285). The FR 2436 collects similar data on the outstanding volume of derivatives, but not on derivatives turnover. As with the FR 3036, the Federal Reserve conducts this report in coordination with other central banks and forwards the aggregated data furnished by U.S. reporters to the Bank for International Settlements (BIS), which publishes global market statistics that are aggregations of national data.

2. Report title: Domestic Branch Notification.

Agency form number: FR 4001.

OMB control number: 7100–0097.

Frequency: On occasion.

Reporters: State member banks.

Annual reporting hours: 599 hours.

Estimated average hours per response: 30 minutes for expedited notifications; 1 hour for nonexpedited notifications.

Number of respondents: 474 expedited; 362 nonexpedited.

General description of report: This information collection is mandatory (12 U.S.C. 321) and is not given confidential treatment.

Abstract: The Federal Reserve System requires a state member bank to file a notification whenever it proposes to establish a domestic branch. There is no formal reporting form; banks notify the Federal Reserve by letter prior to making the proposed investment. The Federal Reserve uses the information to fulfill its statutory obligation to supervise state member banks.

Proposal to Approve Under OMB Delegated Authority the Implementation of the Following Survey:

Report title: Central Bank Survey of Foreign Exchange and Derivatives Market Activity.

Agency form number: FR 3036.

OMB control number: 7100–0285.

Frequency: One–time.

Reporters: Financial institutions that serve as intermediaries in the wholesale foreign exchange and derivatives market and dealers.

Annual reporting hours: 3,945.

Estimated average hours per response: Turnover survey: 51 hours; outstandings survey: 15 hours for FR 2436 reporters, 60 hours for non–FR 2436 reporters.

Number of respondents: 60.

General description of report: This information collection is voluntary (12 U.S.C. 248(a), 353–359, and 461) and is given confidential treatment (5 U.S.C. § 552(b)(4)).

Abstract: The FR 3036 is the U.S. part of a global data collection that is conducted by central banks every three years. More than fifty central banks plan to conduct the survey in 2004. The Bank for International Settlements (BIS) compiles national data from each central bank to produce global market statistics.

The Federal Reserve System and other government agencies use the survey to monitor activity in the foreign exchange and derivatives markets. Respondents use the published data to gauge their market share.

Board of Governors of the Federal Reserve System, October 2, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–25465 Filed 10–7–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 3, 2003.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. NewFirst Financial Group, Inc., El Campo, Texas, and NewFirst Financial Company, Inc., Dover, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of NewFirst National Bank, El Campo, Texas.

Board of Governors of the Federal Reserve System, October 2, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–25466 Filed 10–7–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Grant for Public Health Educational Efforts Conducted by the National Health Museum

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Minority Health.

ACTION: Notice.

SUMMARY: The Office of Minority Health (OMH), Office of Public Health and Science (OPHS), announces that it will award a single source grant to the National Health Museum of Washington, DC. The purpose of this grant is to support U.S. Department of Health and Human Services (HHS) efforts to communicate emerging public health issues to the public, expand the

general audience for HHS public health initiatives such as Steps to a HealthierUS, enhance and expand the teaching of public health to students in grades K–12 by providing educational resources to health and life science teachers, and encourage health and science museums to support public health exhibitions and educational programming.

Authority: Section 301 of the Public Health Service (PHS) Act.

The professional audience for the National Health Museum is comprised of the nation's public health and museum and science center leaders but the end audience that will benefit from the museum is much larger. More than 800 million visits occur each year in American museums and science centers, yet only a relatively small percentage of these visits address public health issues. Funded activities will directly support efforts to reach this public audience with educational activities that incorporate public health learning objectives. Activities will be undertaken to bring public health and museum and science center leaders together to collaborate in the development of products useful to a broad, general audience. Specifically, the grant is intended to: (1) Develop a master plan for museum exhibits; (2) support implementation of the National Public Health Partnership to create a Rapid Response Network (RRN) that could help promote quicker, better-coordinated responses to public health emergencies by communicating CDC and NIH-developed information and research to the public through outreach to the nation's museums, science centers and public health educators, and (3) expand the museum Web site to provide educational resources and instructional support for middle school teachers of health and life sciences.

DATES: Persons requesting additional information about this notice should contact the OPHS Office of Grants Management, no later than November 7, 2003.

ADDRESSES: Persons requesting additional information about this notice should contact the OPHS Office of Grants Management, 1101 Wootton Parkway, 5th Floor, Rockville, MD 20852. An application kit may be requested by telephone from (301) 594–0758 or by fax from (301) 594–9399.

SUPPLEMENTARY INFORMATION: CFDA: Applied for.

I. Funding Opportunity Description

Background

The U.S. Department of Health and Human Services (HHS) is the agency protecting the health of all Americans and providing essential human services, especially for those least able to help themselves. HHS health agencies have responsibility for a wide range of public health activities, working closely with State and local government, public and private nonprofit organizations, schools systems, business and industry. Program responsibilities among public health agencies include but are not limited to biomedical and health services research and translation of research findings into public health practice; the safety of food, drugs, and medical devices; disease prevention and health promotion; improving and expanding access to quality of health care; public health workforce education and development; and conducting rapid and effective responses to public health emergencies. The current HHS Steps to a HealthierUS initiative, led by Secretary Tommy G. Thompson, highlights the importance of prevention in public health, particularly for diseases such as diabetes, obesity, and asthma, by promoting healthy community lifestyles and healthy behavior. The initiative has a special focus on health among youth and older Americans.

The mission of the National Health Museum, a nongovernmental 501[c][3] organization, is to educate, engage, and inspire people, young and old, to understand the past, present, and future of health and health science and empower them to act upon that information to enhance their individual, family, and community health. The goals of the museum are to educate people about the human body and health science, to motivate people to learn more about their health needs and make positive lifestyle changes, to promote appreciation of the Nation's health science and medical heritage, and to serve as an independent and unbiased center of dialogue about health issues. Providing support for the promotion of public health activities was identified by museum planners as one of the key opportunities for museum programming, by museum planners, and the museum is a convener of the National Public Health Partnership comprising 28 organizations dedicated to bridging the gap between public health and informal education in museum and science center settings. Established in 1996, the museum operates an extensive educational Web site at *http://www.accessexcellence.org,* and plans to build a Washington, DC facility that will include a ''discovery center'' for visitors, K–12 classroom facilities and resources, and a health conference center. Additionally, the museum will use HHS funds to support implementation of the NPHP, a nationwide network of museums, science centers, and public health organizations that will actively address public health issues. The National Health Museum conceptualized and secured funding for formative research that has resulted in a strategic plan. HHS funds will be used to undertake implementation of this plan, which will involve Partnership members in information dissemination, project collaborations and resource sharing.

The National Health Museum is uniquely qualified to accomplish the purpose of this grant because:

- It is developing an educational facility in the nation's capitol that is projected to attract over 2 million visitors each year with public health-oriented programs, exhibits and activities.
- It provides leadership to a nationwide network of museums and science centers in developing public health educational materials.
- It has an explicit mission to provide assistance to K–12 health and life science teachers and learners of all ages by furthering their understanding of public health.
- It has a Web site that attracts more than 5.7 million monthly ''hits'' including 650,000 health and life science educators and learners.
- It maintains a national directory that can match public and private sector health experts with schools, community groups, institutions, and media outlets who could use their expertise to develop programs and media on chronic and emerging public health issues.
- As a convener of the National Public Health Partnership which consists of 28 organizations that focus on bridging the gap between public health and education in museum and science center settings, it has strong working relationships with the primary organizations essential to the fulfillment of the public health mission of this grant.

Assistance will be provided only to the National Health Museum under this grant. Various HHS agencies have contributed funds for this effort. The OMH will award this grant on behalf of these agencies.

Purposes of the Grant

The Office of Minority Health, Office of Public Health and Science, will award a single source grant to the

National Health Museum. The purpose of this grant is to support HHS efforts to communicate emerging public health issues to the public, expand the general audience for HHS public health initiatives such as Steps to a HealthierUS, enhance and expand the teaching of public health to students in grades 6–12 by providing educational resources to health and life science teachers, and encourage health and science museums to support public health exhibitions and educational programming. The grant will enable the National Health Museum to plan and implement program activities directed toward three goals.

(1) Planning

A Master Plan will be developed to establish a detailed thematic outline for National Health Museum exhibitions and programs, further articulate the key health communications and learning tactics that will be applied by the museum to support the public health mission. Planning sessions with key public health experts from the academic, government, non-profit and private sectors will inform these planning activities, to identify ''best practices'' from exemplary museums, science centers and other informal learning venues. Museum exhibits ultimately will serve the multi-generational annual audience of more than 2 million individuals that is expected to visit the NHM physical facility in Washington, DC, for public health-oriented programs, exhibitions, and educational activities.

(2) National Public Health Partnership

NHM will use HHS funds to support implementation of the Partnership, a nationwide network of museums, science centers, and public health organizations that will actively address public health issues. Activities will be undertaken to bring public health and museum and science center leaders together to collaborate in the development of products useful to a broad, general audience. One such product will be a Rapid Response Network (RRN) that will help promote quicker, better-coordinated responses to public health emergencies by communicating Centers for Disease Control and Prevention and National Institutes of Health-developed information and research to the public through outreach to the nation's museums, science centers and public health educators. For example, many Partnership member institutions reported receiving inquiries from their visitors recently during the heightened concern over SARS that they were not equipped to answer. Support may be directed to development of items such as resource guides, speakers bureaus, electronic presentations and ''toolkits'' of fast, credible information on rapidly developing public health emergencies or issues.

(3) Museum Web Site

Funds will be used to expand the Museum Web site, Access Excellence@The National Health Museum, which attracts an online audience of more than 650,000 health and life science educators and learners each month. The site, which is currently focused on serving the needs of high school life science teachers, will be expanded to reach a larger middle school audience and provide additional resources specifically designed for health teachers. These additional resources will help address the needs of health teachers who require standards-based lesson plans that are proven effective but who frequently do not have the experience, knowledge, or time to develop such resources for themselves. The expanded resources, including real-time, on-demand, and streaming video materials, will have up-to-date, quality information that is educationally sound, and uses technology to provide innovative and creative classroom activities.

II. Award Information

OMH intends to make $1 million available to the National Health Museum for a project period of 12 months. A budget of up to $1 million total costs (direct and indirect) for this 12-month project period may be requested to cover costs of:

- Personnel
- Consultants
- Supplies
- Equipment
- Grant related travel
- Other grant related costs

Funds *may not* be used for:

- Medical treatment
- Construction
- Building alterations or renovations

The budget request must be fully justified in terms of the proposed objectives and activities and include a computational explanation of how costs were determined. The applicant is not required to provide matching funds or share in project costs.

III. Eligibility Information

Assistance will be provided only to the National Health Museum of Washington, DC.

IV. Application and Submission Information

Application must be submitted on Form PHS 5161–1 (Revised July 2000 and approved by OMB under Control Number 0937–0189). An applicant is advised to pay close attention to the specific program guidelines and general instructions provided in the application kit. The application kit is available from the OPHS Office of Grants Management at the address, telephone, and fax numbers previously listed.

An applicant must submit an original and 2 copies of the completed application to the OPHS Office of Grants Management at the address previously listed. The original application must be signed by the individual authorized to act for the applicant organization and to assume for the organizations the obligations imposed by the terms and conditions of the grant award.

To receive consideration, the grant application must be received by the OPHS Office of Grants Management by November 7, 2003. An application will be considered as meeting the deadline if it is (1) received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. A hand-delivered application must be received in the OPHS Office of Grants Management not later than 4:30 p.m. on the application due date. An application must be submitted in hard copy. An application submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. The applicant will receive written notification from the OPHS Office of Grants Management via Form PHS 3038–1 that its application has been received.

Review Under Executive Order 12372

An application under this announcement is not subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Program Requirements/Application Content

This notice seeks an application from the National Health Museum to plan and implement program activities that will communicate emerging public health issues to the public, expand the general audience for HHS public health initiatives, support the teaching of public health to students in grades K–12, and encourage health and science

museums to support public health exhibitions and educational programming. A successful application will focus on the following:

(1) Evidence that the applicant has experience in planning and implementing educational programming on health sciences to the general public, including young people.

(2) Evidence that the applicant thoroughly understands public health goals, methods, and programs and that the applicant has access to and working relationships with health and science teachers, and to health and science museums and centers suitable to carry out the objectives of this project.

(3) A clear description of target audiences for the messages and the strategies that will be employed to reach them.

(4) A clear description of goals and objectives for the educational and communications efforts that will be undertaken and the measures that will be used to determine success.

(5) A description of the type, length, activities, and services that will be planned and implemented as part of this effort, and a rationale for the proposed approach.

(6) Evidence that the proposed plan is appropriate, feasible, and logically sequenced to attain the stated goals.

(7) A plan to evaluate individual program activities or the program as a whole and its impact (or potential impact) on the target audiences.

(8) A detailed budget justification for the project that is reasonable, adequate, and cost efficient and which includes staffing requirements derived from the proposed activities.

Program Evaluation

The project is required to have an evaluation plan consistent with the scope of the proposed project and funding level that conforms to the program's stated goal and objectives. The plan should include both a process evaluation to track the implementation of program activities and, as appropriate, an outcome evaluation to track changes in knowledge, skills, or behavior that can be attributed to the program.

V. Application Review Information

The funding decision will be determined by the HHS Deputy Assistant Secretary for Minority Health based on results of a technical review by an ad hoc, independent review group conducted by the Office of Minority Health. The application will be reviewed by an Applications will be assessed for technical merit according to the following criteria:

(1) Methodology (35 Points)

- Appropriateness of proposed approach
- Appropriateness of specific activities for educational programming objectives outlined
- Logic and sequencing of the planned approaches

(2) Evaluation (20 Points)

- Thoroughness, feasibility, and appropriateness of the evaluation design, data collection, and analysis procedures
- Clear intent and plans to document the activities and their outcomes

(3) Background (15 Points)

- Expertise and understanding of public health goals, methodologies, and programs
- Demonstrated access to and experience in communicating health/science information to youth and their teachers, the general public, museums, and science centers
- Demonstrated experience in networking, planning, and implementing activities at a national level
- Demonstrated outcomes of past similar efforts/activities with the target audiences

(4) Objectives (15 Points)

- Merit of the objectives
- Relevance to the program purpose and stated problem
- Attainability in the stated time frames

(5) Management Plan (15 Points)

- Demonstrated knowledge/skills in program and project management
- Demonstrated knowledge/skills in health/science education and health/science communications
- Capability to plan and coordinate efforts at a national level
- Capability to manage and evaluate the project as determined by:
- The qualifications of proposed staff or requirements for ''to be hired'' staff
  - —Staff level of effort
  - —Management experience of the applicant
  - —Clarity of the applicant's organizational chart

VI. Award Administration Information

The applicant will be notified by mail regarding the outcome of its application. The Notice of Grant Award is the official document informing the applicant that its application has been approved and funded. This document specifies the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, and the amount of funding, if any, to be contributed to project costs by the grant recipient.

VII. Agency Contacts

For technical assistance on budget and business aspects of the application or administrative requirements, please contact Karen Campbell, OPHS Office of Grants Management, (301) 594–0758.

For assistance with questions about program requirements, please contact Blake Crawford or Yvonne Johns, Division of Information and Education, Office of Minority Health, 1101 Wootton Parkway, Suite 600, Rockville, MD 20852, telephone (301) 443–5224.

Dated: September 30, 2003.

Tuei Doong,

Deputy Director, Office of Minority Health.

[FR Doc. 03–25506 Filed 10–7–03; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04010]

Programs to Improve the Health, Education, and Well-Being of Young People; Notice of Availability of Funds

Application Deadline: December 8, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301(a), 311(b) and (c), and 317(k)(2) [42 U.S.C. 241(a), 243(b) and (c), and 247b(k)(2)] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.938.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2004 funds for a cooperative agreement program for Programs to Improve the Health, Education, and Well-Being of Young People. This program addresses the ''Healthy People 2010'' focus areas of Diabetes, Educational and Community-Based Programs, Family Planning, Food Safety, HIV, Nutrition and Overweight, and Sexually Transmitted Diseases. This program also addresses Goal One, Objective Three, Strategies One, Two, and Six of CDC's HIV Prevention Strategic Plan Through 2005 (found at: *http://www.cdc.gov/nchstp/od/hiv_plan/default.htm).*

The purpose of the program is to improve the education, health, and well-being of young people by

strengthening coordinated school health programs and by enabling other youth-serving organizations to address health risks. Award recipients will emphasize efforts to help young people avoid risks (*e.g.,* to avoid sexual intercourse). This may also include efforts to involve parents in programs to improve the health of youth.

Measurable outcomes of the program will be in alignment with the following performance goal and measure for the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP): Reduce the percentage of HIV/AIDS-related risk behaviors among school-aged youth through the dissemination of HIV prevention education programs. Performance is measured by the percentage of high school students who are taught about HIV/AIDS prevention in school and the proportion of adolescents (grades 9–12) who abstain from sexual intercourse or use condoms if currently sexually active.

This program announcement covers the following six priority areas:

Priority 1: HIV Prevention for School-Age Youth

The purpose of Priority 1 is to build broad nationwide strategies, programs, and support to help schools and other youth-serving agencies prevent sexual risk behaviors that result in HIV infection. Strategies and programs should especially target youth most at risk for HIV infection as identified in CDC's HIV Prevention Strategic Plan Through 2005. Specific populations addressed would include:

- Adolescents who have sex with older male partners
- Adolescents who have multiple sexual partners
- Adolescents who initiate sexual activity at young ages
- Adolescents with multiple lifetime sexual partners
- Adolescents with a history of unprotected sex
- Young men who have sex with men
- Young women who have sex with men who have sex with men.

This priority also includes strategies and programs to involve parents in HIV prevention efforts.

Category A—Schools: These organizations will build capacity and partnerships to help the nation's schools prevent sexual risk behaviors that result in HIV infection. Strategies and programs should especially target youth who are at highest risk for HIV infection per CDC's HIV Prevention Strategic Plan Through 2005, and students in grades 7 through 12.

Category B—Youth-Serving Organizations: These organizations will focus on preventing HIV infection among large populations of youth, especially youth in high-risk situations as identified in CDC's HIV Prevention Strategic Plan Through 2005, Goal 1, Objective 3, Strategy 1. Funded organizations are expected to work through constituencies and networks of youth-serving, community-based agencies and institutions which have access to these young people. Examples include, but are not limited to: Recreation and service organizations, alternative schools, faith-based organizations, juvenile justice facilities, outreach services to runaway and homeless youth, programs for immigrants and limited English speaking youth, and services for youth with substance abuse or mental health problems.

Priority 2: Integration of School Efforts To Prevent HIV, STDs, and Unintended Pregnancy (Optional Enhancements to Priority 1, Category A)

The purpose of Priority 2 is to help schools integrate their efforts to prevent HIV, STDs, and unintended pregnancies. HIV, STD, and unintended pregnancy share many protective factors including sexual abstinence as the most effective prevention method. Integration of efforts to prevent these outcomes will promote increased efficiency and increase the potential for effectiveness. This strategy is consistent with CDC's HIV Prevention Strategic Plan Through 2005, Goal 1, Objective 3, Strategy 6.

Category A—Pregnancy Prevention: These organizations will focus on strategies and programs designed to prevent unintended pregnancy, and how they can be effectively implemented and integrated with strategies and programs designed to prevent HIV and other STDs and increase abstinence from sexual intercourse.

Category B—STD Prevention: These organizations will focus on strategies and programs designed to prevent STDs, and how they can be effectively implemented and integrated with strategies and programs designed to prevent HIV and unintended pregnancy and increase abstinence from sexual intercourse.

Priority 3: Abstinence Collaboration and Partnerships

The purpose of Priority 3 is to strengthen communication, coordination, and collaboration among agencies working to prevent sexual risk behaviors among youth that result in HIV, other STDs, or unintended pregnancy, with an emphasis on partnerships with agencies that focus exclusively on helping school-age youth not to engage in intercourse (*i.e.* to remain or become abstinent). As stated in the Guidelines for Effective School Health Education to Prevent the Spread of AIDS, abstinence from sexual intercourse is the most effective means of preventing the spread of HIV.

Priority 4: Coordinated School Health Programs and Prevention of Chronic Disease Risks

The purpose of Priority 4 is to support state education and health agencies in strengthening coordinated school health programs to prevent priority health risks among youth, especially those that contribute to chronic diseases. Current funding focuses on strategies and programs to (1) prevent tobacco use and addiction, (2) improve eating patterns, (3) increase physical activity, and (4) prevent obesity among youth.

Priority 5: Prevention of Foodborne Illnesses

The purpose of Priority 5 is to build the capacity of organizations and their constituents to help schools prevent foodborne illnesses within a coordinated school health program.

Priority 6: Training and Professional Development

The purpose of Priority 6 is to increase non-governmental organizational capacity to be as effective as possible in working with their constituencies to reduce health problems among youth. This will be accomplished by planning and delivering learning opportunities and providing technical assistance for other non-governmental organizations.

C. Eligible Applicants

Eligible applicants are non-profit, non-governmental organizations, including organizations that represent faith communities, parents, and families, which have the capacity to achieve the purposes of the priority area(s). Applicants ideally should have local, state, or regional constituencies representing all states and territories, but at minimum representing 25 states/territories.

Eligible applicants for Priority 1 should have a nationwide structure and capacity to help schools (Category A) or youth-serving organizations (Category B) prevent HIV among large numbers of youth. Eligible applicants may apply for both Category A and Category B, but can only be funded for one.

Eligible applicants for Priority 2 should have a nationwide structure and

capacity to integrate school efforts to prevent HIV, STDs, and unintended pregnancy. Priority 2, Category A (Pregnancy Prevention) and B (STD Prevention), are optional enhancements to Priority 1, Category A. Thus, to be eligible under Priority 2, organizations must also apply for Priority 1, Category A funding. Only those organizations selected to be funded under Priority 1, Category A will then be considered in the competition for Priority 2 funding. Organizations may apply for one or both categories under Priority 2, so long as they also apply for Priority 1, Category A.

Eligible applicants for Priority 3 should have a nationwide structure and capacity to strengthen communication, coordination, and collaboration among agencies working to prevent sexual risk behaviors among youth that result in HIV, other STDs, or unintended pregnancy, with an emphasis on partnerships with agencies that focus exclusively on helping school-age youth not to engage in intercourse (*i.e.* to remain or become abstinent).

Eligible applicants for Priority 4 should have a nationwide structure and capacity to help schools implement coordinated school health programs to effectively prevent a wide range of health risks, especially organizations that can support state education and health agency chronic disease efforts.

Eligible applicants for Priority 5 should have a nationwide structure and capacity to help schools prevent foodborne illness and related school absences through school food safety programs and the credentialing of food safety professionals.

Eligible applicants for Priority 6 must demonstrate (1) significant nationwide experience with strategies and programs designed to prevent HIV infection and other health problems among youth within the context of schools or other youth-serving agencies, (2) experience with implementing high quality, training events, and (3) experience in working with other Division of Adolescent and School Health (DASH) funded or similar organizations and knowledge of their training needs.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

D. Funding

Availability of Funds

Approximately $9,604,000 will be available in FY 2004 for up to 44 awards for Priorities 1 through 6. Funds expected to be available for specific priorities and categories are as follows:

Priority 1: HIV Prevention for School-Age Youth

Approximately $6,879,000 is expected to be available for Priority 1, Category A and B.

Category A—Schools: Approximately $5,465,000 is expected to be available to fund up to 20 organizations. Awards will average $273,250 and will range from approximately $175,000 to $300,000.

Category B—Youth-Serving Organizations: Approximately $1,414,000 is expected to be available to fund up to six organizations. Awards will average $235,666 and will range from approximately $150,000 to $275,000.

Priority 2: Integration of School Efforts to Prevent HIV, STDs, and Unintended Pregnancy (Optional Enhancements to Priority 1, Category A)

Category A—Pregnancy Prevention: Approximately $600,000 is expected to be available to fund up to six organizations. Awards will average $100,000 and will range from approximately $100,000 to $300,000.

Category B—STD Prevention: Approximately $300,000 is expected to be available to fund approximately three organizations. Awards will average $100,000 and will range from approximately $75,000 to $125,000.

Priority 3: Abstinence Collaboration and Partnerships

Approximately $900,000 is expected to be available to fund approximately four organizations. Awards will average $225,000 and will range from approximately $175,000 to $275,000.

Priority 4: Coordinated School Health Programs and Prevention of Chronic Disease Risks

Approximately $550,000 is expected to be available to fund approximately three organizations. Awards will average $183,333 and will range from approximately $125,000 to $200,000.

Priority 5: Prevention of Foodborne Illnesses

Approximately $125,000 is expected to be available to fund one organization.

Priority 6: Training and Professional Development

Approximately $250,000 is expected to be available to fund one organization.

It is expected that all awards will begin on or about May 15,2004, with a 12-month budget period, within a project period of up to two years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports, achievement of performance standards, and the availability of funds.

Use of Funds

Cooperative agreement funds may be used to support personnel and to purchase equipment, supplies, and services (including travel) directly related to program activities and consistent with the scope of the cooperative agreement. Funds are not intended to be used to conduct research projects, provide direct delivery of patient care or treatment services, purchase condoms or contraceptives, or to provide clinical testing or screening services. Federal funds awarded under this Program Announcement may not be used to supplant other Federal funds.

Grantees are encouraged to leverage the maximum use of limited funds through opportunities to work with other nationwide organizations and state and local education and health agencies that are addressing the risk factors and health problems described in Priorities 1 through 6 of this announcement. These opportunities might include, but are not limited to: joint planning activities, joint funding of complementary activities based on program recipient activities, education of constituents and members, collaborative efforts in the development and implementation of strategies and program interventions, and other cost-sharing activities that complement school and youth-focused program priorities.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

The following activities are applicable to all priorities and recipients:

a. Establish and maintain appropriate and qualified staff positions to implement activities funded under this announcement. With the exception of activities under Priority 2, Category B, each priority area should have at least one full-time staff position within the organization with the responsibility and authority to carry out the activities identified in the operational plan.

b. Collaborate with constituents, CDC, and other relevant federal, national, state, and local organizations to achieve the purposes of the program.

c. Emphasize efforts to help young people avoid risks (*e.g.* to avoid sexual intercourse).

d. Based on a logic model, implement specific, measurable, and feasible goals and objectives. (Logic models depict the causal mechanisms through which interventions are expected to affect health behaviors.)

e. Evaluate the effectiveness of the program in achieving goals, objectives, and performance measures.

f. Participate in DASH-sponsored conferences and meetings of funded partners.

g. Disseminate program information and materials to constituents, stakeholders, CDC, and other DASH-funded partners.

h. Assess the status of constituents with regard to the purposes of the program and their needs for training, technical assistance, materials, and other resources.

i. Build the capacity of constituents by addressing the needs identified.

j. Plan and implement training and technical assistance based on constituent needs and the purposes of the program.

k. Identify and/or develop and disseminate model strategies, guidelines, procedures, programs, materials, and other resources.

l. Help constituents develop and implement effective strategies and programs.

m. Support locally determined programs consistent with community values and needs.

n. Assist constituents in the development of state or local coalitions to support the purposes of the program.

o. Develop and/or participate in coalitions and initiatives to support the purposes of the program.

p. Collaborate with constituents; state and local education, health, and social service agencies; non-governmental partners; and CDC and other federal agencies to develop strategies to support the purposes of the program.

The following activities are applicable to programs awarded with HIV prevention funding (Priorities 1 and 3):

a. Encourage state and local constituents to work collaboratively with health departments and HIV Prevention Community Planning Groups.

b. Emphasize reaching youth at highest risk for HIV infection as identified in CDC's HIV Prevention Strategic Plan Through 2005.

The following activities are applicable to Priority 6 only:

a. Assess the training and professional development needs of other organizations specifically as it pertains to their work under this program announcement.

b. Develop and implement a professional development plan that addresses the training needs.

c. In collaboration with the CDC-sponsored Professional Development Consortium, plan and implement at least two to three training events within a 12-month period for organizations funded under this program announcement.

d. Coordinate all logistical arrangements and disburse funds for significant costs associated with these training events, including travel, hotel, and per diem expenses for participants and presenters.

e. Evaluate the training events to inform necessary changes in future training offerings and designs.

f. Participate in at least one meeting of the DASH-sponsored Professional Development Consortium each year and conference calls as needed to plan and coordinate training events.

Performance Measures: Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP): Reduce the percentage of HIV/AIDS-related risk behaviors among school-aged youth through the dissemination of HIV prevention education programs. Performance is measured by the percentage of high school students who are taught about HIV/AIDS prevention in school and the proportion of adolescents (grades 9–12) who abstain from sexual intercourse or use condoms if currently sexually active.

Performance under Priorities 1 through 5 will be measured by the extent to which recipients:

a. Determine the need for the program based on the reported needs of constituents. Evidence might include: needs assessment reports and/or other data which identifies and documents specific needs for training, materials, or other forms of assistance and support.

b. Address the identified needs, and build constituent's capacity to plan, implement, and evaluate effective strategies and high quality programs. Evidence might include: reports documenting assistance provided to constituents and how the assistance was consistent with identified needs; documentation of the results of the organization's efforts at the constituent level (*e.g.* the number of interventions planned, implemented, and evaluated at the local level; the results of evaluations; or the numbers of youth reached with effective interventions); and documentation of training activities designed to build knowledge and skills directly applicable to constituent activities and the purposes of the program (*e.g.* agendas, training materials, and lists of participants and other data collected with record keeping systems such as Training Tracker).

c. Collaborate effectively with constituents and local, state, national, and federal partners to achieve the purposes of the program. Evidence might include: documentation of activities with, and feedback from constituents; the results and outcomes of key meetings and events; documentation of participation, engagement, and support from constituents and other key organizations, including their involvement in the planning, implementation, and evaluation of the program.

d. Reduce health disparities by targeting efforts toward those youth at highest risk for the health problem(s) addressed. Evidence might include: data indicating the racial or ethnic characteristics of youth reached through constituent activities; documentation of grantee activities related to targeting youth at highest risk for the health problem(s) addressed; documentation of strategies utilized to reach underserved youth most in need of the program and to facilitate their participation in the program; documentation of established strategies and procedures to develop curriculum, education materials, and other information in formats that respect cultural values and meet the language and literacy needs of the target population; evidence of development and implementation of strategies to recruit, retain, train, and promote qualified, diverse, and culturally competent program personnel to address the needs of the youth being targeted; evidence, when applicable, of procedures to assess the quality and appropriateness of interpretation and translation services.

e. Monitor and evaluate program activities relative to stated goals and objectives, performance measures, and the effectiveness of selected strategies in achieving desired results. Evidence might include: progress reports indicating the degree to which goals and objectives and/or performance measures were achieved, and evaluation reports documenting the degree to which strategies and programs were delivered as intended, their effectiveness in achieving desired results, lessons learned, and how evaluation results will be used to improve the program.

Performance under Priority 6 will be measured by the extent to which the organization is able to:

a. Plan and implement training events for CDC-funded organizations consistent with their needs. Evidence might include: results of Professional Development Consortium meetings demonstrating how the training needs of organizations were considered in determining the training topics selected; and progress reports documenting the implementation of training events (e.g. agendas, lists of participants, training materials, etc.).

b. Evaluate training events to determine the degree to which desired results were achieved and to inform changes needed in future training designs. Evidence might include: summaries of participant evaluations (content, format, delivery, and recommendations for improvement); results of follow-up surveys; documentation of de-briefing meetings with CDC and the Professional Development Consortium; and revised agendas demonstrating changes made in training designs as a result of evaluations and feedback.

2. CDC Activities

a. Provide and periodically update information related to the purposes or activities of this program announcement.

b. Coordinate with national, state, and local education, health, social service, and other relevant organizations in planning and implementing the components of a broad strategy designed to prevent health risks among school-age youth.

c. Provide consultation and guidance to grantees on program planning, implementation, and evaluation; assessment of program objectives and performance measures; and dissemination of successful strategies, experiences, and evaluation reports.

d. Provide assistance with program planning to assure consistency with the overall strategy, including assistance with the use of logic models and other public health tools and resources.

e. Assist in the evaluation of program activities, including review and feedback of evaluation plans, and linking grantees to additional evaluation expertise from CDC or its contractors.

f. Plan and implement funded partners meetings, conferences, trainings, and work group meetings to provide forums through which grantees can increase their knowledge and skills, learn from each other, share resources, and work collaboratively together to address issues and program activities related to improving the health, education, and well being of young people.

F. Content

Technical Assistance Conference Call

Technical assistance will be available for potential applicants on two conference calls scheduled as follows:

First Call (Conference #7329384)

Date: 10/21/2003.
Time: 1–3 p.m. Eastern Time.
Telephone Number: 1–888–566–0007.
Pass Code: 22135.
Leader: Ms. Judy Powers.

Second Call (Conference #7329405)

Date: 10/23/2003.
Time: 1–3 p.m. Eastern Time.
Telephone Number: 1–866–556–1092.
Pass Code: 19953.
Leader: Ms. Judy Powers.

Potential applicants are requested to call in using only one telephone line. The pass code and leaders name will be required to join the call. The purpose of the conference calls is to help potential applicants understand the scope and intent of the program announcement, Public Health Service funding policies, and application and review procedures. Participation in these conference calls is not mandatory.

Letter of Intent (LOI)

A LOI is required for this program. The Program Announcement title and number must appear in the LOI, as well as the priority(ies) and category(ies) being applied for. The narrative should be no more than two pages, single-spaced, printed on one side, with one-inch margins, in 12 point, unreduced font. Your LOI will be used to provide evidence of eligibility and to plan the objective review process. Failure to submit a LOI will preclude you from submitting an application. However, it will not influence review and funding decisions. The LOI should provide evidence of eligibility; supportive documentation of eligibility may be attached.

Applications

The Program Announcement title and number must appear in the application, as well as the Priority and Category being applied for. A complete, separate application is required for each priority/category applied for. Use the information in the Purpose, Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. All application pages must be clearly numbered with one-inch margins. Content and narrative must be single-spaced and typewritten in unreduced 12-point font. Applications should be printed on one side only.

Applicants are required to have a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge.

To obtain a DUNS number, access the following Web site: *http://www.dunandbradstreet.com* or call 1–866–705–5711.

Executive Summary

All applications should begin with a clear, concise, one to two page summary, to include: (1) The priority/category being applied for, (2) the amount of funds requested, (3) a brief summary of the overall strategy and the groups and organizations to be reached, and (4) the major activities reflected in the operational plan.

1. Need and Capacity (not more than eight pages)

a. Describe the need for the proposed activities, including the specific groups targeted and the need for the particular strategies and activities planned.

b. Describe the capacity and ability of your organization to address the identified needs and implement the proposed activities, including current and past experience with the priority area and target population(s).

c. Describe the existing organizational structure and how that structure will support the proposed program activities. Include an organizational chart, which may be placed in an appendix.

2. Operational Plan (not more than 15 pages)

a. *Goals:* List goals that specifically relate to the purpose of the priority/category and program requirements, and indicate what the program will have accomplished by the end of the two-year project period.

b. *Objectives:* List objectives that are specific, measurable, and feasible to accomplish during the first 12-month budget period. The objectives should relate directly to the project goals and program requirements.

c. *Activities:* Identify and describe specific activities that will be accomplished to meet each objective. Indicate when each activity will occur, identify the person(s) responsible for each activity and display on a timetable. The plan should also address activities

to be conducted over the entire two-year project period.

3. Project Management and Staffing Plan (not more than four pages, excluding items in an appendix)

a. Describe the proposed staffing for the project and provide job descriptions for existing and proposed positions, including the level of responsibility involved for each position.

b. Submit curriculum vitae (limited to two pages per person) for each professional staff member named in the proposal. These may be placed in an appendix.

c. If other organizations will participate in the proposed activities, provide the name(s) of the organization(s), and a letter from each organization describing their role and the specific activities they have agreed to implement or be involved with.

4. Program Monitoring and Evaluation (not more than four pages)

Describe a plan that will collect relevant data to be used for program accountability and to inform decisions about program changes and improvement. Plans should include the type of data to be collected, the methods of data collection and analysis, and how the data will be used. Plans should include at least two levels of data collection:

a. *Program Monitoring:* Documenting progress in meeting objectives and conducting activities during the budget period.

b. *Program Evaluation:* Assessing the quality and effectiveness of proposed activities (*e.g.* trainings, documents, dissemination efforts), and collecting data to assess the performance measures identified under Recipient Activities (Section E).

5. Budget and Accompanying Justification

Provide a detailed budget and line-item justification of all operating expenses for the first 12-month budget period. The budget should be consistent with the stated objectives and planned activities of the project.

Contracts and Consultants: Provide the following information for contracts and consultants: (a) Name of contractor/consultant, (b) method of selection, (c) period of performance, (d) scope of work, (e) method of accountability, and (f) itemized budget with justification.

Travel Funds: Budget requests should include travel funds for staff members to participate in meetings in Atlanta, Georgia or elsewhere, including: DASH annual conference and/or funded partner meetings (two to three days, applicable to all priorities), the CDC-sponsored HIV Prevention Conference (two to three days, applicable to all HIV-funded priorities) and/or the National Conference on Chronic Disease Prevention and Control (two to three days, applicable to those funded under Priority 4).

Indirect Costs: If indirect costs are requested, applicants must include a copy of the organization's current negotiated Federal Indirect Cost Rate Agreement.

G. Submission and Deadline

Letter of Intent (LOI)

On or before November 7, 2003, submit the LOI to: Technical Information Management—LOI 04010, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Application Forms

Submit the signed original and two copies of PHS 5161–1 OMB Approval No. 0920–0428) for each application. Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at (770) 488–2700, and forms will be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time, December 8, 2003. Submit the original and two copies of each application (*i.e.,* a separate application for each priority/category applied for) to: Technical Information Management—PA# 04010, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO-TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

Deadline

LOIs and applications will be considered as meeting the deadline if they are received in the CDC Procurement and Grants Office before 4 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications that do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Letter of Intent (LOI)

The LOI will be used only to ascertain eligibility for the priority being applied for, and to assist in planning the objective review process. The criteria for eligibility are indicated in the section on Eligible Applicants. All organizations which are determined ineligible for the priority being applied for, whether through information provided in the LOI or in the application itself, will be notified that they are ineligible and why.

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified purposes and objectives of the cooperative agreement. Measures of effectiveness must also relate to the applicable performance measures listed in the ''Program Requirements'' section. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria. All applications will be competitive and reviewed by an independent review group appointed by CDC. Points indicated in parentheses below reflect the total number possible for that section. The total number of possible points for the entire application is 100.

1. Operational Plan (40 Points)

a. *Goals:* The extent to which the applicant has submitted goals that align with Healthy People 2010 focus areas, HHS Department-wide program

objectives including STEPS to a HealthierUS, and the performance goals for NCCDPHP as indicated in the purpose section of this announcement. The extent to which the applicant has submitted goals that are specific and feasible for the two-year project period and are consistent with the purpose of the priority/category and program requirements.

b. *Objectives:* The extent to which the applicant has submitted objectives for the first 12-month budget period that are specific, measurable, feasible, and directly related to the goals, purpose, and program requirements.

c. *Activities:* The extent to which the applicant describes activities that are likely to achieve the objectives identified, provides a timetable, and identifies the person(s) responsible for each activity.

d. The extent to which the overall operational plan reflects a coherent, effective strategy for achieving optimal impact and results within the priority area addressed.

e. The extent to which the applicant demonstrates realistic evidence of collaboration with federal agencies, other organizations, and state and local education and health agencies to achieve the purposes of the program.

f. The extent to which the overall operational plan includes activities to reach communities of color and youth at highest risk for health problems.

2. Need and Capacity (30 Points)

a. The extent to which the applicant justifies the need and demonstrates the ability to implement strategies that serve the greatest unmet needs for the proposed activities.

b. The extent to which the applicant demonstrates the capacity and ability of their organization and constituency to address the identified needs and implement the proposed activities.

3. Project Management and Staffing (15 Points)

The extent to which the applicant identifies staff that have the responsibility, qualifications, and authority to carry out the activities proposed, as evidenced by job descriptions, curriculum vitae, organizational charts, and letters documenting the role of collaborating organizations.

4. Program Monitoring and Evaluation (15 Points)

The extent to which the applicant describes relevant data collection plans for program monitoring and evaluation that include the type of data to be collected, methods of data collection and analysis, and how the data will be used.

5. Budget and Accompanying Justification (Not Scored)

The extent to which the applicant provides a detailed and clear budget consistent with the operational plan.

I. Other Requirements

Technical Reporting Requirements

Send an original and two copies of the following reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement:

1. Interim Progress Report and Continuation Plan

For the first year of the project, an interim progress report and continuation plan will be due by February 15, 2005. The interim progress report will be used as evidence of achievement to date in meeting approved goals, objectives, and performance measures. Continuation funding decisions will be made on the basis of satisfactory progress on performance measures and the availability of funds. The interim progress report/continuation plan should include:

a. HIV Assurance and Compliance Forms (for recipients of HIV funding only): These include the form certifying compliance with Web Site Notices, and CDC Form 0.1113 signed by the chairperson of the HIV Review Panel which lists the names of current review panel members. The applicant should also submit documentation, signed by the chairperson, of materials reviewed, and the panel's decision to approve or disapprove each item.

b. A succinct description (no longer than ten pages) of progress made to date in meeting each program objective, including discussion of any significant delays or barriers and what is being done to correct the situation.

c. A financial progress report which provides an estimate of the overall obligations for the current budget period, and the actions to be taken if unobligated or insufficient funds are anticipated.

d. An operational plan for the next budget period, which includes all goals, objectives, and activities. Descriptions of staffing or evaluation activities are necessary only if there are significant changes from those provided in the original application.

e. A line item budget and budget justification for the next budget period (including information needed for proposed contracts and consultants as described in Section F: Content, Budget and Accompanying Justification).

2. Annual Progress Report

Within 90 days after the end of the first budget period (by August 14, 2005), submit an annual progress report that includes information described in (a) above (if applicable) and (b) above, with the exception that the period covered should be the entire budget period (May 15, 2004 to May 14, 2005). Within 90 days after the end of the entire two-year project period (by August 14, 2006), submit a final progress report.

3. Financial Status Report

Within 90 days after the end of the first budget period (by August 14, 2005), submit a Financial Status Report. Within 90 days after the end of the entire two-year project period (by August 14, 2005), submit a final Financial Status Report.

Additional Requirements

Projects that involve the collection of information from 10 or more individuals and funded by a cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

The following additional requirements are applicable to this program. For a complete description of each, *see* appendix D of the announcement as posted on the CDC Web site:

AR–1 Human Subjects Requirement
AR–5 HIV Review Panel Requirements (HIV funded projects only)
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
AR–15 Proof of Non-Profit Status
AR–20 Conference Support

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on ''Funding,'' then ''Grants and Cooperative Agreements.''

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Nealean Austin, Grants Management Officer, Acquisitions and Assistance Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number: (770) 488–2754, E-mail address: *NEA1@cdc.gov.*

For program technical assistance, send questions in writing to the following e-mail address: *nccddashpdsbnta@cdc.gov.*

Potential applicants may obtain online copies of documents referenced in this announcement at the following addresses:

CDC's HIV Prevention Strategic Plan Through 2005: *http://www.cdc.gov/nchstp/od/news/prevention.pdf.*

Healthy People 2010: *http://www.health.gov/healthypeople.*

Further guidance is available at the DASH Web site: *http://www.cdc.gov/nccdphp/dash.*

Dated: October 2, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–25481 Filed 10–7–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel ZOH1 PCM (10): Occupational Safety and Health Research Program Announcement #99–143

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Occupational Safety and Health Research, Program Announcement #99–143.

Times and Dates: 1 p.m.–1:30 p.m., October 28, 2003 (Open); 1:30 p.m.–5:30 p.m., October 28, 2003 (Closed).

Place: Teleconference, Executive Park, Building 24, Room 1420, Atlanta, GA 30329, Telephone (800) 857–4151.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement Number #99–143.

Contact Person for More Information: Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, Morgantown, WV 26505, Telephone (304) 285–5979.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: September 26, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–25479 Filed 10–7–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Healthcare Infection Control Practices Advisory Committee (HICPAC).

Times and Dates: 8:30 a.m.–5 p.m., October 27, 2003. 8:30 a.m.–4 p.m., October 28, 2003.

Place: Swiss**X**tel, 3391 Peachtree Road, NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Infectious Diseases (NCID), regarding (1) the practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (*e.g.*, nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters To Be Discussed: Agenda items will include an overview of CDC's mission and activities related to patient safety; a review of issues related to isolation precautions in healthcare facilities; strategies for surveillance of healthcare-associated infections; and updates on CDC activities of interest to the committee.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Michele L. Pearson, M.D., Executive Secretary, HICPAC, Division of Healthcare Quality Promotion, NCID, CDC, 1600 Clifton Road, NE., M/S A–07, Atlanta, Georgia 30333, telephone 404/498–1182.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 2, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–25480 Filed 10–7–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Schedule UDC: ''Itemized Undistributed Collections''.

OMB No.: New Collection.

Description: Although state child support enforcement agencies successfully collect and distribute billions of dollars every fiscal year, a certain portion of the collections remain undistributed. State agencies have requested a methodology by which to differentiate and report to the Office of Child Support Enforcement (OCSE) on the nature of those collections. In some instances collections remain undistributed for a short time, pending the anticipated resolution of an assortment of administrative or legal processes, while in other instances collections remain undistributed for an indefinite time as a result of circumstances beyond the control of the state agency. This support schedule, which will be submitted quarterly as an attachment to Form OCSE–34A, the ''Quarterly Report of Collections,'' will enable each state to differentiate and itemize its undistributed collections by category and age.

Respondents: State IV–D agencies administering the Child Support Enforcement Program under Title IV–D of the Social Security Act.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Schedule UDC	54	4	4	864
Estimated Total Annual Burden Hours				864

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 1, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–25438 Filed 10–7–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Grants Application Data Summary, Administration for Native Americans SEDS Application Information.

OMB No.: New Collection.

Description: Grant Application Data Summary (GADS) information is collected as part of a grant application. The GADS provides information used to prepare the legislatively mandated annual report to Congress on the status of American Indians, Native Alaskans, Native Hawaiians and Public Islander communities.

The purpose of this information collection is to collect information from applicants that the Administration for Native Americans can use for more accurate reporting to the Administration for Children and Families and to Congress on the status of American Indians, Native Alaskans, Native Hawaiians and Pacific Islander communities.

Respondents: Tribal Governments, Native Non-Profits, Tribal Colleges and Universities.

ANNUAL BURDEN ESTIMATED

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Grants Application Data Summary	650	1	28	18,200
Estimated Total Annual Burden Hours				18,200

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsrgis@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 1, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–25439 Filed 10–7–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Uniform Project Description (UPD) for Discretionary Grant Application Form.

OMB No: 0970–0139.

Description: The Administration for Children and Families (ACF) has more than 40 discretionary grant programs. The proposed information collection form would be a uniform discretionary application form usable for all of these grant programs to collect the information from grant applicants needed to evaluate and rank applicants and protect the integrity of the grantee selection process. All ACF discretionary grant programs would be eligible but not required to use this application form. The application consists of general information and instructions; the Standard Form 424 series that requests basic information, budget information and assurances; the Program Narrative requesting the applicant to describe how these objectives will be reached; and certifications. Guidance for the content of information requested in the Program Narrative is found in OMB Circulars A–102 and A–110.

Respondents: Applicants for ACF Discretionary Grant Programs.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
UPD	4,133	1	4	16,532
Estimated Total Annual Burden Hours				16,532

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer, E-mail address: *rsargis@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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, and including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 1, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–25440 Filed 10–7–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child Care and Development Fund Quarterly Financial Report (ACF–696).

OMB No.: 0970–0163.

Description: States and territories use this form to facilitate the reporting of expenditures for the Child Care and Development Fund (CCDF) on a quarterly basis. The form provides specific data regarding expenditures, obligations, and estimates. It provides states and territories with a mechanism to request grant awards and certify the availability of State matching funds. Failure to collect this data would seriously compromise the Administration for Children and Families' (ACF) ability to monitor expenditures. This form may also be used to prepare ACF budget submissions to Congress. This information collection currently uses form ACF–696, for which Office of Management and Budget approval expires on December 31, 2003, updated for electronic submission.

Respondents: States and Territories that are CCDF grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–696	56	4	5	1,120
Estimated Total Annual Burden Hours				1,120

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and

comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 1, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–25441 Filed 10–7–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Quarterly Performance Report (ORR–6).

OMB No.: 0970–0036.

Description: We ask for the information on this form in order to determine the effectiveness of the state cash and medical assistance, social services, and targeted assistance programs as required by section 412(e) of the Immigration and Naturalization Act. We also calculate state-by-state Refugee Cash Assistance and Refugee Medical Assistance utilization rates for use in formulating program initiatives, priorities, standards, budget requests, and assistance policies. The Office of Refugee Resettlement regulations require that this form be completed in order to participate in the program.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OOR–6	48	4	3.875	744
Estimated Total Annual Burden Hours				744

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer, E-mail address: *rsargis@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 1, 2003

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–25442 Filed 10–7–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0066]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Inspection by Accredited Persons Program Under the Medical Device User Fee and Modernization Act of 2002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by November 7, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices Inspection by Accredited Persons Program Under MDUFMA (OMB Control Number 0910–0510)—Extension

The Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Public Law 107–250) was signed into law on October 26, 2002. Section 201 of MDUFMA adds a new paragraph ''g'' to section 704 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 374), directing FDA to accredit third parties (accredited persons or APs) to conduct inspections of eligible manufacturers of class II or class III devices. This is a voluntary program; eligible manufacturers have the option of being inspected by an AP or by FDA. The new law requires FDA, within 180 days from the date of MDUFMA was signed into law, to publish in the **Federal Register** criteria to accredit or deny accreditation to persons who request to perform these inspections (section 704(g)(2) of the act).

In the **Federal Register** of April 28, 2003 (68 FR 22388), FDA published a notice announcing that a proposed collection of information has been submitted to OMB for emergency processing under the PRA. Interested persons were given until May 28, 2003, to comment on the notice. Elsewhere in the April 28, 2003, issue of the **Federal Register** (68 FR 22400), FDA published a document announcing the criteria it will use to accredit persons to inspect eligible device manufacturers and the availability of a guidance entitled ''Implementation of the Inspection by Accredited Persons Program Under the Medical Device User Fee and Modernization Act of 2002; Accreditation Criteria: Guidance for Industry, FDA Staff, and Third Parties.''

FDA received a total of three comments from a trade association, an industry association, and a consultant. These comments were not specifically related to the information collection for the submission of applications to become an accredited person. The comments addressed the implementation of the third party inspection program. FDA will take these comments into consideration in further developing its third party inspection program.

Description of Respondents: Businesses or other for profit organizations.

In the **Federal Register** of July 10, 2003 (68 FR 41160), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Item	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Request for Accreditation (First Year)	25	1	25	80	2,000
Request for Accreditation (Second Year)	10	1	10	15	150
Request for Accreditation (Third Year)	5	1	5	80	400
Total					2,550

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based these estimates on conversations with industry, trade association representatives, and internal FDA estimates. Our expectation is that 25 bodies will apply and meet the minimum standard for being accredited. Under MDUFMA, we can only accredit 15 persons during the first year. We (FDA) expect that the lowest ranking, 10 (the ones not accredited), will reapply the following year and will submit an updated application. Five new applicants may apply the third year. Once an organization is accredited, it will not be required to reapply.

Dated: September 30, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–25444 Filed 10–7–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0295]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Establishing and Maintaining a List of U.S. Dairy Product Manufacturers/Processors With Interest in Exporting to Chile

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by November 7, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Establishing and Maintaining a List of U.S. Dairy Product Manufacturers/Processors With Interest in Exporting to Chile (OMB Control Number 0910–0509)—Extension

Section 701(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(h)) authorizes the Secretary of Health and Human Services (the Secretary) to develop guidance documents with public participation presenting the views of the Secretary on matters under the jurisdiction of FDA.

In the **Federal Register** of May 23, 2003 (68 FR 28237), FDA announced the availability of a guidance entitled ''Establishing and Maintaining a List of U.S. Dairy Product Manufacturers/Processors With Interest in Exporting to Chile.'' The guidance provided voluntary recommendations on the process for firms that wish to export dairy products to Chile. FDA is taking this action in response to discussions with Chile that have been adjunct to the negotiations of the United States-Chile Free Trade Agreement. As a result of those discussions, Chile recognized FDA as the competent food safety authority in the United States to identify U.S. dairy product manufacturers and processors eligible to export to Chile and concluded that it will not conduct individual inspections of U.S. firms identified by FDA as eligible to export to Chile.

Therefore, FDA intends to establish and maintain a list identifying U.S. manufacturers/processors that have expressed interest to FDA in exporting dairy products to Chile, are subject to FDA jurisdiction, and are not the subject of a pending judicial enforcement action (i.e. an injunction or seizure) or an unresolved warning letter. Under this guidance, FDA recommends that U.S. firms that want to be placed on the list send information to FDA (i.e., name and address of the firm and the manufacturing plant; name, telephone number, and e-mail address (if available) of contact person; list of products presently shipped and expected to be shipped in the next 3 years; identities of agencies that inspect the plant and date of last inspection plant number and copy of last inspection notice; and, if other than an FDA inspection, copy of last inspection report. The term ''dairy products,'' for purposes of this list, is not intended to cover the raw agricultural commodity raw milk. The guidance can be found at *http://www.cfsan.fda.gov/guidance.html.*

The burden estimates presented in the following paragraphs considered the number of U.S. firms that FDA believes produce dairy products and that will be interested in exporting to Chile, which is estimated to total 75. After the first year, FDA believes that approximately eight new firms each year will be interested in exporting dairy products to Chile, and thus, being placed on the list. In the **Federal Register** of April 10, 2003 (68 FR 17655), FDA published an emergency notice requesting public comment on the information collection provisions that had been submitted to OMB for emergency processing under the PRA. Four comments were received from trade associations and private industry.

Those comments were answered in the 60-day notice.

In the **Federal Register** of July 10, 2003 (68 FR 41157), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Type of Survey	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Mail questionnaire	1,000	1	1,000	3	3,000
Phone Survey	1,000	1	1,000	.5	500
Internet or Cable Survey	3,000	1	3,000	1	3,000
Total					6,500

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the number of firms is based on the actual number of U.S. firms that applied to be placed on the list as a result of the **Federal Register** of May 23, 2003 (68 FR 28237), publication of the availability of a guidance entitled ''Establishing and Maintaining a List of U.S. Dairy Product Manufacturers/Processors With Interest in Exporting to Chile.'' The estimate of the number of hours that it will take a firm to gather the information needed to be placed on the list is based on FDA's experience with firms submitting similar requests. FDA believes that the information to be submitted will be readily available to the firms. We (FDA) estimate that for the first year a firm will require 1.5 hours to read the **Federal Register**, gather the information needed, and to prepare a communication to FDA that contains the information and requests that the firm be placed on the list. We estimate the recurring burden in subsequent years to be 1.5 hours for a new firm to be placed on the list and 0.5 hours for reporting changes to FDA for firms already on the list.

Dated: September 30, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–25448 Filed 10–7–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anesthetic and Life Support Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Anesthetic and Life Support Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 18, 2003, from 8 a.m. to 5 p.m. and on November 19, 2003, from 8 a.m. to 12 noon.

Location: Holiday Inn, The Ballrooms, 2 Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Johanna M. Clifford, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, or e-mail: *cliffordj@cder.fda.gov*, or FDA Advisory Committee Information Line: 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12529. Please call the Information Line for up-to-date information on this meeting.

Agenda: On November 18, 2003, the committee will discuss the assessment and management of risk related to QTc prolongation by Droperidol (Inapsine) Akorn, Inc., indicated for nausea and vomiting in surgical and diagnostic

procedures, premedication, and neuroleptanalgesia.

Procedure: On November 18, 2003, the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 10, 2003. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 10, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On November 19, 2003, from 8 a.m. to 12 noon, the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)).

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact John Lauttman at 301–827–7001 at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 29, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–25445 Filed 10–7–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee.

General Function of the Subcommittee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 29, 2003, from 8 a.m. to 5:30 p.m. and October 30, 2003, from 8 a.m. to 3:30 p.m.

Location: Hilton, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD, 301–556–2046.

Contact Person: Thomas H. Perez, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: *perezt@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530. Please call the Information Line for up-to-date information on this meeting.

Agenda: On October 29, 2003, the subcommittee will meet between 8 a.m. and 3:30 p.m., to discuss the risk assessment and possible risk management strategies for hypothalamic pituitary adrenal (HPA) axis suppression in children who are treated for skin disorders with topical corticosteroids. Following this, from approximately 3:45 p.m. to 5:30 p.m., the agency will report to the subcommittee on Adverse Event Reporting as mandated in section 17 of the Best Pharmaceuticals for Children Act (BPCA). The products to be discussed during this portion of the meeting include ZYRTEC (cetirizine), BUSULFEX (busulfan), COZAAR (losartan), NOLVADEX (tamoxifen), ACCUPRIL (quinapril), and SERZONE (nefazodone).

On October 30, 2003, the subcommittee will meet between 8 a.m. and 3:30 p.m., to discuss how to approach long-term monitoring for cancer occurrence among patients treated for atopic dermatitis with topical immunosuppressants.

The background material for this meeting will be posted on the Internet when available or 1 working day before the meeting at *http:// www.fda.gov/ ohrms/dockets/ac/menu.htm.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by October 21, 2003. On October 29, 2003, oral presentations from the public will be scheduled between approximately 12:30 p.m. and 1:30 p.m. for issues related to atopic dermatitis, and between approximately 4:30 p.m. and 5 p.m. for issues related to section 17 of the BPCA. On October 30, 2003, oral presentations from the public will be scheduled between approximately 12:30 p.m. and 1:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person by October 21, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please notify Thomas Perez at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 2, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–25443 Filed 10–7–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Drug Safety and Risk Management Advisory Committee; Notice of Postponement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is postponing the meeting of the Drug Safety and Risk Management Advisory Committee scheduled for September 19, 2003, due to Hurricane Isabel. The future date of this meeting is to be determined. This meeting was announced in the **Federal Register** of August 5, 2003 (68 FR 46199).

FOR FURTHER INFORMATION CONTACT: Shalini Jain, Center for Drug Evaluation and Research (HFD–21), Food and Drug

Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, or e-mail: *JAINS@CDER.FDA.GOV*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12535. Please call the Information Line for up-to-date information on this meeting.

Dated: October 2, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–25449 Filed 10–7–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0338]

Food and Drug Administration Obesity Working Group; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following public meeting: Public Meeting on Obesity. The topic to be discussed involves issues within FDA's jurisdiction related to obesity and nutrition. The purpose of this public meeting, which is being sponsored by FDA's Obesity Working Group, is to discuss FDA's role and responsibilities in addressing the major public health problem of obesity, to focus on issues related to promoting better consumer dietary and lifestyle choices that have the potential to significantly improve the health and well-being of Americans, and to obtain stakeholder views on how best to build a framework for messages to consumers about reducing obesity and achieving better nutrition.

The agency has developed a web page for this initiative where interested persons can register to attend and/or make an oral presentation at the meeting, submit comments, and obtain related information. This Web Site is located at *http://www.fda.gov/oc/opacom/hottopics/obesity.html*.

DATES: The meeting will be held on October 23, 2003, from 9 a.m. to 5 p.m. Registration to attend the meeting must be received by October 17, 2003 at 5 p.m. Submit written comments by November 21, 2003.

ADDRESSES: The meeting will be held at the Jack Masur Auditorium, Warren Grant Magnuson Clinical Center (Bldg. 10), National Institutes of Health (NIH), 9000 Rockville Pike, Bethesda, MD. Important information about transportation and directions to the NIH campus, parking, and security procedures are found at *http://www.nih.gov/about/visitor/index.htm*.

Visitors must show two forms of identification, one of which must be a government-issued photo identification such as a Federal employee badge, driver's license, passport, green card, etc. If you are planning to drive to and park on the NIH campus, you must enter at the South Dr. entrance of the campus which is located on Wisconsin Ave. (the Medical Center Metro entrance), and allow extra time for vehicle inspection. Detailed information about security procedures is located on *http://www.nih.gov/about/visitorsecurity.htm*.

FOR FURTHER INFORMATION CONTACT:

For General Information: Brian R. Somers, Center for Food Safety and Applied Nutrition (CFSAN), Food and Drug Administration (HFS–820), 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1692, FAX: 301–436–2636, e-mail: *Brian.Somers@CFSAN.FDA.GOV*.

For Registration Information: Patricia A. Alexander, Office of Regulatory Affairs (HFC–150), 5600 Fishers Lane, Rockville, MD 20857, 301–827–6328, FAX: 301–443–2143, e-mail: *registration@ora.fda.gov*.

Registration and Requests for Oral Presentations

If you would like to attend the meeting, you must register with the appropriate contact person (*see* **FOR FURTHER INFORMATION CONTACT**) by October 17, 2003, at 5 p.m. by providing your name, title, organizational affiliation, address, telephone, fax number (optional), and e-mail address (optional). Registration will be conducted on a first-come, first-served basis, and seating will be limited. To expedite processing, this registration information may also be faxed or e-mailed to Patricia A. Alexander (*see* **FOR FURTHER INFORMATION CONTACT**). If you need special accommodations due to a disability, please contact Patricia A. Alexander (*see* **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance.

If, in addition to attending, you wish to make an oral presentation during the meeting, you must inform Patricia A. Alexander (*see* **FOR FURTHER INFORMATION CONTACT**) when you register and submit the following items: (1) A brief written statement of the general nature of the views you wish to present, (2) the names and addresses of all persons who will participate in the presentation, and (3) an indication of the approximate time that you request to make your presentation. FDA asks that groups having similar interests consolidate their comments and present them through a single representative. Scheduled speakers should provide two copies of their presentation for the docket at the meeting. The agency requests that speakers annotate and organize their presentations to specifically identify which of the six questions (*see* **SUPPLEMENTARY INFORMATION**) are addressed in their presentations.

The agency will allocate the time available for the public meeting among persons who have preregistered to give an oral presentation. If time permits, FDA may allow interested persons attending the meeting who did not preregister to give a presentation to make an oral presentation at the end of the meeting.

After reviewing the requests for oral presentations and accompanying information, FDA will schedule each appearance and notify each participant of the time allotted to the person and the approximate time the person's oral presentation is scheduled to begin. The presentation schedule will be available at the meeting. After the meeting, it will be placed on file in the Division of Dockets Management under the docket number found in brackets in the heading of this document.

SUPPLEMENTARY INFORMATION:

I. Background

Obesity is a growing and urgent public health problem in the United States. There have been steady and substantial increases in adult obesity in the United States since the late 1980s. Today, almost two-thirds of all Americans are overweight; in 1988 through 1992, less than 56 percent were overweight. In 1988 through 1992, less than 23 percent of American adults were obese and by 1999 through 2000, the figure had increased by a quarter, to over 30 percent. The trends for children are even more worrisome. Recent research by the U.S. Centers for Disease Control and Prevention shows that 13 percent of children aged 6 to 11 are overweight—almost double the rate of two decades ago. World Health Organization surveys show that weight is on the rise all over the world. The health of Americans suffers as they get heavier. According to some estimates, at least 300,000 deaths each year are associated with cases of heart disease, diabetes, cancer, and other serious chronic diseases that, in many instances, result from unhealthy nutritional choices and lack of physical

activity. The avoidable medical costs of obesity exceed $50 billion each year, well over 5 percent of total U.S. health expenditures, at a time when we can ill afford these costs. The total economic costs of obesity approach $100 billion each year.

Helping consumers improve their diets is one of the nation's most pressing public health problems and an increasingly urgent part of FDA's activities. The consequences of poor diets, including the growing prevalence of excess weight and growing risks of diabetes, high blood pressure, heart disease, arthritis, respiratory difficulties, and many cancers that go along with excess weight, are endangering and diminishing the lives of millions of Americans. The challenge confronting the Government, researchers, the food and restaurant industry, consumers, the medical community, schools, and the public health communitym is to determine what kind of information and assistance the public needs in order to help them improve their dietary choices and reduce the incidence of overweight and obesity.

To address the problem of obesity and to meet the challenge of helping Americans improve their diet and nutrition, Secretary Tommy G. Thompson has led the Department of Health and Human Services (DHHS) in its efforts to encourage healthy habits such as nutritious diets, more exercise, and healthy choices. Secretary Thompson has challenged DHHS agencies and the leadership of the public health community to intensify their efforts to realize these improvements.

On July 30, 2003, Secretary Thompson held a roundtable discussion on obesity and nutrition with leading scientific experts in obesity and weight management. The Secretary's roundtable on obesity/nutrition was intended to enhance a DHHS discussion with leading thinkers and experts in the public health community on the role that DHHS can play in reducing or reversing the weight gain that leads to obesity. The roundtable dialogue centered on five key questions, which are the foundation of the questions on which FDA seeks input in the forthcoming public meeting.

On August 11, 2003, FDA's Commissioner of Food and Drugs, Mark B. McClellan established FDA's Obesity Working Group to confront the current obesity epidemic in the United States and to develop new and innovative ways to help consumers lead healthier lives through better nutrition. Dr. Lester M. Crawford, FDA's Deputy Commissioner, is the Chair of the working group, and Mr. Joseph Levitt, Director of FDA's CFSAN office, is the Vice Chair. As a part of his charge to the working group, Commissioner McClellan directed that it provide for an active dialogue with external stakeholders including consumer groups, academia, the medical community, and the food and restaurant industry, on developing a framework for messages to consumers about reducing obesity and achieving better nutrition. This public meeting is one of the avenues that the working group is using to initiate this dialogue.

II. Scope of Discussion and Format

The scope of this public meeting will be limited to the following questions:

1. What is the available evidence on the effectiveness of various education campaigns to reduce obesity?
2. What are the top priorities for nutrition research to reduce obesity in children?
3. What is the available evidence that FDA can look to in order to guide rational, effective public efforts to prevent and treat obesity by behavioral or medical interventions, or combinations of both?
4. Are there changes needed to food labeling that could result in the development of healthier, lower calorie foods by industry and the selection of healthier, lower calorie foods by consumers?
5. What opportunities exist for the development of healthier foods/diets and what research might best support the development of healthier foods?
6. Based on the scientific evidence available today, what are the most important things that FDA could do that would make a significant difference in efforts to address the problem of overweight and obesity?

This meeting will include an opening session during which FDA will present a discussion of obesity and related issues associated with the tools available to the agency to assist consumers to improve their diets. The agency may ask experts to provide presentations on specific issues. Individuals who have registered to give oral presentations in advance of the meeting will be provided with the opportunity to speak following the opening session. A schedule of oral presentations will be available at the meeting.

III. Comments

To permit time for all interested persons to submit data, information, or views on this subject, the administrative record of this meeting will remain open for 30 days after the meeting. Interested persons may submit to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, written or electronic comments by November 21, 2003. You may also send comments to the Division of Dockets Management via e-mail to *FDADockets@oc.fda.gov.* or on FDA's Web site at *http://www.fda.gov/oc/opacom/hottopics/obesity.html*.

You should annotate and organize your comments to identify the specific questions to which your comments refer. Submit two paper copies of comments, identified with the docket number found in brackets in the heading of this document. Individuals may submit one paper copy. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Comments may be placed on the Internet and, if so, will be available for public viewing.

IV. Transcripts

You may request a transcript of the meeting in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. You may examine the transcript of the meeting after November 10, 2003, at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, as well as on FDA's Web site at *http://www.fda.gov/oc/opacom/hottopics/obesity.html*

Dated: October 6, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–25645 Filed 10–7–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Clinical Pharmacology Subcommittee of the Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Clinical Pharmacology Subcommittee of the

Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 17, 2003, from 8:30 a.m. to 5:30 p.m.; and on November 18, 2003, from 8:30 a.m. to 1:30 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Hilda Scharen, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or e-mail: *SCHARENH@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: On November 17, 2003, the subcommittee will discuss: (1) Quantitative analysis using exposure-response: Proposal for End-of-Phase2A (EOP2A) meeting and use of clinical trial simulation for PK-QT study design; and (2) pediatric decision tree: Examples for applying the pediatric decision tree. On November 18, 2003, the subcommittee will discuss the pediatric decision tree: (1) Use of clinical trial simulation in pediatric population pharmacokinetics study design; (2) drug interactions; and (3) pharmacogenetics: Integration into new drug development.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by November 6, 2003. Oral presentations from the public will be scheduled between approximately 11:30 a.m. and 12 noon on November 17, 2003, and 12:30 p.m. and 1 p.m. on November 18, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 6, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Hilda Scharen at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 2, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–25446 Filed 10–7–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Science Board to the Food and Drug Administration; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Science Board to the Food and Drug Administration.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 6, 2003, 8 a.m. to 4:30 p.m.

Location: Food and Drug Administration, 5630 Fishers Lane, rm. 1066, Rockville, MD 20857.

Contact Person: Jan Johannessen, Office of the Commissioner, Food and Drug Administration, HF–33, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6687, *jjohannessen@fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12603. Please call the Information Line for up-to-date information on this meeting.

Agenda: The Board will hear about and discuss FDA's Food Security Program.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 22, 2003. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 22, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jan Johannessen at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 3, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–25555 Filed 10–7–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0434]

Guidance for Industry and FDA Staff: FDA and Industry Actions on Premarket Approval Applications: Effect on FDA Review Clock and Performance Assessment; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Guidance for Industry and FDA Staff: FDA and Industry Actions on Premarket Approval Applications: Effect on FDA Review Clock and Performance Assessment.'' This guidance describes how the Food and Drug Administration (FDA) will assess its performance in the premarket approval application (PMA) program relative to the goals that accompany the authorization of medical device user fees. This guidance document is immediately in effect, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on this guidance at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''FDA and Industry Actions on Premarket Approval Applications: Effect on FDA Review Clock and Performance Assessment'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT:

For Device Issues: Thinh Nguyen, CDRH (HFZ–402), 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

For Biologics Issues: Sayah Nedjar, Center for Biologics Evaluation and Research (CBER) (HFM–380), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3524.

SUPPLEMENTARY INFORMATION:

I. Background

The Medical Device User Fee and Modernization Act of 2002 (Public Law 107–250), signed into law on October 26, 2002, allows FDA to assess user fees for certain premarket reviews. Performance goals, existing outside of the statute, accompany the authorization of medical device user fees. These goals represent a realistic projection of what FDA's CDRH and CBER offices can accomplish with industry cooperation.

The guidance describes premarket review cycle and decision actions and goals for original PMAs, original expedited PMAs, panel-track supplements, and 180-day PMA supplements. Although it was not feasible to obtain comments before issuing the guidance due to tight statutory deadlines, in accordance with this agency's GGP procedures, FDA will accept comments on the guidance at any time.

II. Significance of Guidance

This guidance is being issued consistent with FDA's GGP regulation (21 CFR 10.115). The guidance represents the agency's current thinking on PMA review cycle and decision actions and performance goals. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive ''FDA and Industry Actions on Premarket Approval Applications: Effect on FDA Review Clock and Performance Assessment ''by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1218) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 USC 3501–3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket approval applications (21 CFR part 814, OMB control number 0910–0231).

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

To receive ''FDA and Industry Actions on Premarket Approval Applications: Effect on FDA Review Clock and Performance Assessment ''by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1218) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Dated: September 30, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–25447 Filed 10–7–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–16200]

National Boating Safety Activities: Funding for National Nonprofit Public Service Organizations

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard seeks applications for fiscal year 2004 grants and cooperative agreements from national, nongovernmental, nonprofit, public service organizations. These grants and cooperative agreements would be used to fund projects on various subjects promoting recreational boating safety on the national level. This notice provides information about the grant and cooperative agreement application process and some of the subjects of particular interest to the Coast Guard.

DATES: Application packages may be obtained on or after October 8, 2003. Proposals for the fiscal year 2004 grant

cycle must be received before 3 p.m. eastern time, January 15, 2004.

ADDRESSES: Application packages may be obtained by calling the Coast Guard Infoline at 800–368–5647. Submit proposals to: Commandant (G–OPB–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 3100, Washington, DC 20593–0001. This notice is available from the Coast Guard Infoline and on the Internet at *http://dms.dot.gov* in docket USCG–2003–16200 or at the Web site for the Office of Boating Safety at *http://www.uscgboating.org.*

FOR FURTHER INFORMATION CONTACT: Ms. Vickie Hartberger, Office of Boating Safety, U.S. Coast Guard (G–OPB–1/room 3100), 2100 Second Street, SW., Washington, DC 20593–0001; 202–267–0974. The points of contact for the nine project areas are listed at the end of the description of each project area.

SUPPLEMENTARY INFORMATION: Title 46, United States Code, section 13103, allocates funds available from the Aquatic Resources Trust Fund for boating safety grants. The majority of funds are allocated to the States, and up to 5 percent of these funds may be distributed by the Coast Guard for grants and cooperative agreements to national, nonprofit, public service organizations for national recreational boating safety activities. It is anticipated that up to $2,950,000 will be made available for fiscal year 2004. Thirty-two awards totaling $2,994,500 were made in fiscal year 2003 ranging from $7,000 to $370,000. Nothing in this announcement should be construed as committing the Coast Guard to dividing available funds among qualified applicants or awarding any specified amount.

It is anticipated that several awards will be made by the Director of Operations Policy, U.S. Coast Guard. Applicants must be national, nongovernmental, nonprofit, public service organizations and must establish that their activities are, in fact, national in scope. An application package may be obtained by writing or calling the point of contact listed in **ADDRESSES** on or after October 8, 2003. The application package contains all necessary forms, an explanation of how the grant program is administered, and a checklist for submitting a grant application. Specific information on organization eligibility, proposal requirements, award procedures, and financial administration procedures may be obtained by contacting the person listed in **FOR FURTHER INFORMATION CONTACT.**

Prospective grantees may propose up to a 5-year grant with 12-month (fiscal year) increments. In effect, an award would be made for the first year and thereafter renewal is optional. Each annual increment would not be guaranteed. Under a continuation (multi-year) grant type of award the Coast Guard agrees to support a grant project at a specific level of effort for a specified period of time, with a statement of intention to provide certain additional future support, provided funds become available, the achieved results warrant further support, and are in support of the needs of the government. Award of continuation grants will be made on a strict case-by-case basis to assist planning certain large scale projects and ensure continuity. Procedures also provide for awarding noncompetitive grants or cooperative agreements on a case-by-case basis. This authority is judiciously used to fund recurring annual projects or events which can only be carried out by one organization, and projects that present targets of opportunity for timely action on new or emerging program requirements or issues.

The following list includes items of specific interest to the Coast Guard, however, potential applicants should not be constrained by the list. We welcome any initiative that supports the organizational objectives of the Recreational Boating Safety Program to save lives, reduce the number of boating accidents, injuries and property damage, and lower associated health care costs. Some project areas of continuing and particular interest for grant funding include the following:

1. *Develop and Conduct a National Annual Safe Boating Campaign.* The Coast Guard seeks a grantee to develop and conduct the year 2005 National Annual Safe Boating Campaign that targets specific boater market segments and recreational boating safety topics. This year-round campaign must support the organizational objectives of the Recreational Boating Safety Program and the nationwide grassroots activities of the many volunteer groups who coordinate local media events, education programs, and public awareness activities, as well as compliment the Coast Guard ''You're In Command'' campaign. The major focus of the campaign will be to affect the behavior of all boaters with special focus on boat operators being responsible for their own safety as well as the safety of their passengers. A significant emphasis should be placed on life jacket wear, safety and security issues, and the dangers of carbon monoxide, as well as boating under the influence of alcohol or a dangerous drug. Efforts will also be coordinated, year-round, with other national safety activities and special media events. Point of Contact: Ms. Jo Calkin, (202) 267–0994.

2. *Develop and Conduct a National Recreational Boating Safety Outreach and Awareness Conference.* The Coast Guard seeks a grantee to plan, implement, oversee, and conduct a National Recreational Boating Safety Outreach and Awareness Conference that supports the organizational objectives of the Recreational Boating Safety Program. The overall conference focus should have promotional strategies with special focus on boat operators being responsible for their own safety as well as the safety of their passengers. Significant emphasis should be placed on offering multiple subject matter areas that afford the participants professional development opportunities and educational enhancement. Areas should focus on, but not be limited to: life jacket wear, safety and security issues, the dangers of carbon monoxide, boating education, vessel safety, as well as boating under the influence of alcohol or a dangerous drug. Point of Contact: Ms. Jo Calkin, (202) 267–0994.

3. *State/Federal/Boating Organizations Cooperative Partnering Efforts.* The Coast Guard seeks a grantee to provide programs to encourage greater participation and uniformity in boating safety efforts. Applicants would provide a forum to encourage greater uniformity of boating laws and regulations, reciprocity among jurisdictions, and closer cooperation and assistance in developing, administering, and enforcing Federal and State laws and regulations pertaining to boating safety. Point of Contact: Ms. Audrey Pickup, (202) 267–0872.

4. *Voluntary Standards Development Support.* The Coast Guard seeks a grantee to carry out a program to encourage active participation by members of the public and other qualified persons in the development of technically sound voluntary safety standards for boats and associated equipment. Point of Contact: Mr. Peter Eikenberry, (202) 267–6984.

5. *Develop and Conduct Boating Accident Seminars.* The Coast Guard seeks a grantee to develop, provide instructional material, and conduct training courses nationwide for boating accident investigators, including three courses at the U.S. Coast Guard Reserve Training Center in Yorktown, Virginia. Point of Contact: Mr. Rick Gipe, (202) 267–0985.

6. *National Estimate of Personal Flotation Devices (PFDs) Wear Rate.* The Coast Guard seeks a grantee to develop

a statistically valid national estimate and evaluation of wear rates of PFDs by recreational boaters. Wear rate should be determined by actual observation of boaters rather than other means such as surveys. Point of Contact: Mr. Peter Eikenberry, (202) 267–6894.

7. *Recreational Boat Navigation Light Installation Practices.* The Coast Guard seeks a grantee to conduct a study of recreational boat navigation light installation practices. This study shall include both traditional incandescent and light emitting diode (LED) lights installed in recreational boats and/or available for sale as after market items. The study shall be focused on identifying issues related to compliance with Rules of the Road, and particularly instances in which the specific positioning of navigation lights may cause glare or other effects that interfere with the operator's visibility. The study shall identify instances in which compliance with Rules of the Road lighting requirements may not serve to enhance the safety of recreational boaters. The grantee shall make recommendations for changes to recreational lights that will enhance safety. Point of Contact: Mr. Richard Blackman, (202) 267–6810.

8. *Recreational Boating Study/Survey Analysis.* This project is a multiple phase project, with the first phase already in progress. The first phase of the project has been directed primarily at compiling and reviewing boating studies and reports, categorizing and summarizing research in a format that will encourage and facilitate its use by boating businesses and agencies, and in developing Web-based mechanisms to efficiently maintain this information (*e.g.*, on-line boating research tracking form, boating research discussion page). Web-based tools are also being utilized to encourage research-related dialogue and future research partnerships, identify recreational boating research priorities and opportunities for multiple purpose studies, and widely publish and disseminate the resulting literature review and project deliverables. The second phase of the project will continue to identify, compile and analyze boating studies. During the second phase, more attention will be directed to encouraging dialogue focused on identifying future research agendas for boating research, and developing partnerships that will coordinate and make studies more comparable (*e.g.*, comparable definitions, sampling, definitions). For example, instead of doing separate boating safety studies, safety issues and behaviors could be incorporated into existing research projects where appropriate. These subsequent efforts will also identify and propose uniform definitions for boating-related terms and concepts, along with other common research variables that will enhance the potential of integration and comparability across recreational boating studies. In the second phase of the project, grantee is to convene a high-level symposium with representation from industry associations, marine trade associations, state and federal boating agencies, and university researchers to: establish boating research priorities, identify ways to encourage integrated multiple-sponsor studies, and to develop a funding strategy for encouraging and supporting these initiatives. Point of Contact: Mr. Bruce Schmidt, (202) 267–0955.

9. *Navigation Lighting On Barges.* The Coast Guard seeks a grantee to research and analyze the danger posed to recreational boaters by barges, both under tow and being pushed, under the conditions of reduced visibility. The grantee would provide recommendations for additional lighting or other means to increase the visibility of the barges. Any lighting recommendations must be consistent with Rule 20 of the Navigation Rules (33 U.S.C. 2020), that is, additional lights cannot be mistaken for the lights specified in the Rules and do not impair their visibility or distinctive character. Point of Contact: Mr. Rick Gipe, (202) 267–0985.

Potential grantees should focus on partnership, *i.e.*, exploring other sources, linkages, in-kind contributions, cost sharing, and partnering with other organizations or corporations. We encourage proposals addressing other boating safety concerns.

The Boating Safety Financial Assistance Program is listed in section 20.005 of the Catalog of Federal Domestic Assistance.

Dated: September 30, 2003.

Jeffrey J. Hathaway,

Rear Admiral, U. S. Coast Guard, Director of Operations Policy.

[FR Doc. 03–25418 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–16252]

Senior Executive Service Performance Review Board Membership

AGENCY: Coast Guard, DHS.

ACTION: Notice of appointments.

SUMMARY: The Coast Guard is providing notice of the appointment of nine individuals to serve on its Performance Review Board.

FOR FUTHER INFORMATION CONTACT: David Hyde, Chief, Office of Civilian Personnel, (202) 267–0921.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 4314(c)(4), the Coast Guard is required to publish the names of individuals appointed to serve on the Coast Guard Performance Review Board (CGPRB). The following nine persons have been selected to serve on the CGPRB:

Rear Admiral K. T. Venuto, Assistant Commandant for Human Resources, United States Coast Guard; Rear Admiral R. J. Papp, Director of Reserve and Training, United States Coast Guard; Rear Admiral E. M. Brown, Assistant Commandant for Systems, United States Coast Guard; Rear Admiral J. C. Olson, Director of Operations Capability, United States Coast Guard; Rear Admiral J. J. Hathaway, Director of Operations Policy, United States Coast Guard; Mr. John Matticks, Senior Planning Advisor, Federal Emergency Management Agency; Dr. Marjorie Budd, Assistant Commissioner for Training and Development, U.S. Customs and Border Protection; Mr. Thomas Grupski, Deputy Assistant Director, Protective Operations Office, U.S. Secret Service; Mr. James L. Dunlap, Deputy Assistant Director, Human Resources and Training, U.S. Secret Service.

Dated: October 1, 2003.

David Hyde,

Chief, Office of Civilian Personnel.

[FR Doc. 03–25417 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

List of Foreign Entities Violating Textile Transshipment and Country of Origin Rules

AGENCY: Bureau of Customs and Border Protection, Homeland Security.

ACTION: General notice.

SUMMARY: This document notifies the public of foreign entities which have been issued a penalty claim under section 592 of the Tariff Act of 1930, for certain violations of the customs laws. This list is authorized to be published by section 333 of the Uruguay Round Agreements Act.

DATES: This document notifies the public of the semiannual list for the 6-month period starting October 1, 2003, and ending March 30, 2004.

FOR FURTHER INFORMATION CONTACT: For information regarding any of the operational aspects, contact Gregory Olsavsky, Fines, Penalties and Forfeitures Branch, Office of Field Operations, (202) 927–3119. For information regarding any of the legal aspects, contact Willem A. Daman, Office of Chief Counsel, (202) 927–6900.

SUPPLEMENTARY INFORMATION:

Background

Section 333 of the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465, 108 Stat. 4809) (signed December 8, 1994), entitled Textile Transshipments, amended part V of title IV of the Tariff Act of 1930 by creating a section 592A (19 U.S.C. 1592a), which authorizes the Secretary of the Treasury to publish in the **Federal Register**, on a semiannual basis, a list of the names of any producers, manufacturers, suppliers, sellers, exporters, or other persons located outside the Customs territory of the United States, when these entities and/or persons have been issued a penalty claim under section 592 of the Tariff Act, for certain violations of the customs laws, provided that certain conditions are satisfied.

The violations of the customs laws referred to above are the following: (1) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products; (2) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the Customs territory of the United States of textile or apparel products; (3) Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labeled as to country of origin or source; and (4) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

If a penalty claim has been issued with respect to any of the above violations, and no petition in response to the claim has been filed, the name of the party to whom the penalty claim was issued will appear on the list. If a petition or supplemental petition for relief from the penalty claim is submitted under 19 U.S.C. 1618, in accord with the time periods established by sections 171.2 and 171.61, Customs Regulations (19 CFR 171.2, 171.61) and the petition is subsequently denied or the penalty is mitigated, and no further petition, if allowed, is received within 60 days of the denial or allowance of mitigation, then the administrative action shall be deemed to be final and administrative remedies will be deemed to be exhausted. Consequently, the name of the party to whom the penalty claim was issued will appear on the list. However, provision is made for an appeal to the Secretary of the Treasury (now delegated to the Secretary of Homeland Security) by the person named on the list, for the removal of its name from the list. If the Secretary finds that such person or entity has not committed any of the enumerated violations for a period of not less than 3 years after the date on which the person or entity's name was published, the name will be removed from the list as of the next publication of the list.

Reasonable Care Required

Section 592A also requires any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labeling that are accurate as to its origin. Reliance solely upon information regarding the imported product from a person named on the list is clearly not the exercise of reasonable care. Thus, the textile and apparel importers who have some commercial relationship with one or more of the listed parties must exercise a degree of reasonable care in ensuring that the documentation covering the imported merchandise, as well as its packaging and labeling, is accurate as to the country of origin of the merchandise. This degree of reasonable care must involve reliance on more than information supplied by the named party.

In meeting the reasonable care standard when importing textile or apparel products and when dealing with a party named on the list published pursuant to section 592A of the Tariff Act of 1930, an importer should consider the following questions in attempting to ensure that the documentation, packaging, and labeling is accurate as to the country of origin of the imported merchandise. The list of questions is not exhaustive but is illustrative.

(1) Has the importer had a prior relationship with the named party?

(2) Has the importer had any detentions and/or seizures of textile or apparel products that were directly or indirectly produced, supplied, or transported by the named party?

(3) Has the importer visited the company's premises and ascertained that the company has the capacity to produce the merchandise?

(4) Where a claim of an origin conferring process is made in accordance with 19 CFR 102.21, has the importer ascertained that the named party actually performed the required process?

(5) Is the named party operating from the same country as is represented by that party on the documentation, packaging or labeling?

(6) Have quotas for the imported merchandise closed or are they nearing closing from the main producer countries for this commodity?

(7) What is the history of this country regarding this commodity?

(8) Have you asked questions of your supplier regarding the origin of the product?

(9) Where the importation is accompanied by a visa, permit, or license, has the importer verified with the supplier or manufacturer that the visa, permit, and/or license is both valid and accurate as to its origin? Has the importer scrutinized the visa, permit or license as to any irregularities that would call its authenticity into question?

The law authorizes a semiannual publication of the names of the foreign entities and/or persons. On May 23, 2003, Customs and Border Protection (CBP) published a notice in the **Federal Register** (68 FR 28238) which identified three (3) entities which fell within the purview of section 592A of the Tariff Act of 1930.

592A List

For the period ending September 30, 2003, CBP has identified 2 (two) foreign entities that fall within the purview of section 592A of the Tariff Act of 1930. This list reflects no new entities and one removal to the 3 entities named on the list published on May 23, 2003. The parties on the current list were assessed a penalty claim under 19 U.S.C. 1592, for one or more of the four above-

described violations. The administrative penalty action was concluded against the parties by one of the actions noted above as having terminated the administrative process.

The names and addresses of the 2 foreign parties which have been assessed penalties by CBP for violations of section 592 are listed below pursuant to section 592A. This list supersedes any previously published list. The names and addresses of the 2 foreign parties are as follows (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the **Federal Register**):

Everlite Manufacturing Company, P.O. Box 90936, Tsimshatsui, Kowloon, Hong Kong (3/01).

Fairfield Line (HK) Co. Ltd., 60–66 Wing Tai Commer., Bldg. 1/F, Sheung Wan, Hong Kong (3/01).

Either of the above parties may petition to have its name removed from the list. Such petitions, to include any documentation that the petitioner deems pertinent to the petition, should be forwarded to the Assistant Commissioner, Office of Field Operations, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

Dated: October 1, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–25550 Filed 10–7–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for Muleshoe National Wildlife Refuge, Muleshoe, TX and Grulla National Wildlife Refuge, Arch, NM

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that a Draft Comprehensive Conservation Plan (CCP) and Environmental Analysis (EA) for the Muleshoe and Grulla National Wildlife Refuges is available for review and comment. This CCP/EA, prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969, describes how the Service intends to manage these refuges over the next 15 years.

DATES: Written comments must be received on or before November 24, 2003.

ADDRESSES: Send comments to Carol Torrez, Biologist/Natural Resource Planner, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico, 87103–1306, Telephone: (505) 248–6821, Fax: (505) 248–6874. Comments may also be sent via electronic mail to: *carol_torrez@fws.gov*

The draft CCP/EA is available on compact diskette or hard copy, and may be obtained by writing, telephoning, faxing, or e-mailing Carol Torrez at the above listed address.

FOR FURTHER INFORMATION CONTACT: Carol Torrez, Biologist/Natural Resource Planner, 505–248–6821 or Harold Beierman, Refuge Manager, 806–946–3341.

SUPPLEMENTARY INFORMATION:

Public Involvement

The draft CCP/EA is available for public review and comment for a period of 45 days. Copies of the document can be obtained as indicated in the **ADDRESSES** section. In addition, documents will be available for public inspection during normal business hours (8–4:30) at the Muleshoe NWR Headquarters Office, 20 miles south of Muleshoe, Texas, off Highway 214, and at the following libraries:

Muleshoe Public Library, 322 West 2nd Street, Muleshoe, Texas 79347,

Lamb County Library, 232 Phelps Avenue, Littlefield, Texas 79339,

Cochran County Love Memorial Library, 318 South Main Street, Morton, Texas 79346,

City of Portales Library, 218 South Avenue B, Portales, New Mexico 88130.

A public meeting to receive comments on the Draft CCP/EA will be held at the Muleshoe NWR Headquarters Office during the open comment period (in November 2003). Special mailings, newspaper articles, and/or other media announcements will be used to inform the public of the date and time of the meeting.

All comments received from individuals become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's NEPA regulations [40 CFR 1506.6 (f)].

Background

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd-668ee *et seq.*) requires a CCP. The purpose in developing CCPs is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update these CCPs at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

The Muleshoe National Wildlife Refuge was established on October 24, 1935 by the authority of the Migratory Bird Conservation Act (16 U.S.C. 712d) ''* * * for use as an inviolate sanctuary, or any other management purpose, for migratory birds.'' Located in the south plains of west Texas, the 5,809 acre refuge is comprised of three shallow playa lakes and almost 5,000 acres of native short to mid-grass prairie. Only small areas of refuge land have been farmed. Much of the refuge grasslands are pristine examples of what the surrounding area was like before agricultural development. Management efforts focus on enhancing and restoring native grassland and wetland communities for sandhill cranes, waterfowl, other migratory birds, and resident wildlife.

The Grulla National Wildlife Refuge was established on November 6, 1969 by the authority of the Migratory Bird Conservation Act (45 Stat. 1222, as amended; U.S.C. 715) ''* * * for a migratory bird refuge primarily for the benefit and use of the lesser sandhill crane.'' Located on the High Plains of eastern New Mexico adjacent to the Texas state line, this 3,236 acre refuge consists of a 2,330 acre shallow lake (Salt Lake) and 906 acres of native grasses and shrubs. The boundary of this refuge is very irregular and runs through the lake bed in several places. Only one access point is currently available to the public and the Service. The refuge provides outstanding wildlife habitat and viewing opportunities when Salt Lake holds

water; however, these opportunities are limited by local precipitation. Opportunities for active management of this refuge have been limited due to its remote location, lack of resident staff, and access issues. Future management efforts will focus on improving access and public wildlife viewing opportunities.

The Draft CCP/EA addresses a range of topics including habitat and wildlife management, public use opportunities, invasive species control, and administration and staffing for the refuges. The key refuge issues and how they are addressed in the plan alternatives are summarized below. Alternative A is the current management, or what is currently offered, at the refuge. Alternative B is the proposed action. Under Alternative C, refuge habitats would be managed solely by the uses of prescribed fire. Under Alternative D, management of refuge habitats would be accomplished through mechanical means such as haying or mowing. Alternative E would call for no active management on the refuge.

Habitat management activities: Alternative A: Grazing has historically been the primary grassland management tool used on the refuge. Efforts to use prescribed fire and control invasive species have been limited. *Alternative B:* The managed grazing program would be modified and integrated with prescribed fire and mechanical vegetative manipulation to encourage ecological integrity, promote native prairie restoration, control invasive plant species, and provide/enhance habitat for grassland birds and other resident wildlife. *Alternative C:* Grazing would be discontinued. Prescribed fire would be the primary tool used to manage refuge habitats and control invasive plants. *Alternative D:* Grazing would be discontinued. Mechanical means such as haying and mowing would be used to manage refuge grassland habitats and control invasive plant species. *Alternative E:* No active management of grassland habitat. Habitats would be allowed to evolve into climax conditions. Limited use of biological controls would be used as an experiment to control invasive plant species.

Improvements to public use opportunities: Alternative A: The public use program would remain at current levels and no new facilities would be developed on the refuge. Hunting would continue to be prohibited. *Alternative B:* The public use program would increase and/or enhance educational and outreach activities, recreational opportunities (including consideration of hunting opportunities), community involvement, and improve facilities. *Alternative C:* The public use program would be similar to *Alternative B.* *Alternative D:* The public use program would be similar to *Alternative B.* *Alternative E:* The public use program would be discontinued.

Refuge Land and Boundary Protection: Alternative A: There would be no acquisition and no exploration of possible refuge boundary expansion. *Alternative B:* Land protection would be accomplished through partnerships with adjacent owners. Refuge boundary expansion would only occur as a means to improve access to the public and would be considered under a separate public process. Any mention of acquisition is conceptual in nature only. *Alternative C:* Same as Alternative B. *Alternative D:* Same as Alternative B. *Alternative E:* Same as Alternative A.

Dated: August 15, 2003.

Geoffrey L. Haskett,

Acting Regional Director, U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

[FR Doc. 03–25485 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by November 7, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone: 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Cincinnati Zoo and Botanical Garden, Cincinnati, Ohio, PRT–077059

The applicant requests a permit to import blood and serum samples collected from captive and wild ocelots (*Leopardus pardalis*) in Mexico for the purpose of enhancement of the survival of the species/scientific research. This notification covers activities conducted by the applicant over a five year period.

Applicant: Archie Wilson, Batavia, OH, PRT–077669

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Larry L. Hehl, Greenwood, SC, PRT–077674

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The application(s) was/were submitted to satisfy requirements of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be

appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: James A. Brush, Galesville, WI, PRT–074543

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal use.

Dated: September 26, 2003.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–25468 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by November 7, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Peter H. Johnson, St. Albans, MO, PRT–077229

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Gregory B. Jacobs, New York, NY, PRT–077237

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Fred Hutchinson Cancer Research Center—Trask Lab, Seattle, WA, PRT–066400

The applicant requests a permit to acquire in interstate commerce cell line samples of gorilla (*Gorilla gorilla*) and orangutan (*Pongo pygmaeus*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: University of Central Florida, Orlando, FL, PRT–076985

The applicant requests a permit to import biological samples obtained from hawksbill sea turtle (*Eretmochelys imbricata*), as well as loggerhead sea turtle (*Caretta caretta*), and green sea turtle (*Chelonia mydas*), obtained from the wild in Oman, for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Dated: September 19, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–25471 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Withdrawal of Finding of No Significant Impact and Final Environmental Assessment on Management of Mute Swans in the Atlantic Flyway

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (the Service) published a Finding of No Significant Impact (FONSI) and Final Environmental Assessment (FEA) for the Management of Mute Swans in the Atlantic Flyway on August 7, 2003. The Service is withdrawing those decision documents. Effective immediately, these documents will not be used to support the issuance of depredation permits authorizing the take of mute swans (*Cygnus olor*) under the Migratory Bird Treaty Act (MBTA). No new mute swan depredation permits will be issued pending completion of further review under the National Environmental Policy Act (NEPA).

FOR FURTHER INFORMATION CONTACT: Brian A. Millsap, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, Mail Stop MS MBSP–4107, 4401 North Fairfax Drive, Arlington, Virginia 22203.

SUPPLEMENTARY INFORMATION: On July 2, 2003, the U.S. Fish and Wildlife Service (the Service) provided notice (68 FR 39593) that a Draft Environmental Assessment for the Management of Mute Swans in the Atlantic Flyway was available for public review and comment. The 15-day public comment period ended on July 16, 2003. On August 7, 2003, the Service published a notice of availability (68 FR 47084) of the FEA and the full text of the FONSI.

On August 11, 2003, in accordance with the FEA and the FONSI, the Service issued a permit under authority of the MBTA to the Maryland Department of Natural Resources authorizing the take of up to 525 mute swans between August 27 and December 12, 2003. The Service's issuance of this permit was challenged in Federal court. A preliminary injunction enjoining the take of any mute swans under this permit pending a final ruling on the merits was issued by the U.S. District Court for the District of Columbia on September 9, 2003 (''*The Fund for Animals, et al.* v. *Norton,* Civil Action No. ECF–03–1710'').

The Court's decision on the preliminary injunction raised serious issues regarding the FEA and FONSI referenced above and the Service therefore is withdrawing these documents. Effective immediately, these documents will no longer be used to support the issuance of depredation permits authorizing the take of mute swans. No new mute swan depredation permits will be issued pending completion of a new review under NEPA.

Dated: October 2, 2003.

Matt Hogan,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 03–25644 Filed 10–8–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the date below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Marine Mammals

Permit Number	Applicant	Receipt of application FEDERAL REGISTER notice	Permit issuance date
071899	Branko Terkovich	68 FR 33734; June 5, 2003	September 16, 2003.

Dated: September 26, 2003.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–25469 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax: (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone: (703) 358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

Marine Mammals

Permit number	Applicant	Receipt of application FEDERAL REGISTER notice	Permit issuance date
069959	Ken G.Wilson	68 FR 20402; April 25, 2003	September 5, 2003.
072088	Thomas H. Essex	68 FR 33734; June 5, 2003	September 5, 2003.
072739	Nyle R. Swast	68 FR 40291; July 7, 2003	September 5, 2003.
072753	Theodore L. Hetrick, Jr	68 FR 40291; July 7, 2003	September 5, 2003.
073481	Gerald E. Meyer, Sr	68 FR 41168; July 10, 2003	September 5, 2003.
073526	Robert E. Kastle	68 FR 41167; July 10, 2003	September 5, 2003.

Dated: September 19, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–25470 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Gulf of Mexico Regional Panel Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Gulf of Mexico Regional Panel. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Gulf of Mexico Regional Panel will meet from 1 p.m. to 5 p.m. on Monday, October 20, 2003, and 9 a.m. to 5 p.m., on Tuesday, October 21, 2003. The Education and Outreach Work Group and Research and Development work Group of the Gulf of Mexico Regional Panel will meet from 8 a.m. to noon, on Wednesday, October 22, 2003.

ADDRESSES: The Gulf of Mexico Regional Panel meeting will be held at the Maison Dupuy, 1001 Toulouse Street, New Orleans, Louisiana. Phone 800–535–9177.

FOR FURTHER INFORMATION CONTACT: Ron Lukens, Assistant Director, Gulf States Marine Fisheries Commission at (228) 875–5912; or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at (703) 358–2308.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) 9of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Aquatic Nuisance Species Task Force Gulf of Mexico Regional Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The Gulf of Mexico Regional Panel was established under the auspices of the ANS Task Force in 2000 with administration and coordination provided by the Gulf States Marine

Fisheries Commission. The purpose of the Panel is to advise and make recommendations to the Aquatic Nuisance Species Task Force on issues relating to the Gulf of Mexico region of the United States that includes five Gulf States: Alabama, Florida, Louisiana, Mississippi, and Texas. The Gulf of Mexico Regional Panel will discuss several topics at this meeting including: 2004 grant agreement; Panel operating procedures; invasive species issues in Mexico; an update from Panel working groups; updates on the development of Louisiana, Mississippi, Texas, and Florida ANS management plans; status of Caulerpa monitoring and detection in Florida, and water spinach in Texas; a discussion on the Mobile Bay Rapid Assessment project; a discussion on the need for developing a network of taxonomists; status and discussion of national legislation regarding aquatic invasive species, such as NISA re-authorization and NISC; and a discussion of the Sea grant line item in NOAA budget.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: October 1, 2003.

Mamie A. Parker,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 03–25467 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1310–PB]

Notice of Public Meeting, Alaska Resource Advisory Council

AGENCY: Bureau of Land Management, Alaska State Office, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Alaska Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held November 13–14, 2003, at the Anchorage Federal Office Building, located at 7th and C Street, beginning at 8:30 a.m. The public comment period will begin at 1 p.m. November 13.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, Alaska State Office, 222 W. 7th Avenue #13, Anchorage, AK 99513. Telephone: (907) 271–3322 or e-mail *tmcphers@ak.blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public lands in Alaska. At this meeting, topics we plan to discuss include:

- Orientation for new Council members
- The Council's 2004 Work Plan
- Status of land use planning in Alaska
- National Petroleum Reserve-Alaska (NPR–A) integrated activity plans
- Other topics the Council may raise

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allotted for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact BLM.

Dated: October 1, 2003.

Peter J. Ditton,

Acting State Director.

[FR Doc. 03–25482 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–956–02–1420–BJ]

Arizona; Notice of Filing of Plats of Survey

September 26, 2003.

1. The plats of survey of the following described land were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A plat representing the dependent resurvey of a portion of the Fifth Standard Parallel North (south boundary), a portion of the west boundary and a portion of the subdivisional lines, the corrective dependent resurvey of the east half mile between sections 30 and 31, the subdivision of sections 28 and 31 and a metes-and-bounds survey in sections 29 and 30, Township 21 North, Range 9 East of the Gila and Salt River Meridian, Arizona, accepted August 4, 2003 and officially filed August 8, 2003.

This plat was prepared at the request of the Phoenix Field Office, Bureau of Land Management.

A plat representing the dependent resurvey of the south, west and north boundaries and the subdivisional lines, Township 27 North, Range 15 East of the Gila and Salt River Meridian, Arizona, accepted July 24, 2003 and officially filed July 31, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

A plat representing the dependent resurvey of the south and west boundaries and a portion of the subdivisional lines and the survey of a portion of the subdivisional lines, Township 27 North, Range 16 East of the Gila and Salt River Meridian, Arizona, accepted July 24, 2003 and officially filed July 31, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

A plat representing the survey of the Eight Standard Parallel North, (south boundary), Township 33 North, Range 20 East of the Gila and Salt River Meridian, Arizona, accepted August 20, 2003 and officially filed August 27, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the Eighth Standard Parallel North, (south boundary), Township 33 North, Range 21 East of the Gila and Salt River Meridian, Arizona, accepted August 20, 2003 and officially filed August 27, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the east and west boundaries, and subdivisional lines, Township 32 North, Range 22 East of the Gila and Salt River Meridian, Arizona, accepted August 20, 2003 and officially filed August 27, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the Eighth Standard Parallel North, (south boundary), Township 33 North, Range 22 East of the Gila and Salt River Meridian, Arizona, accepted August 20, 2003 and officially filed August 27, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of a portion of the Tenth Standard Parallel

North, (south boundary), Township 41 North, Range 22 East of the Gila and Salt River Meridian, Arizona, accepted August 19, 2003 and officially filed August 27, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the south and west boundaries, and the subdivisional lines, Township 40 North, Range 23 East of the Gila and Salt River Meridian, Arizona, accepted August 19, 2003 and officially filed August 27, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the Tenth Standard Parallel North, (south boundary), Township 41 North, Range 23 East of the Gila and Salt River Meridian, Arizona, accepted August 19, 2003 and officially filed August 27, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the west boundary, Township 40 North, Range 24 East of the Gila and Salt River Meridian, Arizona, accepted August 19, 2003 and officially filed August 27, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the dependent resurvey of a portion of the Arizona-Utah State line between the 238 mile and 250 mile post, unsurveyed Townships 41 North, Ranges 24, 25 and 26 East of the Gila and Salt River Meridian, Arizona, accepted July 15, 2003 and officially filed July 18, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the Tenth Standard Parallel North, (south boundary), and a portion of the west boundary, Township 41 North, Range 24 East of the Gila and Salt River Meridian, Arizona, accepted August 19, 2003 and officially filed August 27, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the Eighth Standard Parallel North, (south boundary), and a portion of the subdivisional lines, Township 33 North, Range 31 East of the Gila and Salt River Meridian, Arizona, accepted July 14, 2003 and officially filed July 18, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of sections 9 and 10 and the metes-and-bounds survey of the Arrastra Mountain Wilderness Area boundary, Township 11 North, Range 12 West of the Gila and Salt River Meridian, Arizona, accepted August 4, 2003 and officially filed August 8, 2003.

This plat was prepared at the request of the Bureau of Land Management, Kingman Field Office.

A plat representing the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines, the subdivision of sections 3, 4, 6 and 9, and the metes-and-bounds survey in section 4, Township 40 North, Range 15 West of the Gila and Salt River Meridian, Arizona, accepted July 9, 2003 and officially filed July 16, 2003.

This plat was prepared at the request of the Arizona Strip Field Office, Bureau of Land Management.

A plat representing the dependent resurvey of a portion of the Tenth Standard Parallel North, (south boundary) and a portion of the subdivisional lines, the subdivision of section 28, 33, 34, and 35, and metes-and-bounds surveys in sections 28 and 33, Township 41 North, Range 15 West of the Gila and Salt River Meridian, Arizona, accepted July 9, 2003 and officially filed July 16, 2003.

This plat was prepared at the request of the Arizona Strip Field Office, Bureau of Land Management.

A plat representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines and mineral survey number 1429, Sun Rise Lode, Township 14 North, Range 19 West of the Gila and Salt River Meridian, Arizona, accepted August 28, 2003 and officially filed September 4, 2003.

This plat was prepared at the request of the Lake Havasu Field Office, Bureau of Land Management.

A plat representing the survey of the Tenth Standard Parallel North, (south boundary), the Sixth Guide Meridian East, (west boundary), the east boundary and the subdivisional lines, Township 41 North, Range 25 East of the Gila and Salt River Meridian, Arizona, accepted July 15, 2003 and officially filed July 18, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the Eighth Standard Parallel North, (south boundary), a portion of the east boundary, and a portion of the subdivisional lines, Township 33 North, Range 30 East of the Gila and Salt River Meridian, Arizona, accepted April 25, 2003 and officially filed May 1, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the dependent resurvey of a portion of the Arizona-New Mexico state line between the 53 mile post and an angle point of the 57th mile, unsurveyed Townships 32 and 33 North, Range 31 East of the Gila and Salt River Meridian, Arizona, accepted July 14, 2003 and officially filed July 30, 2003.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the dependent resurvey of portions of mineral survey 1406, Georgia Lode and mineral survey 2566, Noonday Mine Lode and the survey of Tract 39, in unsurveyed Township 23 South, Range 16 East, of the Gila and Salt River Meridian, Arizona, accepted July 9, 2003 and officially filed July 16, 2003.

This plat was prepared at the request of the Coronado National Forest, United States Forest Service.

All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, 222 N. Central Avenue, P.O. Box 1552, Phoenix, Arizona 85001–1552.

Kenny D. Ravnikar,

Chief Cadastral Surveyor of Arizona.

[FR Doc. 03–25483 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of the Final General Management Plan and Final Environmental Impact Statement for Grand Portage National Monument, Minnesota.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the final general management plan and final environmental impact statement (FGMP/FEIS) for Grand Portage National Monument (Monument), Minnesota. This notice is being furnished as required by National Environmental Policy Act Regulations 40 CFR 1501.7.

DATES: The required no-action period on this GMP/FEIS will expire 30 days after the Environmental Protection Agency

has published a notice of availability of the FEIS in the **Federal Register**.

ADDRESSES: Copies of the FEIS/FGMP are available from the Superintendent, Grand Portage National Monument, 315 E. Broadway, P.O. Box 1326, Grand Marais, Minnesota, 55604. The phone number is: 218–387–2788.

SUPPLEMENTARY INFORMATION: The purpose of the general management plan is to set forth the basic management philosophy for the Monument and to provide the strategies for addressing issues and achieving identified management objectives. The FGMP/FEIS describes and analyzes the environmental impacts of a proposed action and three action alternatives for the future management direction of the Monument. A no action alternative is also evaluated.

The draft GMP/EIS for the Monument was released to the public on January 22, 2002. The public comment period ended March 22, 2002. Few substantive comments were received on the draft document; consequently, only minor changes were made to the alternatives and environmental consequences.

The responsible official is Mr. Ernest Quintana, Midwest Regional Director, National Park Service.

Dated: August 21, 2003.

Alan M. Hutchings,

Acting Regional Director, Midwest Region.

[FR Doc. 03–25530 Filed 10–7–03; 8:45 am]

BILLING CODE 4312–99–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Environmental Impact Statement, Aztec Ruins National Monument, New Mexico

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for the General Management Plan at Aztec Ruins National Monument.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332 (C) the National Park Service is preparing an Environmental Impact Statement for the General Management Plan at Aztec Ruins National Monument. This effort will result in a comprehensive general management plan that encompasses preservation of natural and cultural resources—especially extensive archeology, visitor use and interpretation, and facilities development, with the input of stakeholders and up to 26 southwestern American Indian tribes, who consider the park a sacred ancestral site. In cooperation with the City of Aztec Planning Department, attention will be given to factors outside the boundaries that affect the integrity of Aztec Ruins National Monument. Alternatives to be considered include no-action and a proposed action (to be determined). Other alternatives that might be developed will be determined via the planning process.

Major planning interests and opportunities are to:

- Seek the input of interested American Indian tribes throughout the planning process. This was not done when the previous General Management Plan was produced in 1989.
- Determine long-term goals and objectives for resource management; visitor understanding, appreciation, and enjoyment; and facilities development in the nearly 300 acres of land that was added to the park boundaries in 1988, as well as in the original 27 acres; in view of inventories and knowledge about resources that have been acquired since the 1989 GMP, and with consideration of changing and projected operational needs for the future.
- Reassess and make recommendations regarding the development that was prescribed in the 1989 GMP. Some of that development has not been implemented, and some development has occurred that departed from the prescriptions.
- Explore partnership opportunities with neighbors, the City of Aztec, tribes, and others to protect resources within and surrounding the park, and to enhance opportunities for visitor enjoyment and understanding.
- Develop a range of alternatives in conjunction with neighbors, oil and gas companies, and other interested parties, to minimize impacts to the visitor experience and park resources from possible development outside park boundaries and active gas wells within the park.

A scoping information brochure has been prepared that highlights the planning interests and opportunities, describes how the public can provide input to the planning process, and invites public comment. Copies of that brochure may be obtained from the park Superintendent:

Dennis L. Carruth, Aztec Ruins National Monument, #84 County Road 2900, Aztec, NM 87410–9715, Tel: (505) 334–6174 x. 22, Fax: (505) 334–6372, E-mail: *azru_superintendent@nps.gov.*

People who would like to be placed on the park's mailing list for the project should contact the Superintendent.

DATES: Scoping meetings will be held to share information with the public about the GMP in the fall of 2003. Dates, times, and locations of those meetings can be obtained by contacting the Superintendent. The Park Service will accept scoping comments from the public for 30 days after the date of the last meeting.

ADDRESSES: Information will be available for public review and comment in the office of the Superintendent.

SUPPLEMENTARY INFORMATION: If you wish to comment on the scoping brochure or on any other issues associated with the plan, you may mail your comments to the Superintendent, or send them to him via e-mail. Please include your name and return address with your comments. You may also hand-deliver comments to the Superintendent at his office in the park. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

For further information contact the superintendent.

Dated: July 24, 2003.

John Crowley,

Associate Regional Director.

[FR Doc. 03–24651 Filed 10–7–03; 8:45 am]

BILLING CODE 4312–E7–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves

Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the American Museum of Natural History, New York, NY. The human remains were removed from San Juan County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by American Museum of Natural History professional staff in consultation with representatives of the Navajo Nation, Arizona, New Mexico and Utah.

In 1900, human remains representing a minimum of one individual were collected by Dr. Ales Hrdlicka from a battlefield site in the Chuska Mountains, San Juan County, NM. No known individual was identified. No associated funerary objects are present. The site from which the human remains were removed is on the Navajo Indian Reservation.

Catalog records identify the human remains as Navajo. The area from which the human remains were removed has been documented as an area of warfare between the Navajo and other groups. The human remains are from an area that is within the exterior boundaries of the present-day Navajo Indian Reservation and within post-contact Navajo territory.

Although the lands from which the human remains were removed are currently under the jurisdiction of the U.S. Department of the Interior, Bureau of Indian Affairs, the American Museum of Natural History has control of the human remains since the removal of the human remains from tribal lands predates the permit requirements established by the Antiquities Act of 1906.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Navajo Nation, Arizona, New Mexico and Utah.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Luc Litwinionek, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192, telephone (212) 769–5846, before November 7, 2003. Repatriation of the human remains to the Navajo Nation, Arizona, New Mexico and Utah may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Navajo Nation, Arizona, New Mexico and Utah that this notice has been published.

Dated: August 6, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–25532 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Brooklyn Museum of Art, Brooklyn, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.8 (f), of the intent to repatriate cultural items in the possession of the Brooklyn Museum of Art, Brooklyn, NY, that meet the definition of sacred objects and cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

The 11 cultural items are 1 tobacco pipe and pouch, 1 necklace, 1 pair of women's moccasins, 2 war caps, 1 war slat armor, 3 fiber caps, 1 set of arrows, and 1 dance whistle.

During an expedition to California in 1905, the curator of the Brooklyn Museum of Art, Mr. Stewart Culin, purchased the cultural items from Yurok individuals in Yurok villages.

Museum records and information provided during consultation indicate that the cultural items are affiliated with the Yurok Tribe of the Yurok Reservation, California. Tribal representatives identified the pipe and pouch as items used by Yurok medicine people in the preparation for Pir-wai (White Deerskin Dance), Wo-neek-wo-ley-go (Jump Dance), Mey-lee' (Brush Dance), Ray-ma (Kick Dance), and Lo-geen (Fish Dam) ceremonies. The deer hoof necklace, women's moccasins, war caps, and slat armor were identified as ceremonial objects associated with the War Dance. The fiber caps and set of arrows were identified as associated with the Brush Dance, and the dance whistle with the White Deerskin Dance. The Yurok tribe identified the cultural items as sacred and inalienable ceremonial objects, which were obtained without the consent of an appropriate Yurok authority. The Yurok tribe believes that if the cultural items were sold to Mr. Culin, the seller was not the rightful owner, because Yurok law prohibits the sale of ceremonial items.

Officials of the Brooklyn Museum of Art have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the 11 cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Brooklyn Museum of Art also have determined that, pursuant to 25 U.S.C. 3001 (3)(D), the 11 cultural items described above have ongoing historical, traditional, and cultural importance central to the tribe itself, and are of such central importance that they may not be alienated, appropriated, or conveyed, by any individual tribal or organization member. Lastly, officials of the Brooklyn Museum of Art have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects/cultural patrimony and the Yurok Tribe of the Yurok Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these sacred objects/cultural patrimony should contact Elizabeth Reynolds, Chief Registrar, Brooklyn Museum of Art, 200 Eastern Parkway, Brooklyn, NY 11238, telephone (718) 501–6339, before November 7, 2003. Repatriation of the sacred objects/cultural patrimony to the Yurok Tribe of the Yurok Reservation, California may proceed after that date if no additional claimants come forward.

The Brooklyn Museum of Art is responsible for notifying the Yurok Tribe of the Yurok Reservation, California that this notice has been published.

Dated: August 4, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–25531 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Carnegie Museum of Natural History, Pittsburgh, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native America Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.8 (f), of the intent to repatriate a cultural item in the possession of the Carnegie Museum of Natural History, PA, that meets the definitions of sacred object and cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

In the late 19th or early 20th century, John A. Beck purchased a gray slate pipe bowl of a type often referred to as a ''Micmac'' pipe. The pipe bowl contained a small amount of burned substance when it was acquired. Information provided to Mr. Beck indicated that the pipe came from Harbor Springs, MI. In 1925, the Beck collection was loaned to the Carnegie Museum of Natural History. In 1968, Mr. Beck's heirs donated the majority of the collection, including the pipe bowl, to the Carnegie Museum of Natural History.

The presence of the burned substance in the bowl indicates that the pipe was probably in use during the late 19th or early 20th century. Harbor Springs, MI, is located within the area occupied by the ancestors of the Little Traverse Bay Bands of Odawa Indians, Michigan during the late 19th or early 20th century. Representatives of the Little Traverse Bay Bands of Odawa Indians, Michigan have identified the pipe as a specific ceremonial object that is needed by traditional Native American religious leaders for the practice of traditional Native American religions by present-day adherents. Representatives of the Little Traverse Bay Bands of Odawa Indians, Michigan also have identified the pipe as a Manido (spirit) or grandfather that was, and is, a part of the community and as such could not have been alienated by any tribal member.

Officials of the Carnegie Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Carnegie Museum of Natural History also have determined that pursuant to 25 U.S.C. 3001 (3)(D), the cultural item has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Lastly, officials of the Carnegie Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the sacred object/object of cultural patrimony and the Little Traverse Bay Bands of Odawa Indians, Michigan.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with this sacred object/object of cultural patrimony should contact Dr. David R. Watters, Carnegie Museum of Natural History, 5800 Baum Boulevard, Pittsburgh, PA 15206–3706, telephone (412) 665–2605, before November 7, 2003. Repatriation of the sacred object/object of cultural patrimony to the Little Traverse Bay Bands of Odawa Indians, Michigan may proceed after that date if no additional claimants come forward.

The Carnegie Museum of Natural History is responsible for notifying the Little Traverse Bay Bands of Odawa Indians, Michigan that this notice has been published.

Dated: August 20, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–25537 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Denver Art Museum, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Denver Art Museum, Denver, CO. The human remains were removed from an unidentified location near Prescott, Yavapai County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Denver Art Museum professional staff in consultation with representatives of the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico and Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Prior to 1943, human remains representing one individual were removed by an unknown individual from an unidentified location near Prescott, Yavapai County, AZ. The human remains consist of 29 teeth from a single individual between 25 and 45 years old. No known individual was identified. The teeth, along with a large number of small shell beads, had been made into a necklace. On March 18, 1943, the necklace was loaned to the Denver Art Museum by Sarah Coolidge Vance. The necklace was accessioned as a gift on January 21, 1946. A catalog card identified the necklace as ''prehistoric'' and ''[f]rom ruins near Prescott, Ariz[ona].'' There is no indication that the necklace was recovered from a grave site. The shells

attached to necklace do not meet the definition of associated funerary objects at 25 U.S.C. 3001 (3)(A).

The necklace was examined by Bridget Ambler, an archeologist at the Colorado Historical Society. Ms. Ambler identified the teeth as more likely than not being from a Native American individual, probably of Puebloan ancestry. Comparison of the necklace to documentation of Puebloan ruins in the area of Prescott, AZ, led Ms. Ambler to conclude that it is likely to be associated with the Prescott culture and to date to the Pueblo II period (A.D. 1100 to 1200). Ms. Ambler also concluded that a member of the Prescott culture owned and perhaps assembled the necklace.

Yavapai oral tradition indicates a possible cultural affiliation with the prehistoric Prescott culture. Some scholars believe that the Prescott culture was ancestral to modern-day Yuman speaking Yavapai, Havasupai, and other groups, but this belief is not accepted by most archeologists. Hopi oral tradition also indicates a possible cultural affiliation with the Prescott culture.

The placement of human teeth on a necklace is not a commonly observed funerary practice in the ancient Southwest. It may be reasonable to presume that the use of teeth on the necklace occurred in the context of warfare and that the teeth originated from a member of a Puebloan group that engaged in conflict with the Prescott culture. Pueblo of Laguna representative Paul Pino indicated that the Lagunas would never allow a necklace to be made out of human teeth. Mr. Pino agreed that the necklace could well have been produced by a member of the Prescott culture as a trophy to hold teeth taken from a slain enemy from a neighboring Puebloan community. Pueblo oral traditions and archeological evidence indicate that ancient Puebloan societies have a relationship of shared group identity with 21 modern Pueblo communities.

Officials of the Denver Art Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Denver Art Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Nancy J. Blomberg, Curator of Native Arts, Denver Art Museum, 100 West 14th Avenue Parkway, Denver, CO 80204, telephone (720) 913–0160, before November 7, 2003. Repatriation of the human remains to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Denver Art Museum is responsible for notifying the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico and Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: August 11, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–25533 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Illinois State Museum, Springfield, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of Illinois State Museum, Springfield, IL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Illinois State Museum professional staff in consultation with representatives of the Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; and United Keetoowah Band of Cherokee Indians in Oklahoma.

Prior to 1962, human remains representing one individual were removed from an unknown location by an unidentified person or persons. The remains were later donated to the Quincy Museum of Natural History and Art, Quincy, IL. In 1991, the Quincy Museum of Natural History and Art transferred possession and control of the human remains to the Illinois State Museum. The transfer inventory identifies the remains as ''Cherokee Indian skull.'' No known individual was identified. No associated funerary objects are present.

Review of the cranial morphology indicates that the individual is likely to be Native American. The Cherokee Indians are represented by three present-day Indian tribes, the Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; and United Keetoowah Band of Cherokee Indians in Oklahoma.

Officials of the Illinois State Museum have determined that, pursuant to 25

U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Illinois State Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; and United Keetoowah Band of Cherokee Indians in Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Robert E. Warren, Curator of Anthropology, Illinois State Museum, 1011 East Ash Street, Springfield, IL 62703–3535, telephone (217) 524–7903, before November 7, 2003. Repatriation of the human remains to the Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; and United Keetoowah Band of Cherokee Indians in Oklahoma may proceed after that date if no additional claimants come forward.

The Illinois State Museum is responsible for notifying the Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; and United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: August 22, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–25539 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Illinois State Museum, Springfield, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of Illinois State Museum, Springfield, IL. The human remains were removed from Montana.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Illinois State Museum professional staff in consultation with representatives of the Cheyenne-Arapaho Tribes of Oklahoma and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.

In the late 1960s, human remains representing one individual were removed from an unspecified site in Montana by Dr. Ronald Gordon. The human remains were reportedly removed from a road embankment which cut through a known Indian cemetery. Markings believed to have been made by Dr. Gordon on the frontal bone of the skull read ''Cheyenne ♀ Montana.'' Prior to 1987, Dr. Gordon donated the human remains to the Dickson Mounds Museum, a branch of the Illinois State Museum. The accession card indicates that the remains are of a Cheyenne female. No known individual was identified. No associated funerary objects are present.

Review of the cranial morphology indicates that the individual is clearly Native American. The Cheyenne Indians are represented by two present-day Indian tribes, the Cheyenne-Arapaho Tribes of Oklahoma and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.

Officials of the Illinois State Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Illinois State Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Cheyenne-Arapaho Tribes of Oklahoma and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Robert E. Warren, Curator of Anthropology, Illinois State Museum, 1011 East Ash Street, Springfield, IL 62703–3535, telephone (217) 524–7903, before November 7, 2003. Repatriation of the human remains to the Cheyenne-Arapaho Tribes of Oklahoma and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana may proceed after that date if no additional claimants come forward.

The Illinois State Museum is responsible for notifying the Cheyenne-Arapaho Tribes of Oklahoma and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana that this notice has been published.

Dated: August 25, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–25541 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA. The human remains and associated funerary objects were removed from site 45KL242, also known as Millers Island site 20 and 21, Klickitat County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

An assessment of the human remains, and catalog records and associated documents relevant to the human remains, was made by Phoebe A. Hearst Museum of Anthropology professional staff in consultation with representatives of the Confederated Tribes of the Warm Springs Reservation of Oregon.

In 1926, human remains representing at least 24 individuals were excavated from site 45KL242, also known as Millers Island site 20 and 21, Klickitat County, WA, by Dr. Julian H. Steward and donated the same year to the Phoebe A. Hearst Museum of Anthropology by H.J. Biddle. No known

individuals were identified. The 1,610 associated funerary objects are bracelets, metal fragments, copper fragments, copper tubes, copper pendants, copper pendant fragments, copper buttons, iron fragments, wooden pins, glass beads, ochre-stained leather fragments, matting fragments, board fragments, basketry fragments, shell beads, shell pendants, dentalium shells, a bark fragment with copper, tube pipes, bone buttons, bone point fragments, bone implement fragments, bear claws, an incised tooth pendant, whalebone war club handles and fragments, bone gaming sticks and fragments, bone carvings and fragments, an ivory pendant, metal buttons, Phoenix metal buttons, arrow points, a mortar and pestle, a stone dish, ochre fragments, awl fragments, a carved lava fragment, headdress fragments and carvings, rock fragments, and an iron tomahawk head.

The style of manufacture of associated funerary objects and burial contexts indicate that the human remains are of Native American individuals. The presence of items of Euroamerican manufacture date the burials to the 19th century. The site is located within the aboriginal territory of the Confederated Tribes of Warm Springs, specifically the Tenino, based on the territory described in Volume 12 of the Handbook of North American Indians.

Officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of at least 24 individuals of Native American ancestry. Officials of the Phoebe A. Hearst Museum of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 1,610 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes of the Warm Springs Reservation of Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley CA 94720, telephone (510) 642–6096, before November 7, 2003. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Warm Springs Reservation of Oregon may proceed after that date if no additional claimants come forward.

The Phoebe A. Hearst Museum of Anthropology is responsible for notifying the Confederated Tribes of the Warm Springs Reservation of Oregon that this notice has been published.

Dated: August 27, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–25540 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: UCLA Fowler Museum of Cultural History, University of California, Los Angeles, Los Angeles, CA, and California Department of Parks and Recreation, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the UCLA Fowler Museum of Cultural History, University of California, Los Angeles, Los Angeles, CA, and in the control of the California Department of Parks and Recreation, Sacramento, CA. The human remains and associated funerary objects were removed from Anza-Borrego Desert State Park, San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by UCLA Fowler Museum of Cultural History and California Department of Parks and Recreation professional staff in consultation with members of the Kumeyaay Cultural Repatriation Committee, authorized NAGPRA representative of the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California.

In 1958, human remains representing a minimum of five individuals were removed from five cremation sites (SDI–335, SDI–359, SDI–379, SDI–434, and SDI–526) in Anza-Borrego Desert State Park, San Diego County, CA, by Dr. Clement Meighan. No known individuals were identified. The 675 associated funerary objects are 3 basket fragments, 56 shell beads, 2 glass beads, 4 chipped stones, 1 deer bone, 1 worked bone, 41 flakes, 1 bag of cordage fragments, 1 bag of shell fragments, 9 shell ornaments and pendants, 1 haliotis shell fragment, 1 obsidian point, 553 ceramic sherds, and 1 bifacial mano.

In 1959, human remains representing a minimum of three individuals were removed from the Angelina Springs cremation site (SDI–453) in Anza-Borrego Desert State Park, San Diego County, CA, by Joan Townsend, a University of California, Los Angeles anthropology student. No known individuals were identified. The four associated funerary objects are one burned steatite pipe, one bag of steatite fragments, one bag of charcoal fragments, and one bag of burned animal bones.

The collections described above were made during a survey of the Anza-Borrego Desert State Park, supervised by Dr. Clement Meighan of the University of California, Los Angeles and supported by the California Department of Parks and Recreation. According to Dr. Meighan, in a 1959 article ''Archaeological Resources of Borrego Desert State Park,'' the sites from which the cultural items were removed are located in an area formerly occupied by two Yuman groups, the Northern

Diegueno and the Kamia, both of which are ancestral to present-day Kumeyaay groups. Also according to Dr. Meighan, ''the sites seem to belong to the pottery-using period, which is to say since about 1000 A.D.'' Some sites in the area have been dated into the Historic period. A spokesman for the Kumeyaay Cultural Repatriation Committee also identified Anza-Borrego Desert State Park as within the traditional territory of the Kumeyaay. The artifacts and burial practices are consistent with others documented as associated with the indigenous inhabitants of the area. The Kumeyaay Indians are represented by the present-day Indian tribes that are members of the Kumeyaay Cultural Repatriation Committee.

Officials of the California Department of Parks and Recreation have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of eight individuals of Native American ancestry. Officials of the California Department of Parks and Recreation also have determined that, pursuant to 25 U.S.C. 3001(3)(A), the 679 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the California Department of Parks and Recreation have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Paulette Hennum, NAGPRA Coordinator, Cultural Resources Division, California State Parks, P.O. Box 942896, Sacramento, CA 94296–0001, telephone: (916) 653–7976, before November 7, 2003. Repatriation of the human remains and associated funerary objects to the Kumeyaay Cultural Repatriation Committee on behalf of the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California may proceed after that date if no additional claimants come forward.

The California Department of Parks and Recreation is responsible for notifying the Kumeyaay Cultural Repatriation Committee, the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California that this notice has been published.

Dated: August 6, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–25534 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: UCLA Fowler Museum of Cultural History, University of California, Los Angeles, Los Angeles, CA, and California Department of Parks and Recreation, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the UCLA Fowler Museum of Cultural History, University of California, Los Angeles, Los Angeles, CA, and in the control of the California Department of Parks and Recreation, Sacramento, CA, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001. The unassociated funerary objects were removed from Anza-Borrego Desert State Park, San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

The 592 cultural items are 337 animal bones, 4 glass bottle fragments, 1 modified glass fragment, 6 unidentified glass fragments, 1 burned clay fragment, 1 metal button, 1 cog stone, 1 bone scraper fragment, 44 stone flakes, 189 ceramic sherds and fragments, 2 shell fragments, 1 ceramic pipe fragment, and 4 projectile point fragments.

In January and March of 1958, Dr. Clement Meighan, of the University of California, Los Angeles, and his students removed human remains and funerary objects from several sites in Anza-Borrego Desert State Park, San

Diego County, CA, during a survey project supported by the California Department of Parks and Recreation. The human remains and associated funerary objects are described in a companion notice of inventory completion. The unassociated funerary objects were collected from two apparent cremation sites within Anza-Borrego Desert State Park. Dr. Meighan and his students collected 89 ceramic sherds and 24 stone flakes from site CA-SDI–443, also known as SF–74, and 335 heavily burned and 2 unburned animal bones, 100 ceramic sherds and fragments, 20 stone flakes, 7 glass fragments, 4 projectile point fragments, 4 glass bottle fragments, 2 shell fragments, 1 ceramic pipe fragment, 1 bone scraper fragment, 1 burned clay fragment, 1 metal button, 1 cog stone, and 1 bone scraper from site CA-SDI–489.

According to Dr. Clement Meighan in a 1959 article ''Archaeological Resources of Borrego Desert State Park,'' the two sites from which the cultural items were removed are located in an area formerly occupied by two Yuman groups, the Northern Digueno and the Kamia, both of which are ancestral to present-day Kumeyaay groups. Also according to Dr. Meighan, ''the sites seem to belong to the pottery-using period, which is to say since about 1000 A.D.'' Some sites in the area have been dated into the Historic period. A spokesman for the Kumeyaay Cultural Repatriation Committee also identified Anza-Borrego Desert State Park as within the traditional territory of the Kumeyaay. The artifacts are consistent with others documented as associated with the indigenous inhabitants of the area. The Kumeyaay Indians are represented by the present-day Indian tribes that are members of the Kumeyaay Cultural Repatriation Committee.

Officials of the California Department of Parks and Recreation have determined that, pursuant to 25 U.S.C. 3001(3)(B), the cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the California Department of Parks and Recreation also have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Paulette Hennum, NAGPRA Coordinator, Cultural Resources Division, California State Parks, P.O. Box 942896, Sacramento, CA 94296–0001, telephone (916) 653–7976, before November 7, 2003. Repatriation of the unassociated funerary objects to the Kumeyaay Cultural Repatriation Committee on behalf of the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California may proceed after that date if no additional claimants come forward.

The California Department of Parks and Recreation is responsible for notifying the Kumeyaay Cultural Repatriation Committee, the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California that this notice has been published.

Dated: August 6, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–25536 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of California, Riverside, Riverside, CA, and U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the University of California, Riverside, Riverside, CA, and in the control of the U.S Department of the Interior, Bureau of Indian Affairs, Washington, DC. The human remains were removed from the Agua Caliente Indian Reservation, Riverside County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations within this notice are the sole responsibility of the museum,

institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the University of California, Riverside professional staff in consultation with the Cahuilla Inter-Tribal Repatriation Committee, representing the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California; Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California; Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation, California; Cahuilla Band of Mission Indians of the Cahuilla Reservation, California; Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation, California; Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California; Ramona Band or Village of Cahuilla Mission Indians of California; Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California; and Torres-Martinez Band of Cahuilla Mission Indians of California.

In 1971, human remains representing one individual were removed from site CA-RIV–513, located on the Agua Caliente Indian Reservation, Riverside County, CA. Excavations at site CA-RIV–513 were conducted by the University of California, Riverside at the request of the tribal council of the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California. The human remains consist of a single cranial fragment. No known individual was identified. No associated funerary objects are present. Site CA-RIV–513 contains abundant ceramic artifacts throughout its depth. No preceramic deposits were encountered during the excavation. The human remains are believed to have been buried during the Late Prehistoric period (A.D. 1550 to 1770). Archeological evidence indicates that site CA-RIV–513 was used by the Pass Division of the Cahuilla tribe, represented today by the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Reservation, California.

Officials of the University of California, Riverside and the Bureau of Indian Affairs have determined that, pursuant to 25 U.S.C. 3001(9–10), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the University of California, Riverside and the Bureau of Indian Affairs also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Philip J. Wilke, Department of Anthropology, 1334 Watkins Hall, University of California, Riverside, Riverside, CA 92521–0418, telephone (909) 787–5524, before November 7, 2003. Repatriation of the human remains to the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Reservation, California may proceed after that date if no additional claimants come forward.

The University of California, Riverside is responsible for notifying the Cahuilla Inter-Tribal Repatriation Committee and its constituent members, the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California; Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California; Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation, California; Cahuilla Band of Mission Indians of the Cahuilla Reservation, California; Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation, California; Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California; Ramona Band or Village of Cahuilla Mission Indians of California; Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California; and Torres-Martinez Band of Cahuilla Mission Indians of California that this notice has been published.

Dated: August 26, 2003.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 03–25538 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Nebraska State Museum, Anthropology Research Division, Lincoln, NE; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Nebraska State Museum, Lincoln, NE. The human remains and associated funerary objects were removed from six localities in Knox County, NE.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

This notice corrects the list of associated funerary objects from the Ponca Fort Site (Nanza), 25KX001, in Knox County, NE. Officials of the University of Nebraska State Museum have identified the wing bone of an eagle in the museum collections and, based on museum records, have determined that it is an associated funerary object that was originally placed with the remains of an individual at this site.

In the notice of inventory completion published on behalf of the museum in the **Federal Register** of September 19, 1995 (FR doc. 95–23153, pages 48522–48523), paragraphs 4, 16 and 17 are corrected by substituting the following three paragraphs:

Human remains from the Ponca Fort Site (Nanza), 25KX001, Knox County, NE, represent 66 individuals. No known individuals were identified. A total of 5,311 cultural items are associated with these burials, including wood (bark fragments, scraper, shaft smoother, and shaft straightener), copper (beads, bracelets, bells, buttons, coils, neck rings, projectile points, rings, sheets, and cones), glass (beads and button), pipestone (banner stone and pipe fragments), bone (bison tools, pendant, hair pipe bead, and eagle wing bone), stone (grinding slab and unknown artifact), iron (ax, bracelets, projectile points and fragments), lead (bracelet and coils), leather fragments, and shell (unmodified shell and gorgets).

Officials of the University of Nebraska State Museum have determined that, pursuant to 25 U.S.C. 3001(9–10), the human remains described above represent the physical remains of 86 individuals of Native American ancestry. Officials of the University of Nebraska State Museum also have determined that, pursuant to 25 U.S.C. 3001(3)(A), the 5,928 objects described

above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Nebraska State Museum have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Ponca Tribe of Indians of Oklahoma and Ponca Tribe of Nebraska.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the remains and associated funerary objects should contact Priscilla Grew, NAGPRA Coordinator, University of Nebraska-Lincoln, 301 Bessey Hall, Lincoln, NE 68588–0381, telephone (402) 472–7854, before November 7, 2003. Repatriation of the human remains and associated funerary objects to the Ponca Tribe of Indians of Oklahoma and Ponca Tribe of Nebraska may proceed after that date if no additional claimants come forward.

The University of Nebraska State Museum is responsible for notifying the Ponca Tribe of Indians of Oklahoma and Ponca Tribe of Nebraska that this notice has been published.

Dated: August 8, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–25542 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Oregon Museum of Natural History, Eugene, OR, and U.S. Department of Defense, Army Corps of Engineers, Portland District, Portland, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects for which the University of Oregon Museum of Natural History, Eugene, OR, and the U.S. Department of Defense, Army Corps of Engineers, Portland District, Portland, OR, have joint responsibility. The human remains and associated funerary objects were removed from sites on Army Corps of Engineers land located in Morrow County, OR, and Benton, County, WA, within the John Day Dam project area.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Army Corps of Engineers, Portland District and University of Oregon Museum of Natural History professional staff in consultation with representatives of the Confederated Tribes of the Umatilla Reservation, Oregon.

Native American cultural items described in this notice were excavated under Antiquities Act permits by the University of Oregon, Eugene, OR, on Army Corps of Engineers project lands. Following excavations at the sites described below, and under the provisions of the permits, the University of Oregon was allowed to retain the collections for preservation.

In 1958, human remains representing a minimum of one individual were removed from the Crow Butte site (45 BN 58), near Blalock Island, Benton County, WA, within the John Day Dam project area. No known individual was identified. The five associated funerary objects are three dentalium beads and two olivella beads.

The Crow Butte site is a campsite and burial site, and its dates of occupation are unknown. Based on the types of associated funerary objects and tooth wear, the individual has been determined to be Native American.

In 1963, human remains representing a minimum of four individuals were removed from the Eye site (45 BN 64), on Little Blalock Island, Benton County, WA, in the Columbia River, within the John Day Dam project area. No known individuals were identified. The two associated funerary objects are one projectile point and one shell bead.

The Eye site is a village and cemetery site dating after A.D. 1750. Based on the types of associated funerary objects, the individuals have been determined to be Native American.

In 1963, human remains representing a minimum of 12 individuals were removed from site 45 BN 77 on Coyote Island, Benton County, WA, in the Columbia River, within the John Day Dam project area. No known individuals were identified. The 874 associated funerary objects are 8 projectile points, 251 glass beads, 64 copper beads, 23 shell beads, 20 olivella beads, 214 shell and glass beads, 2 bone beads, 18 beads, 102 bones, 16 flakes, 103 pieces of glass, 34 pieces of copper, 3 copper pendants, 1 copper button, 1 graver, 1 scraper, 2 choppers, 2 flaked cobbles, 2 sinkers, 2 shells, 1 lot of raw material for beads, 2 shaft straighteners, 1 uniface, and 1 nail.

Site 45 BN 77 is a campsite and burial site that was occupied during the historic period. Based on the types of associated funerary objects, the individuals have been determined to be Native American.

In 1963, human remains representing a minimum of one individual were removed from site 45 BN 81 on Blalock Island, Benton County, WA, in the Columbia River within the John Day Dam project area. No known individual was identified. The 26 associated funerary objects are 10 glass beads, 14 shell beads, 1 piece of copper, and 1 copper button.

Site 45 BN 81 is a campsite and burial site dating to the protohistoric and historic periods. Based on the types of associated funerary objects, the human remains have been determined to be Native American.

In 1967, human remains representing a minimum of two individuals were removed from the Tom's Camp site (35 MW 10), 3 miles west of the former town of Boardman, Morrow County, OR, on the south bank of the Columbia River, in the John Day Dam project area. No known individuals were identified. No associated funerary objects are present.

The Tom's Camp site is a midden with burials dating from approximately 1800 B.P. to 500 B.P. Based on artifacts excavated in the general area, the individuals have been determined to be Native American.

The sites described above are within the traditional lands of the present-day Confederated Tribes of the Umatilla Indian Reservation, Oregon. The Confederated Tribes of the Umatilla Indian Reservation, Oregon was established by the Stevens Treaty of 1855 and consists of three tribes: Cayuse, Umatilla, and Walla Walla. All three tribes belong to the Sahaptin language group, each tribe's speaking a separate dialect of Sahaptin. Historically, these tribes occupied over 6 million acres of land in southeastern Washington and northeastern Oregon. The Umatilla Indian Reservation and ceded lands roughly include the areas bounded by the Columbia and Snake Rivers on the north to Willow Creek on the west to Tucannon River on the east.

Officials of the Army Corps of Engineers, Portland District have determined that, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of a minimum number of 20 individuals of Native American ancestry. Officials of the Army Corps of Engineers, Portland District also have determined that, pursuant to 25 U.S.C. 3001(3)(A), the 907 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Army Corps of Engineers, Portland District have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes of the Umatilla Indian Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Ms. Gail Celmer, NAGPRA Coordinator, Environmental Resources Branch, U.S. Department of Defense, Army Corps of Engineers, Portland District, P.O. Box 2946, Portland, OR 97208–2946, telephone (503) 808–4762, before November 7, 2003. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Umatilla Indian Reservation, Oregon may proceed after that date if no additional claimants come forward.

The Army Corp of Engineers, Portland District is responsible for notifying the Confederated Tribes of the Umatilla Indian Reservation, Oregon that this notice has been published.

Date: August 7, 2003

John Robbins,

Assistant Director, Cultural Resources

[FR Doc. 03–25535 Filed 10–7–03; 8:45 am]

BILLING CODE 4310–70–S

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–495]

In the Matter of Certain Breath Test Systems for the Detection of Gastrointestinal Disorders and Components Thereof; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') (Order No. 4) terminating the above-captioned investigation on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone: (202) 205–3090. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 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.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 30, 2003, based on a complaint filed by Meretek Diagnostics, Inc. of Lafayette, Colorado, and Medquest PTY, Ltd. of Perth, Australia. 68 FR 44812 (July 30, 2003). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain breath test systems for the detection of gastrointestinal disorders and components thereof by reason of infringement of claims 1, 2, 3, and 5 of U.S. Patent No. 4,830,010. The complaint and notice of investigation named Oridion Systems, Ltd.; Oridion Medical 1987 Ltd.; Oridion BreathID Ltd.; and Oridion BreathID Inc. as respondents.

On September 2, 2003, complainants and respondents filed a joint motion pursuant to Commission rule 210.21(c) to terminate the investigation as to all respondents on the basis of a consent order. The motion included a consent order stipulation and a proposed consent order. The Commission investigative attorney supported the motion. On September 12, 2003, the ALJ issued the subject ID terminating the investigation in its entirety on the basis of a consent order. No petitions for review of the ID were filed.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: October 1, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–25455 Filed 10–7–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

In accordance with 28 U.S.C. 50.7, notice is hereby given that on September 30, 2003, a proposed Consent Decree in *United States* v. *CHS Inc.,* Civil Action No. CV:03–153–BLG–RWA, was lodged with the United States District Court for Montana.

In this action, the United States sought injunctive relief and penalties against CHS Inc. (''Cenex''), pursuant to Section 113(b) of the Clean Air Act (''CAA''), 42 U.S.C. 7413(b) (1983), amended by, 42 U.S.C. 7413(b) (Supp. 1991) for alleged CAA violations at Cenex's refinery in Laurel, Montana in a complaint that was filed simultaneously with the Consent Decree.

The proposed Consent Decree requires Cenex to implement innovative pollution control technologies to greatly reduce emissions of nitrogen oxides (''NO_X'') and sulfur dioxide (''SO_2'') from refinery process units and adopt facility-wide enhanced monitoring and fugitive emission control programs. In addition, Cenex will pay a civil penalty

of $85,937.50 for settlement of the claims in the United States' complaint, and Cenex will pay $85,937.50 for settlement of claims raised by the State of Montana. Cenex also will perform environmentally beneficial projects. The State of Montana will join in this settlement as a signatory of the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States, et al.,* v. *CHS Inc.,* D.J. Ref. 90–5–2–1–07726.

The Consent Decree may be examined at the Office of the United States Attorney, 2929 3rd Ave North, Suite 400, Billings, MT 59101 (attn: Lorraine Gallinger), and at U.S. EPA Region 8, 999 18th Street Suite 300, Denver, CO 80202–2466 (attn: David Rochlin). During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree 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.fleet@woodusdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Consent Decree from the Consent Decree Library, please enclose a check in the amount of $40.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert D. Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–25551 Filed 10–7–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 28 U.S.C. 50.7 and Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9622, notice is hereby given that on September 25, 2003, a proposed Consent Decree in *United States* v. *Horsehead Industries, Inc. et al.*, Civil Action No. 3:CV–98–0654, was lodged with the United States District Court for the Middle District of Pennsylvania.

In this action, the United States sought under Section 107 and 113 of CERCLA, 42 U.S.C 9607 and 9613, to recover past and future response costs incurred by EPA at the Palmerton Zinc Pile Superfund Site (''Site'') located in and around the Borough of Palmerton, Carbon County, Pennsylvania.

The Site consists of a broad area impacted by emissions of contaminants from zinc smelting and recovery operations. For purposes of remediation, EPA divided the Site into four operable units. OU–1 consists of approximately 2,000 acres of Blue Mountain defoliated by heavy metals and other airborne contaminants. A portion of the area within OU–1 overlaps the Appalachian Trail and is owned and managed by the Department of the Interior (''DOI'') through the National Park Service (''NPS''). OU–2 consists of an approximately 2½ mile long, ten story high, ''Cinder Bank'' which is composed of smelting residues and other zinc processing byproducts deposited along the base of Blue Mountain. OU–3 consists of soil contamination in the valley between Blue Mountain and Stoney Ridge, which includes the Borough of Palmerton itself. OU–4 consists primarily of area-wide surface water and groundwater contamination.

The proposed Consent Decree requires Settling Defendants to pay approximately $12.85 million in reimbursement of past response costs incurred by EPA. In addition, Settling Defendant agree to implement the remedial actions at OU–1 and OU–3, and to perform the operation and maintenance activities at OU–2, at a projected costs of $27 million. Settling Defendants also agree to pay DOI $700,000 for past and future costs related to OU–1. Finally, Settling Defendants agree to dismiss counterclaims that they filed against the United States under Sections 107 and 113 of CERCLA. The United States reserves all rights to pursue additional actions against the Settling Defendants with respect to the portions of the Site not addressed in this settlement.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. 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, and should refer to *United States* v. *Horsehead Industries, Inc. et al.*, D.J Ref. 90–11–2–271m.

The Consent Decree may be examined at the Office of the United States Attorney for the Middle District of Pennsylvania, Federal Courthouse Building, 228 Walnut Street, Suite 220, Harrisburg, PA 17108, and at U.S. EPA Region III, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103–2029. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree 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 of the Consent Decree from the Consent Decree Library, please enclose a check in the amount of $33.50 (25 cents per page reproduction cost) payable to the U.S. Treasury. Copies of the appendices to the Consent Decree are also available at an additional charge of 25 cents per page.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–25553 Filed 10–7–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on September 25, 2003, a proposed Consent Decree in *United States* v. *City of Long Beach, California,* Civil Action No. CV 01–08790 PA (RCx) was lodged with the United States District Court for the Central District of California.

In this action the United States sought to recover unpaid response costs, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (''CERCLA'') incurred by the Environmental Protection Agency in connection with the release of hazardous substances at the Enviropur West Corporation Superfund Site, located in Signal Hill, California. Under the proposed Consent Decree, the City will pay $290,000 to the Hazardous Substance Superfund to

reimburse the United States for a portion of its past response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent Decree. 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, and should refer to *United States* v. *City of Long Beach, California,* D.J. Ref. #90–11–3–1656/2.

The Consent Decree may be examined at U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree 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 amount of $5.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–25552 Filed 10–7–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Multiple Worksite Report and the Report of Federal Employment and Wages.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before December 8, 2003.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number (202) 691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number (202) 691–7628. (*See* **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

I. Background

The Covered Employment and Wages (ES–202) Program is a Federal/State cooperative effort which compiles monthly employment data, quarterly wage data, and business identification information from employers subject to State Unemployment Insurance (UI) laws. These data are collected from State Quarterly Contribution Reports (QCRs) submitted to State Employment Security Agencies (SESAs). The States send micro-level employment and wages data, supplemented with the names, addresses, and business identification information of these employers, to the BLS. The State data are used to create the BLS sampling frame, known as the Business Establishment List. This file represents the best source of detailed industrial and geographical data on employers and is used as the sampling frame for most BLS surveys. The Business Establishment List includes the individual employers' employment and wages data along with associated business identification information that is maintained by each State to administer the UI program as well as the Unemployment Compensation for Federal Employees (UCFE) program.

The ES–202 Report, produced for each calendar quarter, is a summary of these employer (micro-level) data by industry at the county level. Similar data for Federal Government employees covered by the UCFE Program also are included in each State report. These data are submitted by all 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands to the BLS which then summarizes these macro-level data to produce totals for the States and the Nation. The ES–202 Report provides a virtual census of nonagricultural employees and their wages, with about 47 percent of the workers in agriculture covered as well.

For employers having only a single physical location (worksite) in the State and, thus, operating under a single assigned industrial and geographical code, the data from the States' UI accounting files are sufficient for statistical purposes. Such data, however, are not sufficient for statistical purposes for those employers having multiple establishments or engaged in different industrial activities within the State. In such cases, the employer's QCR reflects only statewide employment and wages and is not disaggregated by establishment or worksite. Although data at this level are sufficient for many purposes of the UI Program, more detailed information is required to create a sampling frame and to meet the needs of several ongoing Federal/State statistical programs. The Multiple Worksite Report (MWR) is designed to supplement the QCR when more detailed information is needed.

As a result of the MWR, improved establishment business identification data elements have been incorporated into and maintained on the Business Establishment List. The MWR collects a physical location address, secondary name (trade name, division, subsidiary, *etc.*), and reporting unit description (store number, plant name or number, *etc.*) for each worksite of multi-establishment employers.

Employers with more than one establishment reporting under the same UI account number within a State are requested to complete the MWR if the sum of the employment in all of their secondary establishments is 10 or greater. The primary worksite is defined as the establishment with the greatest number of employees. Upon receipt of the first MWR form, each employer is requested to supply business location identification information. Thereafter, this reported information is computer printed on the MWR each quarter. The employer is requested to verify the accuracy of this business location identification information and to provide only the employment and wages for each worksite for that quarter. By using a standardized form, the reporting burden on many large employers, especially those engaged in multiple economic activities at various

locations across numerous States, has been reduced.

Comparable to the MWR, the function of the Report of Federal Employment and Wages (RFEW) is to collect employment and wage data for each installation of Federal agencies. The RFEW aids in the development and maintenance of business identification information by installation. The RFEW was modeled after the MWR and is used only to collect data from Federal agencies covered by the UCFE program.

No other standardized report is available to collect current establishment-level employment and wages data by SESAs for statistical purposes each quarter from the private sector nor State and local governments. Also, no other standardized report currently is available to collect installation-level Federal employment and wages data each quarter by SESAs for statistical purposes. Completion of the MWR is required by state law in 21 States.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

The BLS has taken steps to help reduce employer reporting burden by developing a standardized format for employers to use to send these data to the States in an electronic medium. The BLS also established an Electronic Data Interchange (EDI) Collection Center to improve and expedite the MWR collection process. Employers who complete the MWR for multi-location businesses can now submit employment and wages information on any electronic medium (tape, cartridge, diskette, or computer-to-computer) directly to the data collection center, rather than to each State agency, separately. The data collection center then distributes the appropriate data to the respective States. The BLS also has been working very closely with firms providing payroll and tax filing services for employers as well as the developers of payroll and tax filing software to include this electronic reporting as either a service for their clients or a new feature of their system. In addition, the BLS is developing a web-based system to collect these data from small to medium size businesses.

Type of Review: Extension of currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Multiple Worksite Report (MWR) and the Report of Federal Employment and Wages (RFEW).

OMB Number: 1220–0134.

Frequency: Quarterly.

Affected Public: Business or other for-profit institutions, not for-profit institutions, Federal Government, and State, local or tribal government.

Form number	Total respondents	Respondent	Total responses	Average time per response (minutes)	Total burden (hours)
BLS 3020 (MWR)	116,172	Non-Federal	464,688	22.2	171,935
BLS 3021 (RFEW)	2,074	Federal	8,296	22.2	3,070
Totals	118,246		472,984		175,004

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 25th day of September, 2003.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 03–25515 Filed 10–7–03; 8:45 am]

BILLING CODE 4510–24–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Meetings; Sunshine Act

October 2, 2003.

TIME AND DATE: 2 p.m., Thursday, October 9, 2003.

PLACE: Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on an appeal of Rag Shoshone Coal Corporation from the decision of an administrative law judge in *Secretary of Labor* v. *Rag Shoshone Coal Corporation*, Docket No. WEST 99–342–R, WEST 99–384–R and WEST 2000–349. (Issues include whether the judge correctly concluded that the Secretary of Labor's interpretation of 30 CFR 70.207(e)(7) was reasonable; whether the judge correctly concluded that the Secretary of Labor was not required to engage in notice-and-comment rulemaking before imposing the 060 designated occupation for purposes of sampling levels of respirable coal dust; and whether the judge correctly concluded that the Secretary of Labor's imposition of the 060 designated occupation was not arbitrary, capricious, or an abuse of discretion.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

FOR FURTHER INFORMATION CONTACT: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 03–25623 Filed 10–6–03; 12:29 pm]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–126)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration

ACTION: Correction.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, has been filed in the United States Patent and Trademark Office, and is available for licensing.

DATES: October 8, 2003.

FOR FURTHER INFORMATION CONTACT: Linda Blackburn, Patent Counsel, Langley Research Center, Mail Code 212, Hampton, VA 23681–2199; telephone (757) 864–9260; fax (757) 864–9190.

NASA Case No. LAR–15712–2-CU: Optical Path Switching Based Differential Absorption Radiometry For Substance Detection (was incorrect title) the correct title should have been:

NASA Case No. LAR–15712–2–CU: Method for the Detection of Volatile Organic Compounds Using a Catalytic Oxidation Sensor.

Dated: September 25, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–25496 Filed 10–7–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–127]

NASA Space Science Advisory Committee, Solar System Exploration Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration announces a meeting of the NASA Space Science Advisory Committee (SScAC), Solar System Exploration Subcommittee (SSES).

DATES: Thursday, October 23, 2003, 8:30 a.m. to 5:15 p.m.; Friday, October 24, 2003, 8:30 a.m. to 12:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 9H40, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Jay Bergstralh, Code SE, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0313, *Jay.T.Bergstralh@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Status of Solar System Exploration
—Status of Mars Exploration Program
—Mars Exploration Rover Status
—Instruments for Mars Surface Laboratory Payload
—Mars Exploration Program beyond Mars Surface Laboratory
—Prometheus Science Concept Definition Team
—Bahcall Committee Report on Hubble Space Telescope

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; visa/greencard information (number, type, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. Foreign nationals will be escorted at all times. To expedite admittance, all attendees can provide identifying information in advance by contacting Dr. Jay Bergstralh via e-mail at *Jay.T.Bergstralh@nasa.gov* or by telephone at 202/358–0313 or Kay Butzke via e-mail at *glenda.K.butzke@nasa.gov* or by telephone at 202/358–0730.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–25497 Filed 10–7–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

Public Hearing

AGENCY: National Commission on Terrorist Attacks Upon the United States.

ACTION: Notice of public hearing.

SUMMARY: The National Commission on Terrorist Attacks Upon the United States will hold its fourth public hearing on October 14, 2003 in Washington, DC. Witnesses will speak about issues related to U.S. intelligence leadership, intelligence and national security policy, and the effectiveness of warning against transnational threats. Representatives of the media should register in advance of the hearing by visiting the Commission's Web site at *http://www.9–11 commission.gov.* Seating for the general public will be on a first-come, first-served basis. Press availability will occur at the conclusion of the hearing.

DATES: October 14, 2003, 9 a.m. to 3:15 p.m. Press availability to follow.

LOCATION: Russell Senate Office Building, Room 253, Washington, DC, 20510.

FOR FURTHER INFORMATION CONTACT: Al Felzenberg, (202) 401–1725 or (202) 236–4878 (cellular).

SUPPLEMENTARY INFORMATION: Please refer to Public Law 107–306 (November 27, 2002), title VI (Legislation creating the Commission), and the Commission's Web site *http://www.9–11 commission.gov.*

Dated: October 2, 2003.

Philip Zelikow,

Executive Director.

[FR Doc. 03–25412 Filed 10–7–03; 8:45 am]

BILLING CODE 8800–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of remote field camps during a skiing/climbing expedition in the Antarctic interior. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit

application by November 6, 2003. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene Kennedy at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed Antarctic Waste Regulations, 45 CFR part 671, that requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica.

The waste permit applications received are as follows:

[Permit Application No. 2004 WM–004]

1. Applicant

Ralph Fedor, 2337 Granite View Road, Waite Park, MN 56387.

Activity for Which Permit is Requested: The applicant is a member of the Peter 1st Ham Radio Expedition and makes this application for a Waste Management Permit for the use and release of designated pollutants. The applicant along with approximately 15 others will establish a temporary camp on Seal Island using several Weather Haven shelters for sleeping, cooking and eating, and two small lab or work areas. The camp will be established for approximately 2.5 weeks, after which it will be removed. Propane tanks for cooking and 55 gallon drums of unleaded gas will be used to operate electric generators. These items will be secured and have tarps underneath to contain any possible spills. Daily inspections will be conducted to ensure items are secure. All human, paper, kitchen wastes will be removed from Antarctica. All items brought ashore will be returned to the ship for proper disposition.

Location: Peter I Island.

Dates: January 9, 2004 to February 9, 2004.

[Permit Application No. 2004 WM–005]

2. Applicant

David Rootes, Environmental Manager, Antarctic Logistics and Expeditions, Ltd., 4350 N. Fairfax Drive, Suite 840, Arlington, VA 22203.

Activity for Which Permit is Requested: Antarctic Logistics and Expeditions, Ltd (ALE) will provide logistic support for expeditions to Antarctica and will operate from Patriot Hills, Antarctica, for the 2003/2004 season. Primary logistics support and operations are offered for Mt. Vinson climbing groups as well as private expeditions along the general route to the South Pole. ALE proposes to establish a base camp in the Patriot Hills to support its expeditions. Unleaded fuel for snowmobile and generators, and white gas for cooking will be secured and spill mats and drip trays will be used to minimize possible spills. All food waste, sewage, solid wastes (*i.e.,* paper, plastics, timber, metal, glass, and fuel drums) will be removed from Antarctica or proper disposal.

Location: Patriot Hills, Antarctica.

Dates: November 1, 2003 to February 29, 2008.

[Permit Application No. 2004 WM–006]

Jennifer Miller, Solo World Challenge, Ltd. ''Polar First'', Flat 2, One Onslow Gardens, London SW7 3LX, UK.

Activity for Which Permit is Requested: Solo World Challenge Ltd. (''Polar First'') makes application for a waste management permit for the use and release of designated pollutants and wastes generated by two pilots and a Bell 407 helicopter during their journey from Punta Arenas to the South Pole and back. Approximately 5,440 liters of Jet A1 fuel will be stored at various caches for refueling the helicopter. The Jet A1 fuel will also be used for the cooking stove. The pilots will have a fuel proof, rubberized container of suitable size to fit the drums during refueling to catch any possible spillage. The pilots will carry approximately 3 gallons of oil, and ½ liter of hydraulic fuel for maintenance purposes. Sewage, solid, and food wastes will be stored in containers and removed from Antarctica for proper disposal.

Location: Antarctic Peninsula area and onward toward the South Pole.

Dates: November 6, 2003 to January 15, 2004.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 03–25461 Filed 10–7–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by November 6, 2003. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

[Permit Application No. 2004–015]

1. Applicant

Richard R. Veit, Biology Department, The College of Staten Island, 2800 Victory Boulevard, Staten Island, NY 10314.

Activity for Which Permit is Requested: Take. The applicant proposes capture and release up to 5 individuals each of Cape Petrel, Wilson's Storm Petrel, Black-bellied Storm Petrel, Brown Skua, Kelp Gull, and Antarctic Tern. The applicant plans to assess the breeding condition of the birds, and to determine diet, based on regurgitations and fecal samples about the next.

Location: Seal Island, Antarctic Peninsula.

Dates: November 23, 2003 to December 26, 2003.

[Permit Application No. 2004–016]

2. Applicant

Terry J. Wilson, Department of Geological Sciences, Ohio State University, 155 S. Oval Mall, Columbus, OH 43210.

Activity for Which Permit is Requested: Enter Antarctic Specially Protected Areas. The applicant proposes to enter Cape Crozier (ASPA #124) and Beaufort Island (ASPA #105) for the purpose of visiting the previously installed GPS monuments that were deployed to detect motion of the bedrock due to tectonism or post-glacial rebound. GPS receivers will be installed then later removed and local GPS surveys will be conducted in an area within approximately 50 meters of the monument.

Location: Cape Crozier, Ross Island (ASPA #124), and Beaufort Island, Ross Sea (ASPA #105).

Dates: November 03, 2003 to January 31, 2007.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 03–25462 Filed 10–7–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel in Advanced Computational Infrastructure and Research Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting. This meeting was originally scheduled for September 18 and 19, 2003 and had to be cancelled due to Hurricane Isabel.

Name: Proposal Review Panel in Advanced Computational Infrastructure & Research (#1185).

Date & Time: October 23, 2003; 8 a.m.–5 p.m.—October 24, 2003; 8 a.m.–4 p.m.

Place: ACCESS Center, 901 N. Stuart Street, 8th Floor, Arlington, VA 22203.

Type of Meeting: Open.

For Further Information Contact: Richard Hilderbrandt, Program Director, Division of Advanced Computational Infrastructure and Research, Suite 1112, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Tel: (703) 292–8963, e-mail: *rhilderb@nsf.gov.*

Purpose of Meeting: To perform a reverse site visit to review and provide advice and recommendations on ACI program plans and review progress reports for NPACI, NCSA and PSC as part of the PACI activity.

Agenda: To review and evaluate annual reports and program plans.

Dated: October 3, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–25499 Filed 10–7–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–7580–MLA–3; ASLBP No. 04–816–01–MLA]

Fansteel Inc.; Designation of Presiding Officer

Pursuant to delegation by the Commission, *see* 37 FR 28710 (Dec. 29, 1972), and the Commission's regulations, *see* 10 CFR 2.1201, 2.1207, notice is hereby given that (1) a single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding: Fansteel Inc., Muskogee, Oklahoma (Materials License Amendment).

The hearing will be conducted pursuant to 10 CFR part 2, subpart L, of the Commission's Regulations, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' This proceeding concerns a request for hearing submitted on September 10, 2003, by the State of Oklahoma. The request was filed in response to an August 5, 2003 notice of consideration and opportunity for a hearing regarding a July 24, 2003 amendment request from Fansteel Inc., to amend its 10 CFR part 40 source material license, which was published in the **Federal Register** on August 11, 2003 (68 FR 47621). The requested license amendment would authorize decommissioning of the Fansteel Inc. facility located in Muskogee, Oklahoma in accordance with a January 14, 2003 site decommissioning plan (as amended on May 8, 2003).

The Presiding Officer in this proceeding is Administrative Judge Alan S. Rosenthal. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Richard F. Cole has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judges Rosenthal and Cole in accordance with 10 CFR 2.1203. Their addresses are:

Alan S. Rosenthal, Administrative Judge, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Richard F. Cole, Administrative Judge, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Issued at Rockville, Maryland, this 2nd day of October, 2003.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 03–25495 Filed 10–7–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Financial Management Policy Directive on Use of Grants.Gov FIND

AGENCY: Office of Management and Budget.

ACTION: Notice of issuance of final policy directive.

SUMMARY: The Office of Federal Financial Management (OFFM) is issuing a policy directive requiring Federal agencies to use the Grants.gov FIND module to electronically post synopses of funding opportunities under Federal financial assistance programs that award discretionary grants and cooperative agreements. The policy directive includes an attachment which contains the government-wide standard set of data elements to be used by Federal agencies when posting synopses at *http://www.Grants.gov* or such Web site/Internet address designated by the Office of Management and Budget (OMB). The purpose of the Grants.gov FIND module is to provide potential applicants with (1) enough information about any funding opportunity to decide whether they are interested in viewing the full announcement; (2) information on one or more ways to obtain the full announcement (*e.g.*, an Internet site, e-mail address or telephone number); and (3) one common Web site for all Federal grant opportunities searchable by key word, date, Catalog of Federal Domestic Assistance (CFDA) number or specific agency name. The Federal agencies jointly developed the standard data elements to be used for posting the synopses information as part of their grant streamlining efforts to implement the Federal Financial Assistance Management Improvement Act of 1999 (Public Law 106–107).

FOR FURTHER INFORMATION CONTACT: Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503; telephone: (202) 395–3993; fax: (202) 395–3952.

SUPPLEMENTARY INFORMATION:

I. Background

In a **Federal Register** notice [68 FR 37379], published on June 23, 2003, the Office of Management and Budget (OMB) finalized a standard set of data elements for use by Federal agencies to electronically post synopses of announcements of funding opportunities under programs that award discretionary grants and cooperative agreements at *http://www.Grants.gov*, the current Web site for the Grants.gov FIND module. Also on June 23, 2003, another **Federal Register** notice [68 FR 37385] proposed an OFFM policy to establish the requirement for agencies to post funding opportunity synopses in the Grants.gov FIND module.

We received comments from seven Federal agencies on the proposed policy. We considered all comments in developing this final OFFM policy directive. Comments on the policy supported establishing the requirement for agencies to post synopses of funding opportunities in the Grant.gov FIND module. The following paragraphs summarize the comments and our responses.

II. Comments and Responses

Comment: One commenter noted a discrepancy in one of the FIND data elements. Specifically, the ''Additional information on eligibility'' data element notes that it is ''Required if agency selects either category 25 or category 99 in the 'Eligible applicants' field'' data element. The commenter notes there is no category 25 in the June 23, 2003, published standard [68 FR 37379].

Response: Agree. The commenter has correctly noted a shortcoming in the FIND data elements published on June 23, 2003. The full set of codes is available in the attachment to this policy and on the Grants.gov Web site. To clarify in this response, code 25 is for ''Others (*see* text field entitled 'Additional information on eligibility' for clarification)''.

Comment: One commenter recommended that the policy be changed to ensure the policy applies to postings of an initial announcement and any modification of the announcement.

Response: Agree. Section 4(a), ''Applicability'' of the policy directive, and the Grants.gov FIND Data Elements/Format have been revised to reflect that postings include initial announcements and modifications to announcements.

Comment: A commenter recommended there be a separate FIND template for modifications of announcements. In accordance with the OMB announcement format policy, agencies should only have to provide the date of the announcement and identify what has been modified.

Response: The Grants.gov instructions for input to the FIND module have been clarified to be consistent with the standard announcement format notice [68 FR 37376], Overview Information, Announcement Type. For a modification entry, only the date of the previous announcement synopsis and information that has been changed need to be entered. A separate FIND template for a modification is not necessary because the current FIND module accommodates any modifications.

Comment: The commenter recommended that Section 4, ''Policy'' which references the uniform resource locator (URL), be amended to add, ''or such web/Internet address as may be identified by the Grants.gov Project Management Office.'' It is suggested that this would alleviate revising the policy directive in the event the URL changed.

Response: Agree. Language has been revised to reflect ''or such Web site/Internet address as may be identified by the Office of Management and Budget (OMB)'' since this policy is issued by OMB.

Comment: A commenter indicated that the second sentence of the introductory paragraph appears to make Grants.gov FIND (the terminology that will supercede ''FedGrants.gov'') the primary location for publication of the complete funding opportunity, since it states that agencies are required to post funding opportunities for all discretionary grant and cooperative agreement programs at that site. Their understanding is that the posting requirement is for the synopsis with a link to the full announcement (unless uploaded in Grants.gov FIND) and that agencies will continue to post their full announcements at a location(s) consistent with any applicable statutory requirements and policies. This needs to be clarified.

Response: Agree in part. Grants.gov has a search mechanism to be used to locate synopses and link to full announcements. As such, Grants.gov will continue to be the site used to post synopses and, for some agencies, full announcements unless, or until, another web/Internet site has been identified by OMB.

The policy has been revised to state that the synopsis should be posted with URL links through which the full announcement can be obtained. However, when agencies post the full announcement at Grants.gov, a URL link from the synopsis to the full announcement is not necessary because the synopsis and full announcement share the same URL; in this event, the synopsis must indicate that the full announcement can be found at Grants.gov FIND.

Comment: Two commenters indicated that under Section 4(a), ''Applicability,'' the intent was to post synopses of funding opportunities, not grant awards.

Response: Agree. The language in the policy, Section 4(a), ''Applicability,'' has been changed to ''funding opportunity announcements and modifications to the announcements.''

Comment: With respect to Section 4(a), ''Applicability,'' several commenters recommended that limited eligibility and sole source funding opportunities be considered exceptions to the policy. One commenter wanted to add the word ''competitive'' before the terms ''discretionary grants and cooperative agreements.'' In addition, a commenter wanted to add the word ''grant awards'' after ''discretionary.''

Response: Agree with ''single-source'' funding opportunities [''sole source'' is an acquisition term with a definition that does not apply to grants] being excepted because a single-source award is not considered a true funding opportunity for anyone other than the intended recipient. As such, a third exception has been added to Section 4(a), indicating that synopses of single-source announcements will not need to be posted. Since an exception has been added for single-source awards, which are not competitive, adding the word ''competitive'' would be unnecessary.

An exception, however, was not added for limited eligibility announcements because limited eligibility announcements are, in fact, true funding opportunities which often include a competitive component. As such, these announcements must be posted to Grants.gov FIND in order to provide the public maximum opportunity to view potential funding opportunities, thereby maintaining transparency consistent with the customer service mandates prescribed in Public Law 106–107. Furthermore, this requirement should not be burdensome to agencies because most agencies use systems which automatically extract from the full announcement the information needed to develop and post the synopses to Grants.gov FIND. Inserting ''grant awards'' has not been added since the intent is to post announcements and not

awards. As previously indicated, the policy has been changed to reflect the posting of funding opportunities rather than awards in Grants.gov FIND.

Comment: One commenter expressed concern about having funding opportunity announcements that are targeted for a set of pre-cleared potential applicants (in terms of top-secret or sensitive work associated with national security) included as synopses in Grants.gov FIND and requested another exception be added to meet this need.

Response: Disagree. The policy in Section 4 already states that ''agencies should continue to post their full announcement at location(s) consistent with any applicable statutory requirements and policy.'' If such requirements prohibit an agency from the public posting of a funding opportunity announcement, then there would be no requirement for a synopsis to be posted in Grants.gov FIND.

Comment: One commenter thought the exception at Section 4a (2), is too restrictive and did not address the ''nature of overseas awards.'' In addition, the commenter thought the definition of the exception stating, ''A program with 100 percent of potential eligible applicants who live outside the United States, and who demonstrate lack of Internet access, and the agency has requested a waiver from OMB,'' is very narrow and potentially burdensome and questioned how it could be applied. In addition the commenter agreed with the policy, but suggested the policy should reflect flexibility with respect to posting announcements for overseas recipients and the second exception should be removed altogether.

Response: Agree in part. Reference to lack of internet access and requiring agencies to request a waiver from OMB has been eliminated from the policy directive. Instead, the policy exception has been revised to state, ''announcements of funding opportunities for awards less than $25,000 for which 100 percent of potential eligible applicants live outside of the United States.'' It should be noted that while the exceptions to the policy do not require agencies to post synopses, agencies are not precluded from the option of posting a synopsis in Grants.gov FIND. The second option was therefore modified, but not eliminated.

Comment: One agency commenter was concerned about the effective date of postings in Grants.gov FIND. Specifically, the commenter was concerned that when a funding announcement is published that may result in the award of a contract, grant or cooperative agreement, the proposed three-day requirement is in conflict with the Federal Acquisition Regulation (FAR) 5.203(a) which requires agencies to publish a notice of solicitation at least fifteen days prior to the issuance of the solicitation (with certain exceptions).

Response: No change. The requirements to post the synopsis within three days of posting the full announcement represents the latest timeframe during which the synopsis must be posted. Agencies have the flexibility to post the synopsis prior to this timeframe to meet statutory or regulatory requirements.

Comment: Four commenters recommended changes to the policy regarding reference to the Administrative Procedures Act and suggested the reference be removed and be replaced with ''statutory or regulatory requirements.'' Also, one commenter recommended that the word ''some'' be inserted before ''agencies'' in reference to ''agencies may need to announce the funding opportunity in the **Federal Register**.'' As noted by the commenter, not all agencies are required to publish in the **Federal Register**.

Response: Agree. The reference to the Administrative Procedures Act has been replaced with ''statutory or regulatory requirements.'' In addition, the word ''some'' has been inserted in front of ''agencies.''

Comment: One commenter noted that ''the notice is still vague about whether agencies can post grant opportunity announcements solely at Grants.gov, and therefore, bypass the **Federal Register**.'' The commenter asked whether or not it was acceptable to post the full information on agency Web sites with a link from Grants.gov FIND.

Response: No change. The policy indicates that agencies must post synopses of funding opportunities in Grants.gov FIND, which, in turn, states methods through which an agencies' full announcement can be accessed. The policy indicates that agencies may also put an ''availability notice'' of the funding opportunity in the **Federal Register**, which identifies the funding opportunity availability and contact information, for those that do not have Internet access. However, the policy indicates that the agency will have to follow its own statutory or regulatory requirements with regard to publishing in the **Federal Register**. And in response to a similar comment on the Grants.gov FIND Notice of Standard Data Elements [68 FR 3780, IIA. Comments and Responses], OMB responded as follows: Grants.gov FIND and the **Federal Register** are complementary. The Grants.gov FIND's primary purposes are to provide: (1) A synopsis of each funding opportunity with the minimum information people need in order to quickly decide whether they want to review the full announcement for that opportunity; and (2) a way to access the full announcement electronically. The **Federal Register** is one place an agency may locate the full announcement to which the synopsis links electronically. Whether a given opportunity that is synopsized in Grants.gov FIND will have its full announcement published in the **Federal Register**, on the agency's web site, or at Grants.gov FIND, is a question for the agency and their program offices.

Comment: An agency commented that it is not required to obtain a Catalog of Federal Domestic Assistance (CFDA) number, since many of its announcements are advertised as ''Broad Agency Announcements,'' which may result in contracts, grants or cooperative agreements.

Response: Agree. The Grants.gov FIND Notice of Standard Data Elements [68 FR 37382], states the following with respect to the CFDA element, ''Is agency input required?'' At least one entry is required (may list more than one), if the Federal agency is subject to the requirement in 31 U.S.C. Chapter 61, to report to the CFDA. Federal agencies that have programs that are not domestic assistance, and therefore, are not listed in the CFDA, may arrange with Grants.gov to insert an alternate number that will allow listing of the funding opportunity. Consistent with this approach, language has been added to clarify that agencies should work with Grants.gov to obtain an alternate number in situations where the CFDA does not apply.

Linda M. Springer,

Controller.

To the Heads of Executive Departments and Agencies

Subject: Requirement to Post Funding Opportunity Announcement Synopses at Grants.gov and Related Data Elements/Format.

1. Purpose. This policy directive establishes a government-wide requirement for Federal agencies to electronically post synopses of announcements of funding opportunities under financial assistance programs that award discretionary grants and cooperative agreements, using a standard set of data elements. The purpose of the synopsis is to provide potential applicants (1) enough information about the funding opportunity to decide whether they are interested in viewing the full

announcement; (2) one or more ways (*e.g.*, an Internet site, e-mail address or telephone number) to get the full announcement with the detailed information; and (3) one common Web site to search for all Federal grant opportunities by key word, date, Catalog of Federal Domestic Assistance (CFDA) number, specific agency or across agencies. The attached data elements are the government-wide standard developed for Federal programs that award discretionary grants and cooperative agreements.

2. Authority. The policy directive is part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Public Law 106–107). This policy is also designed to further implement the Grants.gov initiative, one of the 24 electronic government (E-Gov) initiatives under the President's Management Agenda.

3. Background. Public Law 106–107, requires the Office of Management and Budget (OMB) to direct, coordinate, and assist Executive Branch departments and agencies in establishing an interagency process to streamline and simplify Federal financial assistance procedures for non-Federal entities. The law also requires executive agencies to allow applicants to electronically apply for and report on the use of funds from any Federal financial assistance program administered by the agency.

The posting of standard synopses in an electronic environment provides government customers the opportunity to locate funding opportunities in one place and to decide whether or not to apply for the opportunity. Establishing data standards for the electronic format of the synopses and the posting of synopses on the Internet serve to implement Public Law 106–107 and the President's Management Agenda.

4. Policy. The data elements/format attached to this policy directive are the government-wide standard for posting synopses at *http://www.Grants.gov* or such Web site/Internet address that may be identified by OMB, for programs that award discretionary grants and cooperative agreements. Agencies should continue to post their full announcement at location(s) consistent with any applicable statutory requirements and policy. All Federal agencies are required to post synopses of announcements of funding opportunities for programs that award discretionary grants and cooperative agreements at the Grants.gov FIND module and are also encouraged to post other types of Federal funding opportunities at Grants.gov FIND. The synopsis shall be posted with universal resource locator (URL) links through which the full announcement can be obtained. A URL link from the synopsis to the full announcement is not necessary for full announcements posted to Grants.gov because the synopsis and full announcement share the same URL. However, in this event the synopsis must indicate that the full announcement can be found at Grants.gov FIND.

a. Applicability. All Federal agencies will be required to post synopses of their discretionary grant and cooperative agreement funding opportunity announcements and modifications to the announcements at Grants.gov or a Web site/Internet address identified by OMB, using the standard data elements/format, except for:

(1) Programs that only publish funding opportunities in the Catalog of Federal Domestic Assistance (CFDA).

(2) Announcements of funding opportunities for awards less than $25,000 for which 100 percent of eligible applicants live outside of the United States.

(3) Single source announcements of funding opportunities issued by an agency which are specifically directed to a known recipient.

b. Effective Date. This policy directive is effective thirty days from this date of publication, and all agencies shall post announcement synopses at the Grants.gov FIND module beginning November 7, 2003. A synopsis of the Federal funding opportunity shall be posted at Grants.gov FIND no later than three business days after release of the full announcement.

c. Exemptions. Requests for exemptions must be directed to OMB, Office of Federal Financial Management (OFFM).

5. Agency Responsibilities.

a. Issue any needed direction to offices that award discretionary grants and cooperative agreements on the requirement to post a synopsis at the Grants.gov FIND module, including the standard data elements/format. Synopses must follow the format to ensure all required data elements are included.

b. Ensure the synopsis posted at the Grants.gov FIND Module will have full instructions regarding where to obtain the full announcement for the funding opportunity. To further satisfy statutory, regulatory, or the agency's policy requirements, some agencies may need to announce the funding opportunity in the **Federal Register**.

c. Obtain a Catalog of Domestic Assistance (CFDA) number for all programs that post a synopsis at Grants.gov. For those programs that do not have an assigned CFDA number, the program office or agency must contact the Grants.gov Program Management Office to obtain an alternate identifier to be used in the synopsis posted at the Grants.gov FIND module.

6. Information Contact. Direct any requests for exemption or questions about the policy to the Office of Federal Financial Management (OFFM), 202–395–3993.

Linda M. Springer,
Controller.

GRANTS.GOV FIND DATA ELEMENTS/FORMAT

Data element	Description	Is agency input required?
Federal agency user identification.	User ID of Federal agency representative who is authorized to post information to the FedGrants.gov site.	One entry required.
Federal agency user password.	Password of Federal agency representative who is authorized to post information in the FedGrants.gov site.	One entry required.
Announcement type	Type of announcement to which the synopsis relates: Initial announcement Modification to previously issued announcement.	One entry required Modification requires date and only changes made to the initial announcement.
Funding opportunity title	The Federal agency's title for the funding opportunity (including program subcomponent names, as the agency deems appropriate).	One entry required.
Funding opportunity number	The number, if any that the Federal agency assigns to the announcement. For a modification of a previously issued announcement, use the funding opportunity number of the earlier announcement.	Optional for initial announcement, if a number is not assigned, FedGrants.gov will assign one. Agency input is required for modification.

GRANTS.GOV FIND DATA ELEMENTS/FORMAT—Continued

Data element	Description	Is agency input required?
Catalog of Federal Domestic Assistance (CFDA) number.	Number(s) of the CFDA listing(s) for program(s) included in the announcement (*e.g.,* 12.300).	At least one entry required (may list more than one) if the Federal agency is subject to the requirement in 31 U.S.C. chapter 61, to report to the CFDA. Federal agencies that have programs not listed in the CFDA, may arrange with FedGrants.gov to insert an alternative number that will allow listing of the funding opportunity.
Federal agency name	Name of the Federal organization responsible for the announcement, including agency name and as applicable, specific subcomponent (e.g., department, bureau, directorate, or division).	Optional. If an name office name is not provided, FedGrants.gov will insert the office name provided when the agency initially registered and obtained a user ID and password.
Federal agency contact for electronic access problems.	Should list name of person (e.g., webmaster) to whom potential applicants should refer questions if they cannot link from FedGrants.gov to the full announcement (this person is distinct from the programmatic and other agency contacts who are listed in the full announcement).	At least one entry required. May list more than one.
E-mail address for Federal agency contact for electronic access problems.	E-mail address of Federal agency contact who can help with electronic access problems.	Required. May list only one.
Telephone number for Federal agency contact for electronic access problems.	Telephone number of Federal agency contact who can help with electronic access problems.	Required. May list only one.
Funding opportunity description.	A concise description of the funding opportunity, designed to contain sufficient information for potential applicants to decide whether they are interested enough to read the full announcement.	Required.
Funding instrument type	Types of instruments that may be awarded (codes proved for system-to-system interface): Grant (G) Cooperative Agreement (CA) Procurement Contract (PC) Other (O) Note that if your announcement states that you may award procurement contracts, as well as assistance instruments, the announcement must be posted to both the procurement and assistance modules of Grants.gov FIND.	Required. Select all that apply (up to 4 codes).
Category of funding activity	Designed to allow potential applicants to narrow their search to programs in the CFDA categories of interest to them. Note that the terms are defined in the CFDA. List all categories that apply (codes provided for system-to- system interface): Agriculture (AG) Arts (AR-see ''Cultural Affairs'' in CFDA Business and Commerce (BC) Community Development (CD) Consumer Protection (CP) Disaster Prevention and Relief (DPR) Education (ED) Employment, Labor and Training (ELT) Energy (EN) Environment (ENV) Food and Nutrition (FN) Health (HL) Housing (HO) Humanities (HU-see ''Cultural Affairs'' in CFDA) Income Security and Social Services (ISS) Information and Statistics (IS) Law, Justice and Legal Services (LJL) Natural Resources (NR) Regional Development (RD) Science and Technology and other Research and Development (ST) Transportation (T) Other (O-see text field entitle ''Explanation of other category of funding activity'' for clarification.)	At least one entry required and may list as many as needed. There is no default value. If the category of funding activity does not clearly fit in any listed category, must select, ''Other.''
Explanation of ''other'' category of funding activity.	A text description of ''Other'' category or categories of funding activity applicable to the funding opportunity.	Required if an agency selects ''other'' as a category of funding activity, either by itself or in combination with one or more other categories.

GRANTS.GOV FIND DATA ELEMENTS/FORMAT—Continued

Data element	Description	Is agency input required?
Estimated total program funding.	The total amount of funding the agency expects to make available for awards under this announcement.	Optional. Default, if agency does not provide input, is ''not available.'' However, agencies should provide this information whenever possible.
Expected number of awards	The number of individual awards the agency expects to make under this announcement.	Optional. Default, if agency provides no input, is ''not available.'' However, agencies are strongly encouraged to provide this information whenever possible.
Ceiling, if any, on amount of individual award.	The maximum dollar amount for an individual award under this announcement that the awarding agency will not exceed.	Required. Enter a number or ''none.''
Floor, if any, on amount of individual award.	Any minimum dollar amount for an individual award under this announcement (i.e., if the awarding agency will not make smaller awards under any circumstances).	Required. Enter a number or ''none.''
How to get full announcement.	Hypertext stating where to get the full announcement, if it si available on the Internet. This field should include the descriptor that precedes the URL for the full announcement (e.g., ''Click on the following link to see the full text of the announcement for this funding opportunity'').	Required.
Electronic link to full announcement.	The URL for the full announcement, unless the announcement is uploaded in Grants.gov FIND.	Agency input is optional because there will be no URL if the agency uploads the announcement in Grants.gov FIND and does not also post it on the Internet.
Eligible applicants	Designed to help potential applicants narrow their searches to programs where they are most likely to be eligible, although they still must read the full announcement for details because eligibility may be further limited to certain subsets of applicants within categories below (codes provided for system-to-system interface). 99-Unrestricted (i.e., open to any type of entity below), subject to any exceptions listed in the text field entitled ''Additional information on eligibility.''. Government Codes: 00–State governments 01–County governments 02–City or township governments 04–Special district governments 05–Independent school districts 06–State controlled institutions of higher education 07–Native American tribal governments (Federally recognized) 08–Public Housing Authorities/Indian housing authorities Non-Government organizations: 11–Native American tribal organizations (other than Federally recognized tribal governments) 12–Nonprofits with 501©)(3) IRS status, other than institutions of higher education. 13–Nonprofits without 501©)(3) IRS status, other than institutions of higher education 20–Private institutions of higher education 21–Individuals 22–For-profit organizations other than small businesses 23–Small businesses 25–Others (see text field entitled ''Additional information on eligibility'' for clarification)	Required to either select ''99'' for unrestricted or select all others that apply.
Additional information on eligibility.	Explanatory information to provide any needed clarification of the meaning of ''unrestricted'' (e.g., all but foreign entities) to identify types of recipients meant by ''all others,'' or to provide further information about limitations for any other categories (*e.g.,* for categories 6 and 20, a limitation to historically Black colleges and universities).	Required if agency selects either category 25 or category 99 in ''eligible applicants'' field. If agency selects category 99 and there are not further limitations, enter ''no restrictions.'' Optional for additional information related to any category other than 99 or 25.
Cost sharing or matching requirement.	Answer to question: Is cost sharing or matching required? (Y or N).	Required.

GRANTS.GOV FIND DATA ELEMENTS/FORMAT—Continued

Data element	Description	Is agency input required?
Due date for applications	Date when applications are due (or latest date when applications accepted, if announcement has multiple due dates or is a general announcement that is open for a specified period with applications accepted at any time during that period). **Note:** This field is to contain the date when pre-applications, rather than applications, are due if an applicant must submit a pre-application to be considered for an award.	Required, if Explanation of application due dates' field is not completed. Optional otherwise.
Explanation of application due dates.	Used by agencies wanting to post more information about due date(s) for potential applicants. For example, the field may be used to describe programs with multiple due dates or ones where applications are accepted at any point within a broad time window. The field also may be used to add information about the time when applications are field due (*e.g.*, 5 p.m. EDT on the date given in the ''Due date for applications'' field).	Optional (**Note:** ''Due date for applications'' field is required if this ''Explanation of application due dates'' text is not completed).
Date of Grants.gov FIND posting.	Month, day, and year when the agency wants the synopsis posted on Grants.gov FIND (*e.g.*, some agencies may build in delays to allow announcements to appear first in the FEDERAL REGISTER or at agencies Internet site. Format is MMDDCCYY.	Required.
Date for Grants.gov FIND to archive.	Month, day and year when the agency wants the synopsis archived. Format is MMDDCCYY.	Optional. Default, if agency provides no input, is 30 days after the date given in the ''Due date for applications'' field.

[FR Doc. 03–25488 Filed 10–7–03; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form T–6—OMB Control No. 3235–0391—SEC File No. 270–344;

Form 11–K—OMB Control No. 3235–0082—SEC File No. 270–101;

Form 144—OMB Control No. 3235–0101—SEC File No. 270–112.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget the requests for extension of the previously approved collections of information discussed below.

Form T–6 (OMB Control No. 3235–0391, SEC File No. 270–344) is a statement of eligibility and qualification for a foreign corporate trustee under the Trust Indenture Act of 1939. Form T–6 provides the basis for determining if a trustee is qualified. Form T–6 is filed on occasion. The information collected must be filed with the Commission and is publicly available. Form T–6 takes approximately 17 burden hours to be prepared and is filed by 15 respondents. It is estimated that 25% of the 255 total burden hours (64 hours) is prepared by the filer. The remaining 75% of burden hours is prepared by outside counsel.

Form 11–K (OMB Control No. 3235–0082; SEC File No. 270–101) is the annual report designed for use by employee stock purchase, savings and similar plans to facilitate their compliance with the reporting requirement. The Form 11–K is necessary to provide employees with information, including financial information, with respect to the investment vehicle or plan itself. Also, Form 11–K provides employees with the necessary information to assess the performance of the investment vehicle in which their money is invested. Form 11–K is filed on occasion. The information collected must be filed with the Commission and is publicly available. Form 11–K takes approximately 30 burden hours to prepare and is filed by 2,300 respondents for a total of 69,000 burden hours.

Form 144 (OMB 3235–0101; SEC File No. 270–112) is used to report the sale of securities during any three-month period that exceeds 500 shares or other units or has an aggregate sales price in excess of $10,000. Form 144 operates in conjunction with Rule 144. If the information collection was not required, the objectives of the rule could not be met. The information collected must be filed with the Commission and is publicly available. Form 144 takes approximately 2 burden hours to prepare and is filed by 18,096 respondents for a total of 36,192 total burden hours.

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.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 2, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–25511 Filed 10–7–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 5th Street, NW., Washington, DC 20549.

Extension:
Rule 44, SEC File No.270–162; OMB Control No. 3235–0147;

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the matters relating to the previously approved collections of information discussed below.

Rule 44, Part 250.44 [17 CFR 250.44] under the Public Utility Holding Company Act of 1935, as amended (''Act''), 15 U.S.C. 79, *et seq.*, prohibits sales of utility assets and utility securities owned by public utility holding companies registered under the Act, except pursuant to a declaration filed with, and approved by, the Commission.

The Commission estimates that the total annual reporting burden of Rule 44 is 96 hours (4 responses × 24 hours = 96 hours).

The estimate of average burden hours is made for purposes of the Paperwork Reduction Act and is not derived from a comprehensive or representative survey or study of the costs of complying with the requirements of Commission rules and forms.

An agency may not conduct, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 1, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–25512 Filed 10–7–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Notice of Application To Withdraw From Listing and Registration on the Philadelphia Stock Exchange, Inc. (Insignia Systems, Inc., Common Stock, $.01 Par Value) File No. 1–13471

October 2, 2003.

Insignia Systems, Inc., a Minnesota corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934, as amended (''Act''),[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and registration on the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'').

The Board of Directors (''Board'') of the Issuer approved a resolution on April 11, 2000 to withdraw its Security from listing on the Exchange. The Issuer states that it is taking such action for the following reasons: the Security is actively traded on the Nasdaq National Market System (''Nasdaq'') and the Issuer fully intends to maintain the listing and registration on Nasdaq. In addition, the Security has not traded on the Phlx since May of 1999.

The Issuer states in its application that it has met the requirements of Phlx Rule 809 governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and from registration under Section 12(b) of the Act[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before October 24, 2003 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Phlx and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–25453 Filed 10–7–03; 8:45 am]

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[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).
[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Lifestream Technologies, Inc., Common Stock, $.001 Par Value) File No. 1–16161

October 2, 2003.

Lifestream Technologies, Inc., a Nevada corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.001 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of Amex Rule l8 by complying with all applicable laws in the State of Nevada, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors (''Board'') of the Issuer approved a resolution on September 23, 2003 to withdraw the Issuer's Security from listing on the Amex. The Board of the Issuer states that the reason it is taking such action is due, in part, to the difficulty of maintaining compliance with the continued listing standards of the Amex as well as related cost constraints. The Issuer states it is currently seeking to list its Security on the OTC Bulletin Board.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under Section 12(b) of the Act[3] shall not affect its obligation to be

[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).

registered under Section 12(g) of the Act.[4]

Any interested person may, on or before October 24, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–25452 Filed 10–7–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48587; File No. SR–ISE–2003–18]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by International Securities Exchange, Inc., Relating to Trading Options on the S&P Small Cap 600 Index

October 2, 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 August 29, 2003, the International Securities Exchange, Inc. (''Exchange'' or ''ISE'') 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. On September 26, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposed rule change, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend ISE Rules 2001, 2004, 2006 and 2009, to enable the Exchange to trade options on the S&P Small Cap 600. The text of the proposed rule change, as amended, is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 2001. Definitions

(l) The term ''reporting authority'' with respect to a particular index means the institution or reporting service designated by the Exchange as the official source for (1) calculating the level of the index from the reported prices of the underlying securities that are the basis of the index and (2) reporting such level. The reporting authority for each index approved for options trading on the Exchange [shall be Specified (as provided in Rule 2000)] *is specified* in Supplementary Material *.01* to this Rule 2001.

* * * * *

Supplementary Material to Rule 2001

.01 The reporting authorities designated by the Exchange in respect of each index underlying an index options contract traded on the Exchange are as provided in the chart below.

Underlying index	*Reporting authority*
S&P SmallCap 600 Index.	*Standard & Poor's.*

Rule 2004. Position Limits for Broad-Based Index Options

(a) Rule 412 generally shall govern position limits for broad-based index options, as modified by the Rule 2004. There may be no position limits for certain Specified (as provided in Rule 2000) broad-based index options contracts. All other Broad-based index options contracts shall be subject to a contract limitation fixed by the Exchange, which shall not be larger than the limits [Specified (as provided in Rule 2000) in this paragraph] *provided in the chart below.*

Broad-based underlying index	*Standard limit (on the same side of the market)*	*Restrictions*
S&P SmallCap 600 Index.	*100,000 contracts.*	*No more than 60,000 near-term.*

* * * * *

Rule 2006. Exemptions from Position Limits

(a) Broad-based Index Hedge Exemption. The broad-based index hedge exemption is in addition to the other exemptions available under Exchange Rules, interpretations and policies. The following procedures and criteria must be satisfied to qualify for a broad-based index hedge exemption:

* * * * *

(5) Positions in broad-based index options that are traded on the Exchange are exempt from the standard limits *up to 75,000 contracts (in addition to standard limit) unless otherwise* [to the extent] Specified (as provided in Rule 2000) in this subparagraph (a)(5).

* * * * *

Rule 2009. Terms of Index Options Contracts

(a) General.

* * * * *

(4) ''European-Style Exercise.'' [Specified (as provided in Rule 2000) *The following* European-style index options, some of which may be A.M.-settled as provided in paragraph (a)(5), [may be] *are* approved for trading on the Exchange[.]*:*

(i) S&P SmallCap 600 Index.

(5) A.M.-Settled Index Options. The last day of trading for A.M.-settled index options shall be the business day preceding the last day of trading in the underlying securities prior to expiration. The current index value at the expiration of an A.M.-settled index option shall be determined, for all purposes under these Rules and the Rules of the Clearing Corporation, on the last day of trading in the underlying securities prior to expiration, by reference to the reported level of such index as derived from first reported sale (opening) prices of the underlying securities on such day, except that:

(i) In the event that the primary market for an underlying security does

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[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated September 25, 2003 (''Amendment No. 1''). In Amendment No. 1, the ISE represented that it would monitor the Standard and Poor's Small Cap 600 Index (''S&P Small Cap 600'' or ''Index'') for the Index's adherence to certain parameters. The ISE represented that it would notify Commission staff if the character of the Index should change from the basic description provided in the instant proposed rule change. The Exchange also represented that it believed its surveillance procedures were adequate to monitor trading in options on the Index. The ISE also provided additional information about the membership of the Intermarket Surveillance Group (''ISG''). In addition, the ISE provided statistics about the median average daily trading volume and about the percentage of securities in the Index that would meet the listing standards applicable to underlying securities for the Exchange's stock options.

not open for trading on that day, the price of that security shall be determined, for the purposes of calculating the current index value at expiration, as set forth in Rule 2008(g), unless the current index value at expiration is fixed in accordance with the Rules and By-Laws of the Clearing Corporation; and

(ii) In the event that the primary market for an underlying security is open for trading on that day, but that particular security does not open for trading on that day, the price of that security, for the purposes of calculating the current index value at expiration, shall be the last reported sale price of the security.

The following A.M.-settled index options [that] are approved for trading on the Exchange*:* [shall be Specified (as provided in Rule 2000) in this subparagraph (a)(5).]

(i) S&P SmallCap 600 Index.

(b) Long-Term Index Options Series.

* * * * *

(2) Reduced Value Long Term Options Series.

(i) Reduced-value long term options series [may be approved for trading on Specified (as provided in Rule 2000) indices.] *on the following stock indices are approved for trading on the Exchange:*

(A) S&P SmallCap 600 Index.

* * * * *

(c) Procedures for Adding and Deleting Strike Prices. The procedures for adding and deleting strike prices for index options are provided in Rule 504, as amended by the following:

(1) The interval between strike prices will be no less than $5.00; provided, that in the case *of the following* [the certain Specified (as provided in Rule 2000)] classes of index options, the interval between strike prices will be no less than $2.50[.]*:*

(i) S&P SmallCap 600 Index, if the strike price is less than $200.00.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to provide for the listing and trading on the Exchange of cash-settled, European-style index options on the S&P SmallCap 600. Options on this index are currently trading on the Chicago Board Options Exchange (''CBOE'').[4] The proposed rule changes adopt the same standards that are currently applied for Index options traded on the CBOE.

a. *Index Design.*

The S&P SmallCap 600 Index is designed to measure the performance of small capitalization stocks. The Index is a capitalization-weighted index of U.S. stocks with each stock affecting the Index in proportion to its market capitalization.

As of August 21, 2003, the 600 component stocks ranged in capitalization from approximately $3 billion to $56 million, and the market capitalization of the Index totaled $397 billion. The largest stock accounted for 0.74% of the total weighting of the Index, while the smallest accounted for 0.01%. The median capitalization of the components in the Index was $517 million. A breakdown of the component stocks by trading markets shows that Nasdaq is the primary market for 43% of the weight of the Index (277 issues), the New York Stock Exchange (''NYSE'') represents 56% (317 issues), and the American Stock Exchange (''AMEX'') represents 1% (6 issues).

A total of 10 major industry sectors are represented in the Index. Those sectors and their weights are as follows: (1) Consumer Discretionary (20.2%); (2) Industrials (19.0%); (3) Information Technology (16.6%); (4) Financials (13.9%); (5) Health Care (12.9%); (6) Energy (5.4%); (7) Materials (4.4%); (8) Utilities (3.8%); (9) Consumer Staples (3.6%); and (10) Telecommunications Services (0.2%). During the period from March through August 2003, the average daily trading volume for the Index component stocks ranged from 8,468 to 4.3 million shares. As of September 25, 2003, a significant majority of the stocks are relatively actively traded, as indicated by an Index component median average daily trading volume of 139,002 shares. The top 100 stocks account for 34.14% of the Index, while the bottom 100 stocks account for 4.12% of the Index. The prices for each of the components ranged from $2.10 to $410.60. The average price was $23.18. The shares outstanding for each of the Index component stocks ranged from approximately 4.96 million to 138.64 million with an average of 29.12 million.

S&P relies on several criteria to add or delete Index component stocks. Among other things, stocks must trade on the NYSE or Amex, or be Nasdaq NMS securities; stocks must have adequate liquidity and reasonable price evidenced by a 0.3 ratio of annual dollar value traded to market capitalization; the companies must have market capitalization between $250 million and $900 million; companies must have financial viability, measured as four consecutive quarters of positive as-reported earnings; companies must have public float of at least 40% of the stock; and companies must be operating companies, and not closed-end funds, holding companies, partnerships, investment vehicles or royalty trusts.[5]

b. *Calculation.*

The value of the Index is determined by Standard and Poor's by adding the price of each stock times the number of shares outstanding. This sum is then divided by an index divisor (''Index Divisor''), which gives the Index a value of 100 on its base date of December 31, 1993. The Index Divisor is adjusted by Standard & Poor's for pertinent changes in the component stocks. The Index had a closing value of 215.54 on May 31, 2003.

c. *Maintenance.*

The S&P Small Cap 600 is maintained by Standard and Poor's and ISE has represented that it will not influence any S&P decisions concerning the maintenance of the Index.[6] To maintain continuity of the Index, Standard and Poor's adjusts the Index Divisor to reflect certain events relating to the component stocks. These events include, but are not limited to, adjustments for company additions and deletions, share changes, stock splits, stock dividends, and stock price adjustments due to company restructurings or spinoffs. Some corporate actions, such as stock splits and stock dividends, require simple

[4] *See* Securities Exchange Act Release No. 35532 (March 24, 1995), 60 FR 16518 (March 30, 1995) (SR–CBOE–94–43) (Order approving the listing and trading of the S&P 600 on the CBOE).

[5] Should the character of the Index change from the basic description contained in the rule filing, ISE will so notify the Commission staff. Such a change could require filing a proposed rule change pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder. *See* Amendment No. 1, *supra* note 3.

[6] Telephone conference between Katherine Simmons, Vice President and Associate General Counsel, ISE, and Florence Harmon, Senior Special Counsel, Division, Commission, on October 1, 2003.

changes in the common shares outstanding and the stock prices of the companies in the Index. Other corporate actions, such as share issuances, change the market value of the Index and require an Index Divisor adjustment as well.

Although ISE is not involved in the maintenance of the Index, it represents that it will monitor the Index semi-annually and will notify Commission staff in the event that (1) 10% of the capitalization of the Index is comprised of securities with a market capitalization of less than $100 million; (2) 10% of the capitalization of the Index is made up of components with an average daily trading volume of less than 10,000 shares over the previous six months; or (3) non-U.S. component securities (common stock or ADRs) that are not subject to a comprehensive surveillance agreement in the aggregate represent more than 20% of the weight of the Index's aggregate market capitalization.

d. *Index Options Trading.*

In addition to regular Index options, the Exchange may provide for the listing of long-term (up to three years expiration) index options series and reduced-value long-term index options on the Index. For reduced-value long-term index options, the underlying value would be computed at one-tenth of the Index level. The current and closing index value of any such reduced-value long-term index option will, after such initial computation, be rounded to the nearest one-hundredth.

The Exchange seeks to have the discretion to list series in 2½ point intervals when the Index level falls below 200. The minimum tick size (trading interval) for series trading below $3 will be $.05 ($5.00) and for series trading above $3 will be $.10 ($10.00). The trading hours for options on the Index will be from 9:30 a.m. to 4:15 p.m. Eastern time.[7]

e. *Exercise and Settlement.*

The options on the Index will be European-style index options that expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 4:15 p.m. Eastern time on the immediately preceding Thursday.[8] The Index multiplier will be 100. The exercise settlement value of the Index at option expiration will be calculated by Standard & Poor's based on the opening prices of the component securities on the business day prior to expiration (''A.M. Settlement''). If a stock fails to open for trading, the last available price on the stock will be used in the calculation of the index.

f. *Position Limits.*

The Exchange proposes to establish position limits for options on the S&P Small Cap 600 at 100,000 contracts on either side of the market, and no more than 60,000 of such contracts may be in the series in the nearest expiration month. The hedge exemption for this broad-based Index will be an additional 75,000 contracts.

g. *Exchange Rules Applicable.*

As modified herein, the Exchange Rules in Chapter 20 will be applicable to S&P Small Cap 600 options.

h. *Surveillance.*

The Exchange conducts routine surveillance for trading of equity options and has, where appropriate, incorporated all index options into its program. In addition, the Exchange has developed surveillance procedures specific to index options, which have been provided to the Commission. The ISE believes these procedures are adequate to properly monitor trading in options on the S&P Small Cap 600.[9] For surveillance purposes, the Exchange will have complete access to information regarding trading activity in the underlying securities. In addition, the Intermarket Surveillance Group Agreement (''ISG Agreement''), dated June 20, 1994, will be applicable to the trading of options on the Index.[10]

i. *Capacity.*

ISE believes it has the necessary systems capacity to support new series that will result from the introduction of S&P Small Cap 600 index options. ISE has also been informed that the Options Price Reporting Authority (''OPRA'') believes that it has the capacity to support such new series.[11]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act[12] in general, and furthers the objectives of section 6(b)(5),[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, 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

The Exchange did not receive any written comments on the proposed rule change, as amended.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–ISE–2003–18 and should be submitted by October 29, 2003.

[7] Telephone conference between Katherine Simmons, Vice President and Associate General Counsel, ISE, and Florence Harmon, Senior Special Counsel, Division, Commission, on October 1, 2003.

[8] When the last trading day is moved because of Exchange holidays (such as when ISE is closed on the Friday before expiration), the last trading day for expiring options will be Wednesday and the exercise settlement value of Index options at expiration will be determined at the opening of regular Thursday trading.

[9] *See* Amendment No. 1, *supra* note 3.

[10] The ISE is a member of the Intermarket Surveillance Group (''ISG'') under the ISG Agreement, dated June 20, 1994. The members of the ISG include all of the U.S. registered stock and options markets: the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange (''BSE''), the Chicago Board of Options Exchange (''CBOE''), the Chicago Stock Exchange (''CHX''), the Cincinnati Stock Exchange (''CSE''), the National Association of Securities Dealers (''NASD''), the New York Stock Exchange, Inc. (''NYSE'') the Pacific Stock Exchange (''PCX'') and the Philadelphia Stock Exchange (''Phlx''). The ISE members work together to coordinate surveillance and investigative information sharing in the stock and options markets. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses. *See* Amendment No. 1, *supra* note 3.

[11] *See* letter from Joseph P. Corrigan, Executive Director, OPRA to Kathy Simmons, Vice President, Legal & Regulatory, ISE, dated August 28, 2003.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,[14] and, in particular, with the requirements of section 6(b) of the Act [15] and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act,[16] which requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, protect investors and the public interest consistent with the Act.

The Commission finds that the trading of options on the Index will permit investors to participate in the price movements of the 600 securities on which the Index is based. The Commission also believes that the trading of options on the Index will allow investors holding positions in some or all of the securities underlying the Index to hedge the risks associated with their portfolios. Accordingly, the Commission believes S&P Small Cap 600 options will provide investors with an important trading and hedging mechanism that should reflect accurately the overall movement of stocks in the small-capitalization range of U.S. equity securities. By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of S&P Small Cap 600 options will serve to protect investors, promote the public interest, and contribute to remove impediments to a free and open market.[17]

The trading of S&P Small Cap 600 options, however, raises several issues, including issues related to index design, customer protection, surveillance, and market impact. For the reasons discussed below, the Commission believes that the ISE has adequately addressed these issues.

a. Index Design and Structure

The Commission finds that it is appropriate and consistent with the Act to classify the Index as broad-based, and therefore to permit Exchange rules applicable to the trading of broad-based index options to apply to the Index options. Specifically, the Commission believes the Index is broad-based because it reflects a substantial segment of the U.S. equities market, in general, and small-capitalization securities in particular. First, the Index consists of 600 relatively actively traded,[18] small-capitalization domestic securities. Second, the total capitalization of the Index, as of August 21, 2003, was $397 billion, with the market capitalizations of the individual stocks in the Index ranging from a $3 billion to $56 million, with a median value of $517 million. Third, the Index includes stocks of companies from a broad range of industry sectors, and no industry sector comprises more than 20.2% of the Index's total value. Fourth, as of August 21, 2003, no single stock comprised more than 0.74% of the Index's total value, and the percentage weighting of the 100 largest issues in the Index accounted for only 34.14% of the Index. Fifth, the Commission believes that the Index selection and maintenance criteria will serve to ensure that the Index maintains its broad representative sample of stocks in the small-capitalization range of U.S. equity securities. Accordingly, the Commission believes it is appropriate to classify the Index as broad-based.[19] Should the character of the Index change from the basic description contained in the rule filing, ISE will so notify the Commission staff. Such a change could require a filing pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder.[20]

The Commission believes that the general broad diversification, capitalizations, and relatively liquid markets of the Index's component stocks significantly minimize the potential for manipulation of the Index. First, as discussed above, the Index represents a broad cross-section of domestic small capitalization stocks, with no single industry group or stock dominating the Index. Second, the majority of the stocks that comprise the Index are relatively actively traded.[21] Third, the Commission believes that the Index selection and maintenance criteria will serve to ensure that the Index will not be dominated by low-priced stocks with small capitalizations, floats, and trading volumes.[22] Fourth, the ISE will monitor the Index semi-annually, and will notify staff of the Commission in the event that (1) ten percent of the capitalization of the Index is comprised of securities with a market capitalization of less than $100 million; (2) ten percent of the capitalization of the Index is made up of components with an average daily trading volume of less than 10,000 shares over the previous six months; or (3) non-U.S. component securities (common stock or ADRs) that are not subject to a comprehensive surveillance agreement in the aggregate represent more than twenty percent weight of the Index's aggregate market

[14] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of any new option or warrant proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options or warrants on the S&P Small Cap 600 Index will provide investors with a hedging vehicle that should reflect the overall movement of the small-capitalization stock universe. The Commission also believes that these options will provide investors with a means by which to make investment decisions in the small-capitalization equity market, allowing them to establish positions or increase existing positions in small-capitalized stocks in a cost effective manner.

[18] A significant majority of the stocks are relatively actively traded, as indicated by an Index component stock median Average Daily Trading Volume of 139,002 shares. *See* Amendment No. 1, *supra* note 3.

[19] The Commission notes that an index purportedly representing high capitalization stocks might not be deemed to have actively traded stocks if the component stocks' median Average Daily Volume was only 139,002 shares. With regard to a small capitalization index, where almost by their nature the most active stocks will likely not be included, a median average daily trading volume less than that for existing broad based indexes could be acceptable, depending upon the index's other features. For the S&P Small Cap 600, the median average daily trading volume is acceptable given the large number of component stocks and the inclusion of criteria designed to exclude inactively traded stocks from being selected. *See* Amendment No. 1, *supra* note 3.

[20] *See* Amendment No. 1, *supra* note 3.

[21] *See supra* note 18.

[22] Currently, 61% of the Index is accounted for by stocks meeting the ISE's options listing standards. These standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) The public float must be of at least 7 million shares; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million over the preceding twelve months; and (4) the market price must have been at least $3.00 for the previous five consecutive business days if the security is a ''covered security,'' as defined under section 18(b)(1)(A) of the Securities Act of 1933, or $7.50 for a majority of the business days during the preceding three calendar months if the security is not a ''covered security.'' *See* ISE Rule 502.

As a general matter, for broad-based index options, the Commission prefers that at least 50% of an index's components continue to be options-eligible. Given the broad diversity of the Small Cap 600 Index and the selection and maintenance criteria, together with the fact that 61% of the Index's components are options eligible, the Commission believes that the Index will not be readily susceptible to manipulation.

capitalization.[23] Fifth, the Exchange has proposed reasonable position and exercise limits for the Index options that will serve to minimize potential manipulation and other market impact concerns. Although a position and exercise limit of 100,000 contracts is high by traditional standards, in dollar value it represents $2,155,400,000 (based on the May 31, 2003 Index closing value of 215.54), which the Commission believes is small enough to render it unlikely that attempted manipulations of the prices of the Index components would affect significantly the Index's value.[24]

b. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Index options, can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risk of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options will be subject to the same regulatory regime as the other standardized options traded on the ISE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Index options.

c. Surveillance

The Commission generally believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.[25] In this regard, the NYSE, Amex, and the NASD are all members of ISG.[26]

d. Market Impact

The Commission believes that the listing and trading of S&P Small Cap 600 Index Options on the ISE will not adversely affect the underlying securities markets.[27] First, as described above, the Index is broad-based and comprised of 600 stocks with no one stock or industry group dominating the Index. Second, as noted above, the stocks contained in the Index have relatively large capitalizations and are relatively actively traded. Third, existing ISE stock index options rules and surveillance procedures will apply to S&P Small Cap 600 options. Fourth, the position limits of 100,000 contracts on either side of the market, with no more than 60,000 of such contracts in a series in the nearest month expiration month, will serve to minimize potential manipulation and market impact concerns. Fifth, the risk to investors of contra-party non-performance will be minimized because the Index options will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States.

Lastly, the Commission believes that settling expiring S&P Small Cap 600 options based on the opening prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing expiring index options for exercise settlement purposes based on opening prices rather than closing prices may help reduce adverse effects on the securities underlying options on the Index.[28]

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,[29] for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission believes that, the trading of these options on the Exchange will introduce price competition to the benefit of public investors, by providing investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the options promptly. In addition, the proposed rule change, as amended, reflects the listing and trading standards currently applied by the CBOE to enable their members to trade the S&P Small Cap 600.[30] Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) and 19(b)(2) of the Act,[31] to approve the proposed rule change, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the act,[32] that the proposed rule change (SR–ISE–2003–18), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–25513 Filed 10–7–03; 8:45 am]

BILLING CODE 8010–01–P

[23] *See* Amendment No. 1, *supra* note 3.

[24] The Commission would not be inclined to approve such a high position limit if the position limit dollar equivalent amount were substantially higher than as currently proposed.

[25] *See* Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992) (SR–CBOE–91–51).

[26] *See supra* note 10.

[27] The ISE has stated that it has the necessary systems capacity to support new series that would result from the introduction of the S&P Small Cap 600 options. In addition, the OPRA has represented that additional traffic generated by options on the S&P Small Cap 600 Index is within OPRA's capacity. *See supra* note 11.

[28] *See* Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (SR–CBOE–92–09).

[29] 15 U.S.C. 78s(b)(2).

[30] *See supra* note 4.

[31] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3549]

State of Delaware (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective September 29, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on September 18, 2003 and continuing through September 29, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 19, 2003, and for economic injury the deadline is June 21, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 2, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–25473 Filed 10–7–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3545]

State of North Carolina (Amendment #2)

In accordance with a notice received from the Department of Homeland

Security—Federal Emergency Management Agency, effective October 1, 2003, the above numbered declaration is hereby amended to include Franklin, Granville, Greene, Lenoir, Nash, Person, Vance, Warren, Wayne and Wilson Counties as disaster areas due to damages caused by Hurricane Isabel occurring on September 18, 2003 and continuing through September 26, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Caswell, Durham, Johnston, Orange and Wake in the State of North Carolina; and Halifax and Mecklenburg Counties is the Commonwealth of Virginia may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 17, 2003, and for economic injury the deadline is June 18, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 2, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–25475 Filed 10–7–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3534]

State of Ohio (Amendment #5)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective October 1, 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 October 7, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is October 7, 2003, and for economic injury the deadline is May 3, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 2, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–25474 Filed 10–7–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 23–16A, Powerplant Guide for Certification of Part 23 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular AC 23–16A, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular, Advisory Circular (AC) 23–16A, Powerplant Guide for Certification of Part 23 Airplanes, that provides information and guidance concerning acceptable means, but not the only means of compliance with Title 14 of the Code of Federal Regulations (14 CFR) part 23, subpart E, applicable to the powerplant installation in normal, utility, acrobatic, and commuter category airplanes. The AC consolidates existing policy documents, and certain AC's that cover specific paragraphs of the regulations, into a single document. Material in the AC is neither mandatory nor regulatory in nature and does not constitute a regulation.

DATES: Comments must be received on or before December 8, 2003.

ADDRESSES: If possible, please submit your comments electronically to *Mark.Orr@faa.gov* Otherwise, send all comments on the proposed AC to: Federal Aviation Administration, Attention: Mr. Mark Orr, ACE–111, 901 Locust, Kansas City, MO 64106. Comments may be inspected at the above address between 7:30 and 4 p.m. weekdays, except Federal holidays. All comments should contain the name and telephone number of the individual or company making the comment, the paragraph and page number that the comment references, the reason for comment, and the recommended resolution.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Orr, Standards Office, Small Airplane Directorate, Aircraft Certification Service, Kansas City, Missouri 64106, telephone: (816) 329–4151, fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 23–16A and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Small Airplane Directorate before issuing the final AC. The proposed AC can be found and downloaded from the Internet at *http://www.faa.gov/certification/aircraft* and taking the following steps: Select ''Regulations, Policy, and Guidance,'' next select ''Draft Advisory Circulars,'' and, finally, select ''Open for Comment.'' A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT**.

Issued in Kansas City, Missouri on September 24, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–25424 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collections. The ICR describes the nature of the information collection and the expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collections of information was published on July 25, 2003, page 44137.

DATES: Comments must be submitted on or before November 7, 2003. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

1. *Title:* Notice and Approval of Airport Noise and Access Restrictions.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0563.

Form(s): N/A.

Affected Public: A total of 8 airport operators.

Abstract: The Airport Noise and Capacity Act of 1990 mandates the formulation of a national noise policy. One part of that mandate is the development of a national program to review noise and access restrictions on the operation of Stage 2 and 3 aircraft. 14 CFR part 161 is the principal means. Respondents are airport operators proposing voluntary agreements and/or mandatory restrictions on Stage 2 and Stage 3 aircraft operations, and aircraft operators that request reevaluation of a restriction.

Estimated Annual Burden Hours: An estimated 30,000 hours annually.

2. *Title:* Associate Administrator for Commercial Space Transportation (AST) Customer Service Survey.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0611.

Form(s): N/A.

Affected Public: A total of 300 commercial space transportation customers.

Abstract: The FAA Office of the Associate Administrator for Commercial Space Transportation (AST) conducts this survey in order to obtain industry input on customer service standards which have been developed and distributed to industry customers. This is a requirement of the White House NPR Customer Service Initiative. AST collects and analyzes the data for results.

Estimated Annual Burden Hours: An estimated 300 hours annually.

3. *Title:* Service Difficulty Report.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0663.

Form(s): FAA Form 8070–1.

Affected Public: A total of 7,695 aircraft and repair station operators.

Abstract: The administrator has determined, based on evaluation of previous accidents and other incidents, that certain events involving malfunctions and defects may be precursors to the recurrence of these accidents. As a result, operators and repair stations are required to report any malfunctions and defects to the Administrator.

Estimated Annual Burden Hours: An estimated 6,107 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on October 1, 2003.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 03–25434 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Lincoln Airport, Lincoln, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Lincoln Airport Authority for Lincoln Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is September 26, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Schenkelberg, Federal Aviation Administration, Central Region, 901 Locust, Kansas City, MO 64106, 816–329–2645.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Lincoln Airport are in compliance with applicable requirements of part 150, effective September 26, 2003. Under 49 U.S.C. section 47503, an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. 49 U.S.C. Section 47503 requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Aviation Safety and Noise Abatement Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by Lincoln Airport Authority. The documentation that constitutes the ''noise exposure maps'' as defined in section 150.7 of part 150 includes: ''2002 Noise Exposure Map and 2007 Noise Exposure Map''. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on September 26, 2003.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under 49 U.S.C. Section 47503, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of 49 U.S.C. Section 47506. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under 49 U.S.C. Section 47503. The FAA has relied on the certification

by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the full exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, Central Region, 901 Locust, Kansas City, MO 64106; Jon L. Large, Lincoln Airport, 2400 West Adams, Lincoln, NE 68504.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Kansas City, Missouri, on September 26, 2003.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 03–25437 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Technical Standard Order (TSO)–C168, Aviation Visual Distress Signals

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability and requests for public comment.

SUMMARY: This notice announces the availability of and requests comments on proposed Technical Standard Order (TSO)–C168, Aviation Visual Distress Signals. This proposed TSO tells manufacturers and designers of aviation visual distress signals what minimum performance standards (MPS) their equipment must first meet to obtain approval and identification with the applicable TSO marking.

DATES: Comments must identify the TSO and arrive by November 7, 2003.

ADDRESSES: Send all comments on the proposed TSO to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Technical Programs and Continued Airworthiness Branch, AIR–120, Room 815, 800 Independence Avenue SW., Washington, DC 20591. ATTN: Mr. Dave Rich, AIR–120. Or, deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Rich, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Technical Programs and Continued Airworthiness Branch, AIR–120, Room 815, 800 Independence Avenue SW., Washington, DC 20591. Telephone: (202) 267–7141, fax: (202) 267–5340, e-mail: *dave.rich@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

You may comment on the proposed TSO listed in this notice by sending written data, views, or arguments to the above listed address. You may also examine comments received on the proposed TSO, before and after the comment closing date, in Room 815, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director of the Aircraft Certification Service will consider all communications received by the closing date before issuing the final TSO.

Background

This proposed TSO gives the MPS for aviation visual distress signals. The MPS are based on Society of Automotive Engineers, Inc. (SAE) Aerospace Standard (AS) 5134, ''Aviation Distress Signals,'' dated June 2001. The signals must also meet specific test criterion contained in RTCA Document No. RTCA/DO–160D, ''Environmental Conditions and Test Procedures for Airborne Equipment,'' Change 4, dated July 29, 1997. This TSO's standards apply to handheld, high-intensity, stroboscopic light sources that can be added to aviation survival kits to supplement pyrotechnic devices. These light sources will significantly eliminate potential equipment and personnel hazards associated with using pyrotechnics devices in inflatable life rafts, by providing an equivalent level of safety that meets or exceeds the current performance standards for pyrotechnics devices that aid in locating and rescuing aviation accident survivors.

How To Get Copies

You may get a copy of the proposed TSO via the Internet at *http://www.faa.gov/certification/aircraft/TSOA.htm*, or by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on October 2, 2003.

David W. Hempe,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 03–25435 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–3–16255]

Agency Information Collection Activities; Request for Comments; Renewed Approval of Information Collection; State Right-of-Way Operations Manuals, OMB Control Number: 2125–0586

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew an information collection. The collection involves State Departments of Transportation (STD) providing their Right-of-Way Operations Manuals to FHWA. The information to be collected will be used to certify that the manuals are representative of the states' right-of-way procedures and the information is necessary to comply with the FHWA Final Rule for the Right-of-Way program on December 21, 1999. We are required by the Paperwork Reduction Act of 1995 to publish this notice in the **Federal Register**.

DATES: Please submit comments by December 8, 2003.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FHWA–3–16255 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.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

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.

You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed

collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized, including the use of electronic technology, without reducing the quality of the collected information.

FOR FURTHER INFORMATION CONTACT: Wayne Coil, (202) 366–2038, Office of Real Estate Services, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: State Right-of-Way Operations Manuals.

OMB Control No.: 2125–0586.

Background: The Federal Highway Administration (FHWA) issued a final rule for the Right-of-Way Program on December 21, 1999 (**Federal Register** Volume 64, Number 244, pages 71284–71297). This issuance was a comprehensive rewrite of rules governing the use of Federal-aid funds for right-of-way acquisition, property management, and project development. The regulation reduces Federal regulatory requirements and places primary responsibility for a number of approval actions at the state level. The rule states that states must certify at 5-year intervals that their State Right-of-Way Operations Manuals are representative of their procedures, or submit an updated manual. STDs are required to update their manuals to reflect changes in Federal requirements for programs administered under Title 23 U.S.C. These manuals reflect how the STD plans to perform real estate acquisition, property management, and maintain the integrity of the right-of-way for highway and related transportation systems. The State manuals may be submitted to FHWA electronically or they can be made available by postings on state Web sites.

Respondents: State Departments of Transportation (52 including the District of Columbia and Puerto Rico).

Frequency: Once initially, then States update their operations manuals for review.

Estimated Average Burden per Response: 75 hours per respondent.

Estimated Total Annual Burden Hours: 75 hours for each of the 52 State Departments of Transportation. The total is rounded to 4,000 burden hours annually.

Issued on: October 2, 2003.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 03–25520 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–98–3298 and FMCSA–98–3299]

Notice of Scoping Meetings and Soliciting Scoping Comments for Programmatic Environmental Impact Statement and General Conformity Evaluation for Proposal To Promulgate North American Free Trade Agreement Regulations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Announcement of public scoping meetings.

SUMMARY: The agency is in the early stages of preparing an environmental analysis, including a Programmatic Environmental Impact Statement (PEIS) and a General Conformity Evaluation (GCE), assessing the potential environmental impacts'such as impact on air quality'on its proposal to promulgate regulations allowing trucks and buses domiciled in Mexico to operate throughout the United States under conditions ensuring public safety. The FMCSA is holding several public meetings on environmental issues and concerns to be considered in the PEIS and GCE. The purpose of these meetings is to obtain the public's input on the potential range or scope of environmental impacts and alternatives that should be considered in the PEIS and GCE. FMCSA invites the public to submit comments on the environmental issues and topics that they believe are appropriate for inclusion in these analyses.

DATES: *See* **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: *See* **SUPPLEMENTARY INFORMATION** section for meeting addresses.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Rombro, Analysis Division, Office of Information Management, (202) 366–1861, FMCSA, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001. You may also visit FMCSA's Web site at *http://www.fmcsa.dot.gov/NAFTAEIS* or call FMCSA's toll-free hotline number at (800) 288–5634. Inquiries may be made in Spanish or English.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Addresses

The scoping meeting addresses, dates and times are as follows:

1. El Paso—October 21, 2003, 7 p.m. ''9 p.m.; Franklin High School, 900 North Resler Drive, El Paso, TX; (915) 832–6600.
2. Phoenix—October 21, 2003; 7 p.m. ''9 p.m.; Wyndham Phoenix Hotel, 50 East Adams Street, Phoenix, AZ; (602) 333–0000.
3. San Diego—October 22, 2003; 7 p.m. ''9 p.m.; San Diego Concourse, 202 C Street, San Diego, CA; (619) 525–5000.
4. Nogales—October 22, 2003; 7 p.m. ''9 p.m.; Santa Cruz County Complex, 2150 N. Congress Drive, Nogales, AZ; (520) 375–7812.
5. Los Angeles—October 23, 2003; 7 p.m. ''9 p.m.; Los Angeles Convention Center; 1201 South Figueroa Street; Los Angeles, CA;
(213) 741–1151.
6. Las Cruces—October 27, 2003; 7 p.m. ''9 p.m.; New Mexico State University, Corbett Center Student Union; Las Cruces, NM;
(505) 646–3049.
7. Laredo—October 27, 2003; 7 p.m. '' 9 p.m.; Texas A&M International University, 5201 University Blvd, Laredo, TX; (956) 326–2001.
8. Houston—October 28, 2003; 7 p.m. ''9 p.m.; Reliant Arena; One Reliant Park, Houston, TX; (800) 776–4995.
9. Washington, DC—October 30, 2003; 2 p.m. ''4 p.m.; Loews L'Enfant Plaza Hotel; 480 L'Enfant Plaza, Washington, DC; (202) 484–1000.

Pre-Registration to Speak at Public Meetings

Persons wanting to speak at a public meeting are encouraged to pre-register by calling FMCSA's toll-free hotline at (800) 288–5634 and leave their name, telephone number, the name of any group, business, or agency affiliation, if applicable, and the date and location of the meeting at which they wish to speak. The deadline for pre-registration for all meetings is October 20, 2003.

Persons will be called to speak at each meeting in the following order: elected officials, those who pre-registered, and then those wishing to speak who did not pre-register. Those wishing to speak at more than one meeting will also be accommodated, after their first meeting, as time allows and after all others have had an opportunity to participate. As FMCSA would like as many persons as possible to participate and since there will be a limited amount of time at each meeting, all speakers are strongly

encouraged to prepare summary oral comments, and submit detailed comments in writing at the meeting or as described below. FMCSA also encourages groups of individuals with similar comments to designate a representative to speak for them. A translator will be available at the meetings for Spanish-speakers wishing to speak.

In addition to submitting comments at the public meetings, the public may submit comments to FMSCA by November 7, 2003, via one of the following:

- Project Web site at *http://www.fmcsa.dot.gov/NAFTAEIS;*
- E-mail to *NAFTAEIS@fmcsa.dot.gov;*
- FAX at (800) 260–9702; or
- Mail to NAFTA EIS, P.O. Box 4050, Merrifield, VA 22116–4050.

After completing the scoping comment process, FMCSA will prepare a draft EIS and GCE to address the environmental concerns identified by the public. This draft EIS will be made publicly available for review and comment. FMCSA will then prepare a final EIS and issue a record of decision that considers and responds to comments concerning the draft EIS. Both the draft and final PEIS will be available to the public on the Project Web site at *http://www.fmcsa.dot.gov/NAFTAEIS.* In addition, copies can be requested by calling FMCSA's toll-free hotline at (800) 288–5634.

Background

The FMCSA is responsible for ensuring the safe operation of commercial motor vehicles within the United States. In carrying out these responsibilities, FMCSA proposed regulations in May 2001 prescribing application procedures and procedures for monitoring the safety of Mexico-domiciled carriers seeking permission to operate within the United States. FMCSA proposed these rules pursuant to NAFTA and in anticipation of the President lifting a moratorium previously imposed by Congress on the operating authority of Mexico-domiciled carriers. The proposed regulations would permit Mexico-domiciled carriers to operate throughout the entire Unites States, rather than only in the narrow border commercial zone to which they are currently confined. The implementation of the rules was put on hold as a result of a court decision finding FMCSA should have conducted a more extensive analysis of the environmental impacts of the regulations. *See Public Citizen* v. *Department of Transportation,* 316 F. 3d 1002 (9th Cir. 2003).

FMCSA is now in the process of preparing a more extensive environmental analysis of the potential impacts of the rules. This will include a detailed analysis of the environmental impacts of the rules and other alternatives, called a ''Programmatic Environmental Impact Statement'' or PEIS, to be prepared pursuant to the National Environmental Policy Act of 1969. It also will include an analysis of specific air quality impacts, called a ''General Conformity Evaluation'' or GCE, to be prepared pursuant to the Clean Air Act of 1990. A notice of intent to prepare a PEIS and a GCE was published in the **Federal Register** on August 26, 2003 [68 FR 51322].

(Authority: 40 CFR 1506.6)

Issued on: October 3, 2003.

Annette M. Sandberg,

Administrator.

[FR Doc. 03–25618 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2003–16097

Applicant: Union Pacific Railroad Company, Mr. Phil Abaray, Chief Engineer–Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the automatic block signal system through Miller Yard, between milepost 258.1 and milepost 260.7, at Miller, Texas, on the Ennis Subdivision, Fort Worth Division, consisting of the discontinuance and removal of signal No.'s 2596, 2597, 2600, and 2603. Automatic block signals will continue southward from the end of siding location at milepost 258.1, and the northbound automatic signal located at 260.1 will be converted to a yellow ''D'' signal in approach to the CTC signals and controlled switch location at milepost 260.9.

The reason given for the proposed changes is that the signals were originally installed to expedite the movement of passenger trains that no longer use this line, and the ABS system inhibits switching operations in the yard.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the 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.*

FRA wishes to inform all potential commenters that 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.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on October 2, 2003.

Grady C. Cothen,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–25419 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2003 16267]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel AMETHYST.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16267 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before November 6, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003 16267. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel AMETHYST is:

Intended Use: ''Sailing Excursions.''

Geographic Region: ''California''.

Dated: October 2, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–25464 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2003 16268]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel RUBY.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16268 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before November 7, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003 16268. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel RUBY is:

Intended Use: ''Term charter, combined with Bluewater sailing and boat handling instruction. The goal is to perpetuate the cruising lifestyle.''

Geographic Region: ''East Coast of the U.S.A.''

Dated: October 2, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–25463 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–03–16246]

Pipeline Safety: Direct Assessment Workshop

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice of workshop on direct assessment technology.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) and the National Association of Pipeline Safety Representatives (NAPSR) will cosponsor a workshop with the pipeline industry trade associations (Interstate Natural Gas Association of America, American Gas Association, NACE International,

and American Public Gas Association) to discuss direct assessment technology. The workshop is intended to provide a forum for the discussion of direct assessment technology as it relates to natural gas pipeline integrity management. RSPA/OPS will gather issues presented at the workshop needing additional clarification or guidance material development.

DATES: Tuesday, November 4th, 2003, from 7 a.m. to 5:30 p.m.

ADDRESSES: The public may attend the meeting at the Wyndham Greenspoint North Hotel, 12400 Greenspoint Drive, Houston, Texas 77060, (281) 875–2222, *http://www.wyndhamhouston.com*

Operators of natural gas transmission pipelines are urged to attend. To facilitate meeting planning, advance registration for these meetings is strongly encouraged and can be accomplished online at the following Web site: *http://primis/rspa.dot.gov/meetings*

Members of the public are welcome to attend the workshop. An opportunity will be provided for the public to ask questions or make short statements on the topics under discussion. You may submit written comments by mail or deliver to the Dockets Facility, U.S. Department of Transportation (DOT), Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. It is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. You also may submit written comments to the docket electronically. To do so, log onto the following Internet Web address: *http://dms.dot.gov.* Click on ''Help & Information'' for instructions on how to file a document electronically. All written comments should identify the docket and notice numbers which appear in the heading of this notice. Anyone who would like confirmation of mailed comments must include a self-addressed stamped postcard.

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 April 11, 2000, issue of the **Federal Register** (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Information on Services for Individuals with Disabilites: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Juan Carlos Martinez (tel: 202–366–1933; E-mail: *juan.martinez@rspa.dot.gov).*

FOR FURTHER INFORMATION CONTACT: Zach Barrett, (tel: 405–954–5559; E-mail *zach.barrett@rspa.dot.gov*), regarding the subject matter of this notice. Additional information about gas integrity management can be found at *http://primis.rspa.dot.gov/gasimp/index.htm.* You can read comments and other material in the docket on the Internet at: *http://dms.dot.gov.*

SUPPLEMENTARY INFORMATION:

Direct Assessment is an integrity assessment method that utilizes a process to evaluate certain threats to pipeline integrity. It consists of a combination of pipeline corrosion assessment techniques and data integration. The Pipeline Safety Improvement Act of 2002 required RSPA/OPS to issue regulations, not later than December 17, 2003, prescribing standards for an operator's conduct of risk analysis and adoption and implementation of an integrity management program and for defining direct assessment. RSPA/OPS issued a notice of proposed rulemaking on January 28, 2003, proposing regulations to require a gas transmission operator to conduct a risk analysis and adopt an integrity management program. As part of the required integrity management program, each operator of a gas transmission pipeline facility must conduct a baseline integrity assessment. RSPA/OPS defines direct assessment as a primary assessment technique for any transmission pipelines or as a supplement to other assessment techniques. Although the application of corrosion assessment techniques such as Close-Interval or Direct Current Voltage Gradient surveys have been in place for some time, their integration with other information in a structured process to identify integrity concerns is a new industry practice for many pipeline operators. NACE International has published Standard RPO502–2002 ''Pipeline External Corrosion Direct Assessment Methodology,'' providing a recommended practice for external corrosion direct assessment. NACE International is also developing standards for internal corrosion and stress corrosion cracking direct assessment methodologies. The adoption of these standards into the pipeline safety regulations is being considered by RSPA/OPS. RSPA/OPS and NAPSR recently participated in several direct assessment demonstration programs sponsored by the industry to further knowledge and discussions regarding the implementation of direct assessment methodologies for integrity management.

RSPA/OPS is co-sponsoring this public workshop with NAPSR and the industry trade associations to solicit comments on improving and understanding direct assessment technology as it relates to the proposed gas integrity management regulation.

Authority: 49 U.S.C. 60102, 60109, 60117.

Issued in Washington, DC, on October 1, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–25420 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Notice of Meeting

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

ACTION: Notice; Pipeline Safety: Final Project Review Meeting.

SUMMARY: RSPA's Office of Pipeline Safety (OPS) and the Gas Technology Institute (GTI), Des Plaines, IL, have funded a research program to study parameters pertinent to the application of the magnetic flux leakage (MFL) and Nonlinear Harmonics (NLH) technologies to in-line inspection of pipelines. This research was managed by GTI and performed by the Battelle Memorial Institute, Columbus, Ohio (Battelle) and the Southwest Research Institute, San Antonio, Texas, (SwRI).

RSPA/OPS and GTI invite pipeline industry, in-line inspection vendors, pipeline trade association representatives, and the public to a project review meeting. The purpose of the meeting is to present a final report on the progress and findings of the research. The meeting is open to all and no registration is required. The presentations at the meeting will include an overview of the project, a technical review, and the results of technology transfer.

DATES: The meeting will be held on Tuesday, October 28, 2003, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held in conference room 4438–40 at U.S. Department of Transportation, 400–7th Street, SW., Washington, DC 20590. All non-federal personnel must enter the building through the Southwest entrance at 7th and E Streets, SW., and must present a photo-ID to receive a temporary building pass.

FOR FURTHER INFORMATION CONTACT: Gopala (Krishna) Vinjamuri, Agreement Officer's Technical Representative, RSPA/OPS, by phone at (202) 366-4503; by fax at (202) 366–4566; or by e-mail at *gopala.vinjamuri@rspa.dot.gov.* You may also contact Dr. Albert Teitsma, Program Manager, Gas Technology Institute, by telephone at (847) 768–0974, by fax at (847) 768–0501, or by e-mail at *albert.teitsma@gastechnology.org.*

Background

This research program began in 1996. The first phase of the MFL technology research (DTRS56–96-C–0010, *In-Line Inspection Technologies for Mechanical Damage and Stress Corrosion Cracking (SCC) in Pipelines*, was fully funded by RSPA/OPS. Battelle worked with its research partners, SwRI and Iowa State University, to complete this phase of the research. GRI provided technical and project management assistance.

Magnetic flux leakage (MFL) is the most commonly used in-line inspection (ILI) technology for detecting pipe wall corrosion. Until about 1996, the technology was not capable of reliably detecting mechanical damage (gouges and scratches) or long, thin axial defects, both of which are common causes of pipeline failures.

Battelle designed an intelligent MFL in-line inspection tool (''smart pig'') and was responsible for data acquisition and analysis using GRI's Pipeline Safety Simulation Facility (PSF) in Ohio. Natural and fabricated pipe samples with corrosion and other defects were used to evaluate the capabilities of the Battelle device. SwRI conducted mechanical testing and studied the feasibility of non-liner harmonics (NLH) for in-line inspection applications. The Iowa State University researchers attempted to develop a neural network analysis process to analyze MFL signals and determine by trained pattern recognition the extent of metallurgical damage. The 2000 final report on this part of research is available on the OPS Web site, at *primis.rspa.dot.gov*—click on > Pipeline Safety Research and Development > Recent Projects > R&D Database > Inline Inspection/Pigging and, finally, > In-Line Inspection Technologies for Mechanical Damage and SCC in Pipelines.

To continue this research, RSPA/OPS co-funded an additional $1,180,000 for a 3-year project of advanced research and development. GTI was the program manger, and Battelle and SWRI were the research partners. The project, DTRS656–00–H–0004, *Better Understanding of Mechanical Damage*, focused on designing a smart pig capable of circumferential (transverse) magnetization for detecting longitudinally oriented cracks, crack-like defects, and mechanical damage defects, particularly gouges. The project scope included the determination of criteria for assessing the relative severity of detected defects and advanced research in NLH tool design and analysis. As the research progressed, additional analyses and testing were identified that added valve to the project.

The tentative agenda for the meeting is as follows.

Welcome—Stacey Gerard
Introduction, History and Achievements—Gopala Vinjamuri
Fit with IMP Rule; Effective Technologies—Keith Leewis
Statistics; Progress in Safety; SOA—Harvey Haines
Mechanical Damage R&D—Harvey Haines
Break
Project Organization and Overview—Albert Teitsma
Battelle R&D MFL for Mechanical Damage—Bruce Nestleroth
SwRI R&D for Nonlinear Harmonics—Al Crouch
Technology Transfer—Alan Dean
Questions and Answers
Lunch
Mechanical Damage Detection/Characterization—Graham Chell, Bruce Nestleroth
Implementation of MFL Decoupling—Alan Dean
Final Questions and Answers
Conclusions—Gopala Vinjamuri

Issued in Washington, DC, on October 3, 2003.

James K. O'Steen,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 03–25521 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Pipeline Safety: Stress Corrosion Cracking (SCC) Threat to Gas and Hazardous Liquid Pipelines

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

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: RSPA's Office of Pipeline Safety (OPS) is issuing this advisory notice to owners and operators of gas and hazardous liquid pipelines to consider the threat from stress corrosion cracking (SCC) when developing and implementing Integrity Management Plans. Operators should determine whether their pipelines are susceptible to SCC and assess the impact of SCC on pipeline integrity. Based on this evaluation, an operator should prioritize application of additional in-line inspection and hydrostatic testing and take actions to remediate problem areas.

FOR FURTHER INFORMATION CONTACT: Mike Israni, (202) 366–4571; or by e-mail, *mike.israni@rspa.dot.gov.* This document can be viewed at the OPS home page at *http://ops.dot.gov.* General information about the RSPA/OPS programs may be obtained by accessing RSPA's home page at *http://rspa.dot.gov.*

I. Advisory Bulletin (ADB–03–05)

To: Owners and Operators of Gas and Hazardous Liquid Pipeline Systems.

Subject: Stress Corrosion Cracking (SCC) Threat to Gas and Hazardous Liquid Pipelines.

Purpose: To advise owners and operators of natural gas and hazardous liquid pipeline systems to consider stress corrosion cracking as a possible safety risk on their pipeline systems and to include SCC assessment and remediation measures in their Integrity Management Plans.

Advisory: Each owner and operator of a gas or hazardous liquid pipeline system should assess the risk of stress corrosion cracking (SCC). Pipeline owners and operators should evaluate their systems for the presence of risk factors for high pH (9–11) SCC or near-neutral pH (6–8) SCC. Criteria for high pH SCC can be found in Appendix A3.3 of standard ASME B31.8S. If conditions for SCC are present, a written inspection, examination, and evaluation plan should be prepared and appropriate action should be taken in accordance with Appendix A3.4 of standard ASME B31.8S. RSPA/OPS will soon publish a final rule on the integrity management program for gas transmission pipelines in high consequence areas that incorporates requirements for addressing SCC threats by referencing Appendix A3 of standard ASME B31.8S. Although criteria and mitigation plans for near-neutral pH (6–8) SCC are not addressed in this standard, NACE International (NACE) is currently developing a standard on Direct Assessment of Stress Corrosion Cracking. Also, NACE will soon issue a technical committee report, *External Stress Corrosion Cracking of Underground Pipelines,* to provide information on SCC for hazardous liquid pipelines.

The integrity management rules for both large (65 FR 75378; December 1, 2000) and small (66 FR 2136; January 16, 2002) hazardous liquid pipelines in high consequence areas did not specifically address the SCC threat. By this Advisory Bulletin, we are reminding owners and operators of both gas and hazardous liquid pipeline systems to consider the stress corrosion cracking threat as a possible risk factor when developing and implementing Integrity Management Plans. All owners and operators of pipeline systems, whether or not their pipeline systems are subject to the Integrity Management Plan rules, should determine whether their pipeline system is susceptible to SCC and assess the impact of SCC on pipeline integrity. Based on this evaluation an operator should prioritize application of internal inspection, hydrostatic testing, or other forms of integrity verification.

SUPPLEMENTARY INFORMATION:

II. Background

Recent incidents throughout North America and the world, including Australia, Russia, Saudi Arabia, and South America, have highlighted the threats to pipelines from SCC failures. In the United States, SCC failures on hazardous liquid pipelines have been very rare when compared with SCC occurrences on natural gas pipelines. However, three SCC-caused failures of hazardous liquid pipelines have occurred in 2003. Another hazardous liquid pipeline operator has reported finding significant SCC defects.

SCC is the cracking induced from the combined influence of tensile stress and a corrosive medium. The impact of SCC on a material usually falls between dry cracking and the fatigue threshold of that material. The required tensile stresses may result from directly applied stresses (pressure and overburden) or in the form of residual stresses (fabrication and construction). The most effective means of preventing SCC are to: (1) properly design the pipeline using appropriate materials; (2) reduce pipeline stresses; and (3) remove critical environmental electrolytes, such as hydroxides, chlorides, and oxygen.

Most pipelines are buried. No matter how well these pipelines are designed, constructed, and protected, once in place they are subjected to environmental abuse, external damage, coating disbondment, inherent mill defects, soil movements/instability, and third party damage. SCC develops in pipelines due to a combination of environmental, stress (absolute hoop and/or tensile, fluctuating stress) and material (steel type, amount of inclusions, surface roughness) factors. Although the age of a pipeline is not indicative of the presence of SCC, it is a factor to consider when assessing pipelines that are subject to conditions that may cause crack growth.

Two types of SCC are found on pipelines: high pH (9 to 11) SCC and near-neutral pH (6 to 8) SCC. Characteristics of both forms of SCC as summarized by experts are as follows:

—Cracks usually oriented in longitudinal direction (cracks may exist at other orientations, depending on the direction of tensile stress).

—Occurrence in clusters consisting of several cracks to hundreds of cracks.

—Cracks tend to interlink to form long shallow flaws (cracks may grow to cause ruptures).

—Fractures faces are covered with magnetite and carbonate films.

High pH SCC was originally noted in gas transmission pipelines. It is typically found within 20 miles downstream of the compressor station. High pH SCC usually occurs in a relatively narrow cathodic potential range (-600 to -750 mV $Cu/CuSO_4$) in the presence of a carbonate/bicarbonate environment in a pH window from 9 to 11. Temperatures greater than 100° F are necessary for high pH SCC susceptibility. Other characteristics of high pH SCC according to experts are as follows:

—Cracks are narrow and inter-granular and, have extensive crack branching.

—Cracks are generally not associated with long seams or other metallurgical features.

—Cracks are commonly found on the bottom half of a pipe.

—Cracks are commonly associated with coal tar and asphalt coatings.

For other details on high pH SCC please refer to Appendix A3 of standard ASME B31.8S.

A Near-neutral pH SCC was initially noted in Canada and has been observed by operators in the United States. The environment primarily responsible for near-neutral pH SCC is groundwater containing dissolved CO_2. The CO_2 originates from the decay of organic matter. Cracking is exacerbated by the presence of sulfate reducing bacteria. This primarily occurs due to disbonded coatings, which normally prevent the cathodic current from reaching the pipe surface. There is a corrosion condition below the disbonded coating that results in an environment with a pH of between 6 and 8. Other characteristics of near-neutral pH SCC according to experts are as follows:

—Cracks are wide (compared with high pH SCC) and trans-granular and have limited crack branching.

—Cracks are frequently associated with long seams and other metallurgical features (dents, mechanical damage).

—Cracks are commonly associated with tape coatings.

Pipeline operators know the pipeline metallurgy, coating type, and operating pressure of each pipeline. The only remaining variable in determining the likelihood of SCC is soil type. RSPA/OPS has previously directed certain pipeline operators to evaluate and establish the extent of SCC susceptibility, utilize over the ditch coating surveys to identify locations of holidays (uncoated spots) and match them with high stress levels (60% or greater of specified minimum yield strength), and match the areas with high temperature locations. The areas where all factors are present are then excavated and evaluated.

If a pipeline is susceptible to SCC, pipeline operators are required to quantify the life cycle of the pipeline by conducting fracture mechanic calculations to estimate where in the system an SCC rupture might occur. Appropriate in-line inspection technologies can help to identify SCC in a pipeline. If the pipeline cannot accommodate internal inspection tools, an appropriately designed hydrostatic test program can be effective in exposing SCC. If excavations of suspected SCC locations do not reveal SCC, RSPA/OPS recommends continuous monitoring for SCC as part of an operator's integrity management program for corrosion.

Because of the randomness of SCC failures, RSPA/OPS has, in the past, often ordered operators to reduce operating pressure by 20% of the prefailure pressure to add a factor of safety and allow the operator to continue service. This protects the public and environment from other SCC failures, even if there is another crack on the pipeline of the same size. Based on technical studies, RSPA/OPS has often required the pipeline operator to perform a spike hydrostatic pressure test to expose other cracks and ensure a safe return to full operating pressure. The pipeline operator can then commence a rigorous SCC management program that may include in-line inspection, recoating the pipeline, or even replacing sections of pipe where SCC is present.

By the end of 2003, RSPA/OPS will invite scholars and consultants to a public meeting to discuss research and technologies that can effectively identify, assess, and manage SCC.

Issued in Washington, DC, on October 1, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–25421 Filed 10–7–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from the Association of American Railroads (WB463–6, September 10, 2003) for permission to use certain data from the Board's Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. 03–25505 Filed 10–7–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34402]

Iowa Northern Railway Company—Operation Exemption—Rail Lines of D&W Railroad, Inc.

Iowa Northern Railway Company (INAR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to operate approximately 51.95 miles of rail line, including incidental trackage rights, known as the Waterloo Industrial Lead, pursuant to an operating agreement with D&W Railroad, Inc. (D&W). The lines to be operated are located in Black Hawk, Buchanan and Fayette Counties, IA, as follows: (1) Between milepost 332.0 at Dewar, IA, and milepost 354.3 at Oelwein, IA; (2) between milepost 245.58 and milepost 245.0 at Oelwein; (3) .32 miles of wye track at Oelwein; (4) 23 miles of yard track at Oelwein; and (5) incidental trackage rights over Union Pacific Railroad Company's track between milepost 332.0 at Dewar and milepost 326.2 at Linden Street, Waterloo, IA. INAR certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier.

INAR reported that the parties intend to consummate the transaction on or soon after September 26, 2003.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 34401, *D&W Railroad, Inc.—Acquisition Exemption—Rail Lines of Union Pacific Railroad Company,* wherein D&W seeks to acquire the above-described rail lines.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34402, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: October 1, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–25503 Filed 10–7–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34401]

D&W Railroad, Inc.—Acquisition Exemption—Rail Lines of Union Pacific Railroad Company

D&W Railroad, Inc. (D&W), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire approximately 51.95 miles of rail line, including incidental trackage rights, known as the Waterloo Industrial Lead, from the Union Pacific Railroad Company (UP). The lines to be acquired are located in Black Hawk, Buchanan and Fayette Counties, IA, as follows (1) between milepost 332.0 at Dewar, IA, and milepost 354.3 at Oelwein, IA; (2) between milepost 245.58 and milepost 245.0 at Oelwein; (3) .32 miles of wye track at Oelwein; (4) 23 miles of yard track at Oelwein; and (5) incidental trackage rights over UP's track between milepost 332.0 at Dewar and milepost 326.2 at Linden Street, Waterloo, IA. D&W certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier.

D&E reported that the parties intend to consummate the transaction on or soon after September 26, 2003.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 34402, *Iowa Northern Railway Company—Operation Exemption—Rail Lines of D&W Railroad, Inc.,* wherein Iowa Northern Railway Company seeks to operate the rail lines being acquired by D&W here.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34401, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: October 1, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–25504 Filed 10–7–03; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register

Vol. 68, No. 195

Wednesday, October 8, 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 COMMERCE

International Trade Administration

[A–570–879]

Antidumping Duty Order: Polyvinyl Alcohol from the People's Republic of China

Correction

In notice document 03–24899 beginning on page 56620 in the issue of October 1, 2003, make the following correction:

On page 56621, in the first column, in the table, under the heading ''Margin (percent)'', in the second entry, ''7.86'' should read ''97.86''.

[FR Doc. C3–24899 Filed 10–7–03; 8:45 am]

BILLING CODE 1505–01–D

COUNCIL ON ENVIRONMENTAL QUALITY

National Environmental Policy Act Task Force

Correction

In notice document 03–24527 beginning on page 55954 in the issue of Monday, September 29, 2003, make the following correction:

On page 55955, in the first column, in the eighth line, ''Pugel'' should read, ''Puget''.

[FR Doc. C3–24527 Filed 10–7–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
October 8, 2003

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Site Remediation; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR 2002–0021; FRL–7549–3]

RIN 2060–AH–12

National Emission Standards for Hazardous Air Pollutants: Site Remediation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) from site remediations. The final rule implements the Clean Air Act (CAA) section 112(d) to control hazardous air pollutants (HAP) emissions at major sources where remediation technologies and practices are used at the site to clean up contaminated environmental media (*e.g.*, soils, groundwaters, or surface waters) or certain stored or disposed materials that pose a reasonable potential threat to contaminate environmental media. Site remediations subject to the final rule are required to control emissions of organic HAP by meeting emissions limitations and work practice standards reflecting the application of maximum achievable control technology (MACT). The final rule applies to certain types of site remediation activities that are conducted at a facility where non-remediation sources are a major source of HAP emissions. Some site remediations already regulated by rules established under the Comprehensive Environmental Response and Compensation Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA) are not subject to the final rule.

The HAP emitted by site remediation activities can include benzene, ethyl benzene, toluene, vinyl chloride, xylenes, and other volatile organic compounds (VOC). The range of potential human health effects associated with exposure to these organic HAP and VOC include cancer, aplastic anemia, upper respiratory tract irritation, liver damage, and neurotoxic effects (*e.g.*, headache, dizziness, nausea, tremors).

EFFECTIVE DATE: October 8, 2003.

ADDRESSES: *Docket.* The official public docket is the collection of materials used in developing the final rule and is available for public viewing at the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact your State or local representative or the appropriate EPA Regional Office representative. For information concerning the analyses performed in developing the final rule, contact Mr. Greg Nizich, Waste and Chemical Processes Group, Emission Standards Division (C439–03), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–3078, facsimile number (919) 541–0246, electronic mail (e-mail) address *nizich.greg@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAICS[1]	Examples of regulated entities
Industry	325211, 325192, 325188, 32411, 49311, 49319, 48611, 42269, 42271.	Site remediation activities at businesses at which materials containing organic HAP currently are or have been in the past stored, processed, treated, or otherwise managed at the facility. These facilities include: organic liquid storage terminals, petroleum refineries, chemical manufacturing facilities, and other manufacturing facilities with co-located site remediation activities.
Federal Government		Federal agency facilities that conduct site remediation activities to clean up materials contaminated with organic HAP.
State/Local/Tribal Government.		Tribal governments that conduct site remediation activities to clean up materials contaminated with organic HAP.

[1] North American Industry Classification System (NAICS) code. Representative industrial codes at which site remediation activities have been or are currently conducted at some but not all facilities under a given code. The list is not necessarily comprehensive as to the types of facilities at which a site remediation cleanup may potentially be required either now or in the future.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action.

A comprehensive list of NAICS codes cannot be compiled for businesses or facilities potentially regulated by the final rule due to the nature of activities regulated by the source category. The industrial code alone for a given facility does not determine whether the facility is or is not potentially subject to the final rule. The final rule may be applicable to any type of business or facility at which a site remediation is conducted to clean up media contaminated with organic HAP and other hazardous material. Thus, for many businesses and facilities subject to the final rule, the regulated sources (*i.e.*, the site remediation activities) are not the predominant activity, process, operation, or service conducted at the facility. In these cases, the industrial code indicates a primary product produced or service provided at the facility rather than the presence of a site remediation performed to support the predominant function of the facility. For example, NAICS code classifications where site remediation activities are currently being performed at some but not all facilities include, but are not limited to, petroleum refineries (NAICS code 32411), industrial organic chemical manufacturing (NAICS code 3251xx), and plastic materials and synthetics manufacturing (NAICS code 3252xx). However, we are also aware of site remediation activities potentially subject to the final rule being performed at facilities listed under NAICS codes for refuse systems, waste management, business services, miscellaneous services, and nonclassifiable.

To determine whether your facility is regulated by the action, you should carefully examine the applicability criteria in the final rule. If you have questions regarding the applicability of the final rule to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established an official public docket for this action including both Docket ID No. A–99–20 and Docket ID No. OAR–2002–0021. The official public docket consists of the documents specifically referenced in

this action, any public comments received, and other information related to this action. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to the final rule. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air 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 Docket is (202) 566–1742.

Electronic Docket Access. You may access the final rule electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in the above section. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final 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. The NESHAP for site remediation was proposed on July 30, 2002 (67 FR 49398). Today's final rule announces the EPA's decision on the final rule. Under CAA section 307(b)(1), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by December 8, 2003. Only those objections to the final rule which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under CAA section 307(b)(2), the requirements that are the subject of today's final rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

I. Background
A. What is the statutory authority for the final rule?
B. How did we develop the final rule?
C. What criteria are used in the development of the final rule?
II. Summary of Final Rule
A. Who must comply with the final rule?
B. What are the affected sources?
C. What are my compliance options?
D. What are the emissions limitations and work practice standards?
E. What are the requirements for remediation material that is shipped off-site?
F. What are the general compliance requirements?
G. What are the initial compliance requirements?
H. What are the continuous compliance requirements?
I. What are the notification, recordkeeping, and reporting requirements?
J. What are the compliance deadlines?
K. How does the ''once in, always in'' policy apply?
III. Responses to Major Comments on Proposed Rule
A. Why are we promulgating a NESHAP to regulate HAP emissions from site remediation activities?
B. How did we select the HAP to be regulated by the final rule?
C. How do we define site remediation for the final rule?
D. Why does the final rule not apply to CERCLA Superfund and RCRA Corrective Action cleanups?
E. Why does the final rule potentially apply to State and voluntary cleanup programs?
F. How does the final rule apply to cleanups of leaking underground storage tanks?
G. How does the final rule apply to cleanups of radioactive mixed waste?
H. How does the final rule apply to short-term site remediations at affected facilities?
I. How does the final rule apply to remediation materials sent off-site from affected facilities?
IV. Summary of Environmental, Energy, and Economic Impacts
A. What are the air emission impacts?
B. What are the cost impacts?
C. What are the economic impacts?
D. What are the non-air health, environmental and energy impacts?
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
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 Statutory Authority for the Final Rule?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. Major sources of HAP are defined by CAA section 112(a)(1) as those sources that have the potential to emit greater than 10 tons per year (tpy) of any one HAP or 25 tpy of any combination of HAP. Area sources are stationary sources of HAP that are not major sources. The category of major sources covered by today's final NESHAP for site remediation, was listed on July 16, 1992 (57 FR 31576). We included site remediation on the source category list to address HAP emissions at major sources where remediation technologies and practices are used at the site to clean up contaminated environmental media (*e.g.*, soils, groundwaters, or surface waters) or certain stored or disposed materials that pose a reasonable potential threat to contaminate environmental media.

B. How Did We Develop the Final Rule?

We proposed the Site Remediation NESHAP on July 30, 2002 (67 FR 49398). A 60-day public comment period (July 30, 2002 to September 30, 2002) was provided for the public to submit their comments on the proposed rule. Also, we offered to hold a public hearing to allow any interested persons to present their oral comments on the proposed rule. However, we did not receive a request from anyone to speak at the public hearing, so a public hearing was not held.

We received a total of 51 comment letters and e-mails regarding the proposed rule. Two commenters affiliated with the U.S. Department of the Navy independently submitted the same set of comments; and two

commenters from the State of Alabama each submitted two separate and distinct sets of comments.

The final rule promulgated by this action reflects our full consideration of all the comments we received on the rule proposal. Our responses to all of the substantive public comments on the proposal are presented in the background information document (BID) titled, ''National Emission Standards for Hazardous Air Pollutant (NESHAP) for Site Remediation: Background Information for Promulgated Standards.'' The BID is available in Docket No. OAR–2002–0021.

C. What Criteria Are Used in the Development of the Final Rule?

Under CAA section 112(d), we are directed to establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires that each NESHAP reflect the maximum degree of reduction in emissions of HAP that is achievable for the source category or subcategory. This level of control is commonly referred to as the maximum achievable control technology (MACT).

The MACT floor is the minimum control level allowed for NESHAP and is defined under CAA section 112(d)(3). Establishing the MACT floor ensures that each standard is set at a level that assures that all major sources within a source category or subcategory achieve a level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in the applicable source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT standards established for existing sources can be less stringent than standards for new sources, but the existing source standards cannot be less stringent than the average emissions limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing NESHAP, we also consider control alternatives that are more stringent than the MACT floor. Section 112(d)(2) of the CAA allows us to establish standards that are more stringent than those that would be established by the MACT floor level based on the consideration of costs to achieve the emissions reductions, any health and environmental impacts, and energy requirements.

To determine MACT for the affected sources regulated by the Site Remediation NESHAP, we established at proposal that the MACT floor for existing affected sources associated with site remediation activities is some level of air emission control beyond no controls. Also, we decided to not compute an emission limitation statistically or identify specific control technology that represents the MACT floor for the site remediation sources because of the uniqueness of the site remediation source category, the extent of information available to us, and the complexities of gathering additional meaningful information (see 67 FR 49414–49415). Instead, we relied on provisions of CAA section 112(d)(2) that allow us to select MACT for a source category that is more stringent than the MACT floor.

We chose to select the MACT technology directly from alternatives beyond the MACT floor for each affected source type selected to be subject to the Site Remediation NESHAP. To do this, we looked at the types of air emission controls demonstrated to achieve control levels required under national air standards for sources similar to those sources that potentially may be associated with site remediations (particularly the NESHAP for Off-Site Waste and Recovery Operations under 40 CFR part 63, subpart DD, and the air standards for RCRA hazardous waste treatment, disposal, and facilities (TSDF) under subparts AA, BB, and CC in 40 CFR parts 264 and 265). Because the air emission controls needed to achieve the control levels required under the rules applicable to sources similar to those sources subject to the final Site Remediation NESHAP are now being implemented by facility owners and operators, we concluded that this demonstrates that these control levels are technically achievable, the costs are reasonable, and there are no adverse non-air quality health, environmental impacts, or energy requirements associated with the selected control levels.

Following proposal, we reviewed our data sources to determine the availability of additional information on air pollution controls currently in use for site remediation activities. No new data or information to update and supplement our original data were provided by commenters on the proposed rule. We concluded that our original database remains the best available source of information available to us. The control levels established by the emission limitation and work practices established by the final Site Remediation NESHAP are the same controls levels being implemented at similar sources subject to other NESHAP and related national air rules.

II. Summary of Final Rule

The final rule amends 40 CFR part 63 by adding subpart GGGGG—National Emission Standards for Hazardous Air Pollutants for Site Remediation. At proposal, we received comments stating that the organization, reliance on presenting many rule requirements in an exclusively tabular format, and extensive cross-referencing to provisions in other subparts which we used for the proposed rule made it difficult to read and understand. We have written the final rule to reflect those comments. Many of the requirements that were presented exclusively in tables in the proposed rule have been moved back into the regulatory text of the final rule, and the applicable tables were deleted. While these editorial changes to the final rule make it appear substantially different from the proposed rule, most of the technical and administrative requirements remain the same as proposed.

A. Who Must Comply With the Final Rule?

We have written the applicability requirements to clarify our intent as to what is a site remediation activity and how the final rule applies to these activities. You are subject to the final rule if you own or operate a facility that is a major source of HAP emissions and where a site remediation is conducted that meets the definitions and conditions specified in the final rule. Certain types of site remediations are explicitly exempted from being subject to the final rule.

Applicability Definitions and Conditions

In the final rule, we have added a new definition for the term ''site remediation'' and written our proposed definition of ''remediation material'' to clarify the final rule's applicability and to improve implementation of the final rule's requirements. Site remediation means one or more activities or processes used to remove, destroy, degrade, transform, immobilize, or otherwise manage remediation material, as defined in the final rule. Monitoring or measuring of contamination levels in media, whether by using wells, sampling, or other means, is not considered to be a site remediation.

We have written the definition of remediation material to clarify the term's meaning consistent with our

intent that the final rule address HAP emissions from site remediations to clean up environmental media contaminated with HAP (*e.g.,* soils, groundwaters, surface waters), as well as clean up certain stored or disposed materials that contain HAP and pose a reasonable potential threat to contaminate environmental media. The final Site Remediation NESHAP is applicable to those site remediations that involve the cleanup of materials with the potential to emit the HAP we have listed in the final rule. Also, the revised definition of remediation material used in the final rule explicitly identifies two groups of materials considered to be remediation materials for the purpose of implementing the final rule.

Remediation material as defined for the final Site Remediation NESHAP must contain one or more of the HAP listed in Table 1 of the final rule. Table 1 of the final rule presents a list of 97 specific organic HAP compounds, isomers, and mixtures, and is the same list that we proposed with one correction. The compound 1–1 dimethyl hydrazine was incorrectly included on list published with the proposed rule, and this compound has been deleted from the list in the final rule. If your site remediation does not involve the cleanup of remediation material containing any of the HAP listed in Table 1 of the final rule, then you are not subject to the final Site Remediation NESHAP.

The first group of materials included in the definition of remediation material addresses air emissions from site remediations to clean up environmental media contaminated with HAP. These materials are found in environmental media such as soil, groundwater, surface water, and sediments, or a mixture of such materials with liquids, sludges, or solids which is inseparable by simple mechanical removal processes and is made up primarily of media. Our use of the term ''media'' for the final rule does not include debris as defined in 40 CFR 268.2.

The second group of materials included in the definition of remediation material addresses air emissions from site remediations to clean up materials containing HAP that are stored or disposed at a site and that pose a reasonable potential threat to contaminating environmental media. These are defined to be materials containing HAP that are found in intact or substantially intact containers, tanks, storage piles, or other storage units. Examples of these materials include solvents, oils, paints, and other volatile or semi-volatile organic liquids found in buried drums, cans, or other containers; gasoline, fuel oil, or other fuels in leaking underground storage tanks; and solid materials containing volatile or semi-volatile organics in unused or abandoned piles. We do not consider remediation material, for example, to include waste or residue generated by routine equipment maintenance activities performed at a facility such as tank bottoms and sludges removed during tank cleanouts; sludges and sediments removed from active wastewater treatment tanks, surface impoundments, or lagoons; spent catalyst removed from process equipment; residues removed from air pollution control equipment; and debris removed during heat exchanger and pipeline cleanouts. The removal and subsequent management of these types of waste and residue materials are not remediation activities, but instead, are good operating and maintenance practices that facility owners and operators perform to help sustain process and air pollution control equipment performance at the equipment's design specifications and to extend the equipment's service life.

Hereafter in this preamble, the term remediation material is used as defined in the final Site Remediation NESHAP. Not all site remediations to clean up remediation material are subject to the final Site Remediation NESHAP. Certain site remediations are explicitly exempted from being subject to the final rule. Of the site remediations not specifically exempted, only site remediations to clean up remediation material that meet both of the additional applicability conditions specified in the rule are subject to the final rule.

We have written the final rule to clarify the applicability conditions used to determine if your site remediation is subject to the final rule. These conditions have not changed from the proposed rule other than we have reworded the regulatory language to better describe the types of site remediations we intend the final rule to affect. If your site remediation is not included on the list of exempted site remediations in § 63.7881(b) of the final rule or you can qualify for the facility-wide small HAP content exemption in § 63.7881(c), then you make a determination of whether both of the applicability conditions specified in the final rule apply to your cleanup. If either of the applicability conditions do not apply to your cleanup, then your site remediation is not subject to the final Site Remediation NESHAP.

The first applicability condition is that a site remediation to clean up remediation material must be co-located with one or more stationary sources of HAP emissions within a contiguous area and under common control that meets an affected source definition specified for a source category that is regulated by another NESHAP in 40 CFR part 63. The re-wording of this condition in the final rule eliminated the need for the term ''MACT activity'' that was included in the proposed rule. That term no longer appears. This condition applies regardless of whether or not the non-remediation affected stationary sources at your site are subject to, or exempted from, the control standards under the applicable subpart. For example, if a site remediation is performed at a petroleum refinery subject to 40 CFR part 63, subpart CC—National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries, then a site remediation to clean up remediation materials conducted at the facility meets this applicability condition. If there are no stationary sources that meet this applicability condition at the facility where a site remediation is conducted, then you are not subject to the final rule.

We provided this condition to simplify the applicability determination process whereby an owner or operator of a site remediation with low HAP potential can easily determine that they are not subject to the Site Remediation NESHAP without having to estimate potential HAP emissions. This is a reasonable approach since we believe that remediation activities that are not collocated with a stationary source, or sources, meeting the affected source definition of another NESHAP would not be major sources by themselves. The one possible exception could be some CERCLA sites, which might themselves be major sources without regard for collocation with a major source, but these sites are exempt from the final rule.

The other applicability condition is that the facility at which you conduct a site remediation to clean up remediation material must be a major source, as defined in § 63.2 of the General Provisions to 40 CFR part 63. Your facility is a major source if it emits or has the potential to emit HAP above the threshold levels of 10 tpy for any single HAP and 25 tpy for any combination of HAP. All potential emissions of HAP from the entire facility (*i.e.,* both the remediation activity and all other facility activity) must be considered in making this calculation. It is also important to note that the determination of the major source status of a given facility is determined based on all HAP listed pursuant to CAA section 112(b) (*i.e.,* not just the HAP listed in Table 1 of the final Site Remediation NESHAP).

A source that is not a major source is an area source. If your HAP emission determination shows that when you conduct the site remediation your site will remain an area source (*i.e.,* the total potential HAP emissions from the existing sources at your site plus the estimated HAP emissions from the site remediation activities to be performed for the cleanup are less than the major source threshold levels), then your site remediation is not subject to the final Site Remediation NESHAP. If your site is currently an area source, but will become a major source when you conduct the site remediation, then your site remediation is subject to the final Site Remediation NESHAP. However, for this situation because of the uniqueness of this source category and the nature of the activities regulated by the final rule, there is a special exception to the ''once in, always in'' NESHAP policy as related to your facility's NESHAP compliance obligations.

Site Remediation Applicability Exemptions

The final rule does not apply to certain site remediations that are explicitly exempted, regardless of the organic HAP content of the remediation materials or the status of other stationary sources at the locations where these site remediations are conducted. In general, these exemptions apply to site remediation activities regulated under other Federal rules and requirements or which have special circumstances that make application of requirements under the final rule unnecessary or problematic. The exempted site remediations are listed in § 63.7881(b) of the final rule. The final Site Remediation NESHAP does not apply to CERCLA Superfund and RCRA corrective actions to clean up hazardous substances, hazardous wastes, and hazardous constituents. In short, we view the Superfund program under CERCLA and the hazardous waste corrective action program under RCRA as the functional equivalents of the establishment of MACT standards under CAA section 112. These programs, as part of the ROD process for Superfund cleanups and the RCRA permitting process for corrective action cleanups, require consideration of the same HAP emissions that we do in establishing MACT standards, and provide opportunity for public involvement in these site-specific remediation determinations. The RCRA and CERCLA statues apply more specifically to the remediation process than does MACT under the CAA and, unlike the CAA, authorize site specific means of dealing with remediation activities and their associated HAP emissions. Consequently, we are exempting these activities from the MACT standards promulgated in the final rule.

In response to comments on the proposed exemptions for site remediations to clean up contamination from units managing radioactive mixed waste, we collected additional information and reviewed the basis for the proposed exemption. Because the technical issues related to safety concerns for containers and other storage units managing radioactive mixed wastes do not apply to site remediation treatment unit process vents and equipment leaks, the final Site Remediation NESHAP limits the exemption for radioactive mixed waste to only remediation material management units (a term explained fully below). Remediation activities (that meet the final rule applicability criteria) to clean up radioactive mixed waste are subject to standards for treatment unit process vents and equipment leaks under the final Site Remediation NESHAP. Also, we have written the final rule language to clarify the applicability of this exemption to site remediations involved with the cleanup of radioactive mixed wastes. To be consistent with the definitions used in RCRA, mixed waste is defined in the final rule as waste that contains both hazardous waste subject to RCRA and either source, special nuclear, or byproduct material subject to the Atomic Energy Act of 1954. Also, an additional reference to the Waste Isolation Pilot Plant Land Withdrawal Act (Public Law 102–579) is added to the final rule exemption language to include the management of mixed transuranic waste within the scope of the exemption.

Finally, the final rule maintains the other exemptions we proposed. The final rule does not apply to a site remediation to clean up leaking underground storage tanks located at a gasoline service station. The final rule does not apply to any site remediation conducted at a farm or residential site. Also, the final rule does not apply to a site remediation conducted at a research and development facility that meets the requirements of CAA section 112(c)(7).

The final rule retains the proposed exemption for site remediations of short duration. However, this exemption has been modified from the proposed exemption to address public comments we received and to resolve potential issues regarding the practical implementation and enforcement of the exemption.

Under the short-term site remediation exemption, a site remediation at a facility subject to the final rule is not subject to the emissions limitations and work practice standards in the final Site Remediation NESHAP if the site remediation can be completed within 30 consecutive calendar days as determined from the day on which you actually begin work at the site to physically clean up the remediation materials. Certain administrative and site preparation activities you need to perform before you can physically begin the cleanup are not counted as part of this 30-day exemption period. These pre-activities consist of the following: activities you perform to characterize the type and extent of the contamination by collecting and analyzing samples, obtaining any permits required by State or local authorities to conduct the site remediation, scheduling workers and necessary equipment, and arranging for any contractor assistance in performing the site remediation. To qualify for the short-term site remediation exemption, you must prepare and maintain at your facility written documentation describing the exempted site remediation and listing the initiation and completion dates for the site remediation.

B. What Are the Affected Sources?

The final rule designates three types of affected sources subject to requirements under the final rule: process vents on in-situ and ex-situ remediation treatment processes; units used to manage remediation materials (called remediation material management units'' in the final rule); and equipment leaks from pumps, valves, and other ancillary equipment associated with the remediation activities. The affected source designations in the final rule are the same as proposed.

The affected source for process vents is the entire group of process vents associated with the in-situ and ex-situ remediation processes used at your site to remove, destroy, degrade, transform, or immobilize hazardous substances in the remediation material. Examples of process vents for in-situ remediation processes include the discharge vents to the atmosphere used for soil vapor extraction and underground bioremediation processes. Examples of process vents for ex-situ remediation processes include vents for thermal desorption, bioremediation, and stripping processes (air or steam stripping).

The term remediation material management unit is used in the final rule to refer collectively to any tank,

container, surface impoundment, oil-water separator, organic-water separator, or transfer system used to store, transfer, treat, or otherwise manage remediation material at the site. The affected source for remediation material management units is the entire group of tanks, surface impoundments, containers, oil-water separators, and transfer systems used for the site remediation activities involving clean up of remediation material.

The affected source for equipment leaks is the entire group of remediation equipment components (pumps, valves, etc.) that contain or contact remediation material having a total concentration of HAP listed in Table 1 of the final rule equal to or greater than 10 percent by weight, and are intended to operate for 300 hours or more during a calendar year.

C. What Are My Compliance Options?

Each site remediation subject to the final Site Remediation NESHAP must meet the applicable standards specified in the final rule for the types of the affected sources associated with the site remediation unless the site remediation qualifies for an exemption provided in the final rule. Separate sets of standards are established for each of the affected source groups. These standards and exemptions were included in the proposed rule. A new section has been added to the final rule titled ''General Standards'' to better delineate and clarify the overall compliance options and exemptions allowed under the final rule for each affected source group.

Process Vents

The general standards for affected process vents describe three compliance options. The first compliance option is to control HAP emissions from the affected process vents to meet the facility-wide emissions limitations and associated work practice standards established in the final rule.

The second compliance option is to determine that the average total volatile organic HAP (VOHAP) concentration in the remediation material treated or managed by the process that is vented through the affected process vents is less than 10 parts per million by weight (ppmw). The determination of the VOHAP concentration is based on the concentration of organic HAP listed in Table 1 of the final rule using sampling and analysis procedures specified in the final rule. Affected process vents that meet this option are not subject to air pollution control requirements under the final rule.

The third compliance option is for process vents that are already using air pollution controls to comply with another subpart under 40 CFR part 61 or 40 CFR part 63. Under this option, you treat your remediation material in a process for which the HAP emissions from the affected process vent are controlled in compliance with the standards specified in the applicable subpart. This means you are complying with all applicable emissions limitations and work practice standards under the other subpart (*e.g.*, you install and operate the required air pollution control devices or have implemented the required work practice to reduce HAP emissions to levels specified by the applicable subpart). This provision only applies if the other subpart actually specifies a standard requiring control of HAP emissions from your affected process vents. It does not apply to any exemption of the affected source from using air pollution controls allowed by the other applicable subpart.

Remediation Material Management Units

The general standards for remediation material management units provide two compliance options that apply to all affected units. Two other compliance options are available to some affected remediation material management units that meet special conditions specified in the final rule.

The first compliance option available to all affected remediation material management units is to control HAP emissions from the affected remediation material management unit according to the emissions limitations and work practice standards specified in the final rule. Separate emissions limitations and work practice standards are established under the final rule for each type of remediation material management unit (*i.e.*, separate standards for tanks, separate standards for containers, etc.).

The second compliance option available to all affected remediation material management unit is to determine the average total VOHAP concentration of the organic HAP listed in Table 1 of the final rule that is contained in the remediation material. If the VOHAP concentration of the material is less than 500 ppmw, then the remediation material management units handling this material are not subject to the applicable emissions limitations and work practice standards established under the final rule. The VOHAP concentration determination is based on the organic HAP content of the remediation material at the ''point-of-extraction'' as measured or estimated using the procedures specified in the final rule. Point-of-extraction is a defined term in the final rule that means a point above ground where you can collect samples of a remediation material before or at the first point where organic constituents in the material have the potential to volatilize and be released to the atmosphere, and (in all instances) before placing the material in a remediation material management unit.

The final rule provides two other compliance options that apply to certain affected remediation material management units that operate under the special circumstances specified in the final rule. The first of these compliance options is available for any affected remediation material management unit also subject to another subpart under 40 CFR part 61 or 63. Under this option, you must control HAP emissions from the affected remediation material management unit in compliance with the standards specified in the applicable subpart. Implementation of this provision is the same as discussed above for process vents. The provision only applies to your affected remediation material management unit if the other subpart actually specifies a standard requiring control of organic HAP emissions from the same type of unit as your remediation material management unit (*i.e.*, if your affected remediation material management unit is a tank, then the other subpart must specify organic HAP emission control requirements for tanks). It does not apply to any exemption of the affected source from using air pollution controls allowed by the other applicable subpart (*e.g.*, if the other subpart exempts tanks with capacities less 10,000 gallons from the control requirements, that exemption does not apply to the affected tanks you use for your site remediation activities).

A final compliance option is available for a remediation material management unit that is an open tank or surface impoundment and is used for a biological treatment process. Under this compliance option, you must demonstrate that the treatment process meets one of HAP biodegradation or removal levels specified in the final rule.

The final rule includes a special site-specific exemption for remediation material management units that manage materials with small quantities of the organic HAP listed in Table 1 of the final rule. Due to the nature of the media contamination or other site-specific circumstances, the cleanup at a site may require use of specialized or custom equipment that meets the definition of a remediation material management unit under the final rule

but this equipment's design or configuration makes it technically problematic or very expensive to install and operate the air pollution controls required under the final rule for the particular type of remediation material management unit. Therefore, the final rule provides for a site-specific exemption from the applicable emissions limitations and work practice standards under the final rule to allow use of these remediation material management units in situations where the potential for HAP emissions is relatively low. A remediation material management unit can be exempted from the applicable emissions limitations and work practice standards under the final rule provided that the owner or operator determines that the total annual quantity of the organic HAP listed in Table 1 of the final rule that is contained in the remediation material placed in the unit remains at a level less than 1 Mg/yr.

Equipment Leaks

Under the final rule, you must control HAP emissions from equipment leaks from each equipment component that contains or contacts remediation material having a total concentration of the organic HAP listed in Table 1 of the final rule equal to or greater than 10 percent by weight, and are intended to operate for 300 hours or more during a calendar year. Control of these emissions is achieved by implementing a leak detection program and installing equipment.

D. What Are the Emissions Limitations and Work Practice Standards?

The emissions limitations and work practice standards established by the final Site Remediation NESHAP remain essentially the same as proposed. The standards are the same for existing, reconstructed, and new sources.

Process Vents

The process vent standards are the same regardless of whether the process is an in-situ or ex-situ treatment process. These standards apply to the entire group of affected process vents associated with all of the treatment processes used for your site remediation.

The first option is to reduce emissions of total organic HAP emissions listed in Table 1 of the final rule from all affected process vents at the facility to a level less than 1.4 kilograms per hour (kg/hr) and 2.8 Mg/yr, which is approximately 3.0 pounds per hour (lb/hr) and 3.1 tpy, respectively. You must achieve both the hourly and annual mass emissions limits to comply with this option under the final rule. If the total organic HAP emissions from all affected process vents associated with your site remediation exceed either the hourly or annual mass emissions limitations, then you must use appropriate controls to reduce the emission levels to comply with the emissions limits. If you can meet both the hourly and annual mass emissions limits using no controls, or with federally-enforceable controls, then no additional controls are required under the final rule for your affected process vents.

If you choose, you may demonstrate compliance with the hourly and annual emission limits based on total organic compounds (TOC) minus methane and ethane in place of total organic HAP. Because your compliance determinations based on TOC will be simpler and less expensive than if you use total organic HAP, it may be advantageous for your particular site-specific conditions to choose to comply with the emission limits based on TOC.

As an alternative, you may comply with an emission limit that requires that you reduce the total organic HAP emissions listed in Table 1 of the final rule from all of the affected process vents by at least 95 weight percent. Again, you may demonstrate compliance with this emission limit using TOC emissions (minus methane and ethane) in place of using total organic HAP emissions. At sites with multiple affected process vent streams, you may comply with this option by a combination of controlled and uncontrolled process vent streams that achieve the 95 percent reduction standard on an overall mass-weighted average. You may exclude certain low flow and low HAP concentration process vent streams explicitly specified in the final rule from the percent reduction calculation. Under this option, you must meet the operating limit and work practice standards specified in the final rule for each control device and closed vent system used to control your process vent streams.

Remediation Material Management Units

The air pollution control requirements for remediation material management units in the final Site Remediation NESHAP are based on using the applicable national emission standards established in other subparts of 40 CFR part 63 for specific types of equipment whenever available and appropriate to do so for this source category. For applications where appropriate NESHAP are not included in the final Site Remediation NESHAP, we have relied on establishing air emission control requirements that are consistent with the requirements under 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations. Subpart DD applies to facilities that are major sources of HAP; receive wastes, used oils, or used solvents generated at off-site locations; and manage and treat these materials in units and processes collectively referred to as off-site waste and recovery operations (OSWRO). The final rule has been written to directly cross-reference the appropriate subparts of 40 CFR part 63.

Tanks. Under the final rule for those tanks managing remediation materials with a maximum HAP vapor pressure of the remediation material less than 76.6 kPa and required to meet the air emission control requirements, you must achieve the applicable level of control (Tank Level 1 or Tank Level 2) determined by the tank design capacity and the maximum HAP vapor pressure of the remediation material placed in the tank. For each tank required to use Tank Level 1 controls, you must use a fixed roof according to the requirements in 40 CFR part 63, subpart OO—National Emission Standards for Tanks—Level 1. For each tank required to use Tank Level 1 controls, you may also comply with the final rule by using Tank Level 2 controls if you choose to do so. For each tank required to use Tank Level 2 controls, you must comply with one of five compliance options: use a fixed roof with an internal floating roof, use an external floating roof, use a fixed roof vented to a control device, use a pressurized tank that operates as a closed system during normal operations, or locate an open tank inside a permanent total enclosure that is vented to a control device.

The final rule requirements for the Tank Level 2 internal and external floating roof control option requirements have been revised since proposal by replacing the cross-reference to the floating roof requirements in the 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations with a cross-reference to the floating roof control requirements in 40 CFR part 63, subpart WW—National Emission Standards for Storage Vessels (Tanks)—Control Level 2. The requirements for floating roofs in both rules are essentially the same. This change was made to be consistent with our format changes to the final Site Remediation NESHAP to directly cross-reference the applicable control

requirement where applicable to and appropriate for the type of remediation material management units (in this case tanks) regulated by the final rule.

We stated at proposal that the basis for the selection of tank control requirements in the final Site Remediation NESHAP is the tank control requirements in the 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations (67 FR 49415). We inadvertently omitted from the version of proposed Site Remediation NESHAP published in the **Federal Register** the tank control requirements for tanks managing remediation materials with a maximum HAP vapor pressure of 76.6 kPa or greater included under 40 CFR part 63, subpart DD. For the final rule, we have corrected this omission and have added to the air pollution control requirements for tanks managing these remediation materials. The controls required under the final Site Remediation NESHAP are the same requirements in 40 CFR part 63, subpart DD. Tanks managing remediation materials with a maximum HAP vapor pressure of 76.6 kPa or greater use one of the Tank Level 2 control options other than a floating roof.

Containers. The final rule establishes emissions limitations and work practice standards to control organic HAP emissions from containers having a design capacity greater than 0.1 cubic meters (approximately 26 gallons). For those containers required to use air pollution controls, you must achieve the applicable level of control determined by the container design capacity, the organic content of the remediation material in the container, and whether the container is used for a waste stabilization process. You must comply with the specified requirements for the applicable control level in 40 CFR part 63, subpart PP—National Emission Standards for Containers.

Surface impoundments. For each surface impoundment required to use air pollution controls, you must use a floating membrane cover or a cover vented to a control device according to the requirements in 40 CFR part 63, subpart QQ—National Emission Standards for Surface Impoundments.

Separators. For each oil-water or organic-water separator required to use air pollution controls, you must use a fixed roof, use a floating roof, vent emissions to a control device, or use a pressurized separator according to the requirements in 40 CFR part 63, subpart VV—National Emission Standards for Oil-Water and Organic-Water Separators.

Transfer systems. For each individual drain system required to use air pollution controls, you must comply with the requirements in 40 CFR part 63, subpart RR—National Emission Standards for Individual Drain Systems. For an affected transfer system other than individual drain systems, you are required to comply with one of three options: use covers, use continuous hard-piping, or use an enclosure vented to a control device.

Closed Vent Systems and Control Devices. In final Site Remediation NESHAP we have added a separate series of sections (§§ 63.7925 through 63.7928) that specify in one part of the final rule all of the emissions limitations and work practice standards that apply to each closed-vent system and control device you use to meet the requirements in another section of the final rule. The same requirements for closed-vent systems and control devices that we proposed are now presented in these sections. Each control device you use to meet requirements under the final Site Remediation NESHAP (with the exception of the facility-wide process vent emission limits) must reduce emissions of total organic HAP listed in Table 1 of the final rule or the emissions of TOC (minus methane and ethane) by 95 percent by weight. If a combustion control device is used (thermal incinerator, catalytic incinerator, boiler, or process heater), a second compliance option available to you is for the control device to reduce the concentration of total HAP listed in Table 1 of the final rule or TOC (minus methane and ethane) to 20 parts per million by volume (ppmv) or less on a dry basis corrected to 3 percent oxygen. All control devices you use to meet requirements under the final rule (including any control devices you use to meet the facility-wide process vent emission limits) must meet operating limits for each type of control device and work practice standards for closed vent systems and certain types of control devices.

In addition, we have added to the final rule several more control device compliance options that are under 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations for emissions vented to a boiler, process heater, or fuel system but was not included in the proposed Site Remediation NESHAP. Under these compliance options, as an alternative to complying with the 95 percent reduction requirement for control devices, you may comply with any of the following work practice standards: introduce the vent stream into the flame zone of the boiler or process heater and maintain the conditions in the combustion chamber at a residence time of 0.5 seconds or longer and at a temperature of 760°C or higher, or introduce the vent stream with the fuel that provides the predominant heat input to the boiler or process heater (*i.e.*, the primary fuel), or introduce the vent stream to a boiler or process heater for which you either have been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces; or has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

Equipment Leaks

The final rule establishes work practice standards to control organic HAP emissions from leaks in pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, flanges and other connectors, and product accumulator vessels that either contain or contact a regulated material that is a fluid (liquid or gas) and has a total concentration of the organic HAP listed in Table 1 of the final rule equal to or greater than 10 percent by weight. These work practice and equipment standards do not apply to equipment that operates less than 300 hours per calendar year. You have the option of complying with the provisions of either 40 CFR part 63, subpart TT—National Emission Standards for Equipment Leaks—Control Level 1 or 40 CFR part 63, subpart UU—National Emission Standards for Equipment Leaks—Control Level 2. Both of these subparts require you to implement a leak detection and repair program (LDAR) and to make certain equipment modifications.

E. What Are the Requirements for Remediation Material That Is Shipped Off-Site?

Under the final rule, where remediation material that will be required to be managed in either remediation material management units or treatment processes equipped with process vents is shipped to an off-site facility, you may need to meet certain requirements before transferring the material and maintaining records for the transferred materials. We have written the final regulatory language for the requirements for transfer of remediation wastes to reflect our original objective in establishing the requirements. Also, we have simplified the reporting and recordkeeping requirements in the final

rule related to some off-site transfers of remediation materials. Finally, we have included in the final rule an explicit provision stating that the acceptance by a facility owner or operator of remediation material from a site remediation subject to the final Site Remediation NESHAP does not, by itself, require the facility owner or operator to obtain a title V permit.

F. What Are the General Compliance Requirements?

Under the final rule, you must meet each applicable emission limitation and work practice standard in the final rule at all times, except during periods of startup, shutdown, and malfunction. You must develop and implement a written startup, shutdown, and malfunction plan for your site remediation according to the provisions of 40 CFR 63.6(e)(3). You also must develop and implement a site-specific monitoring plan for each continuous monitoring system required by the final rule. The plan must address installation location, performance and equipment specifications, and procedures for performance evaluations, operation and maintenance, data quality assurance, and recordkeeping and reporting. We have deleted the proposed operation and maintenance requirements for continuous parameter monitoring systems from the final rule. We are planning to develop and promulgate a single set of operation and maintenance requirements for continuous parameter monitoring systems applicable to all NESHAP under 40 CFR part 63.

G. What Are the Initial Compliance Requirements?

Initial compliance with the emissions limitations and work practice standards for process vents is achieved by demonstrating compliance with the selected set of emission limits (*i.e.*, mass emission limit or percent reduction). If a control device is used to achieve compliance with the emission limits, you also must establish your operating limits for the control device based on the values measured during the performance test or determined by the design evaluation.

Initial compliance with the emissions limitations and work practice standards for remediation material management units is achieved by demonstrating that the unit meets all applicable air emission control requirements for the unit. If a control device is used, initial compliance is determined by either: performing a performance test according to 40 CFR 63.7 and using specific EPA reference test methods, or performing a design evaluation according to procedures specified in the final rule. You also must establish your operating limits for the control device based on the values measured during the performance test or determined by the design evaluation.

H. What Are the Continuous Compliance Provisions?

To demonstrate continuous compliance with the applicable emissions limitations and work practice standards under the final rule, you must perform periodic inspections and continuous monitoring of certain types of air pollution control equipment you use to comply with the final rule. In those situations when a deviation from the operating limits specified for a control device is indicated by the monitoring system or when a damaged or defective component is detected during an inspection, you must implement the appropriate corrective measures.

To demonstrate continuous compliance with an emission limitation for a given affected source, you must continuously monitor air emissions or operating parameters appropriate to the type of control device you are using to comply with the standard, and keep a record of the monitoring data. Compliance is demonstrated by maintaining each of the applicable parameter values within the operating limits established during the initial compliance demonstration for the control device.

There are different requirements for demonstrating continuous compliance with the work practice standards, depending on which standards are applicable to a given affected source. To ensure that the control equipment used to meet an applicable work practice standard is properly operated and maintained, the final rule requires that you periodically inspect and monitor this equipment.

I. What Are the Notification, Recordkeeping, and Reporting Requirements?

The final rule requires that you keep records and file reports consistent with the notification, recordkeeping, and reporting requirements in 40 CFR part 63, subpart A. Two basic types of reports are required: initial notification and semiannual compliance reports. The initial notification report advises the regulatory authority of applicability for existing sources or of construction for new sources.

The initial compliance report demonstrates that compliance has been achieved. This report contains the results of the initial performance test or design evaluation, which includes the determination of the reference operating parameter values or range and a list of the processes and equipment subject to the standards. Subsequent compliance reports describe any deviations of monitored parameters from reference values; failures to comply with the startup, shutdown, and malfunction plan (SSMP) for control devices; and results of LDAR monitoring and control equipment inspections.

Records required under the proposed standards must be kept for 5 years, with at least the 2 most recent years being kept on the facility premises. These records include copies of all reports that you have submitted to the responsible authority, control equipment inspection records, and monitoring data from control devices demonstrating that operating limits are being maintained. Records from the LDAR program and storage vessel inspections, and records of startups, shutdowns, and malfunctions of each control device are needed to ensure that the controls in place are continuing to be effective.

J. What Are the Compliance Deadlines?

Each affected source associated with a site remediation is an existing source if you commenced construction or reconstruction of the source before July 30, 2002. Each affected source associated with a site remediation is a new source if you commenced construction or reconstruction of the affected source on or after July 30, 2002. An affected source is reconstructed if it meets the definition of ''reconstruction'' in 40 CFR 63.2.

Existing sources associated with a site remediation subject to the final Site Remediation NESHAP must comply with the final rule requirements by October 9, 2006. New sources, with the exception of those new sources managing remediation material that is a radioactive mixed waste, must be in compliance with the final rule requirements on the final rule's effective date or, if it is not yet operational, upon initial startup of the source.

Under the final Site Remediation NESHAP, remediation activities (which meet the final rule applicability criteria) that clean up radioactive mixed waste are subject to standards for treatment unit process vents and equipment leaks. If you have a new affected source that manages remediation material that is a radioactive mixed waste, and its initial startup date is on or before October 8, 2003, you must be in compliance with the final rule requirements no later than October 9, 2006. If the affected source's initial startup date is after October 8, 2003, you must be in compliance with

the final rule requirements upon initial startup.

K. How Does the ''once in, always in'' Policy Apply?

We explained at proposal why site remediation is a unique source category (see 67 FR 49400–49401). Because of its uniqueness, we specifically evaluated how the final Site Remediation NESHAP could be implemented within the framework of our existing policies for implementing the MACT standards promulgated under CAA section 112. Our ''once in, always in'' policy is that once a facility or source is subject to a MACT standard, it remains subject to that standard as long as the affected source definition or criteria are met. In the preamble to the proposed rule, we discussed our decision that the once in, always in policy should not apply to the site remediation source category for those facilities that are area sources prior to and after, but not during, the cleanup activity. We received many public comments supporting this decision. We are reiterating here how we will apply the once in, always in policy to facilities that conduct site remediations in situations where a facility is an area source prior to the remediation activity, but where addition of the potential HAP emissions from the remediation activities increases the facility's potential to emit (PTE) to levels such that the facility exceeds the 10 or 25 ton HAP thresholds for a major source.

Because the facility is then a major source of HAP, another operation at the facility, such as a manufacturing process, would be subject to NESHAP for other source categories located at their facility. Furthermore, after the remediation is completed, the facility would, in terms of potential emissions, essentially be back to where it was as an area source (assuming no change in the facility plant operations). Under the once in, always in policy, the facility would remain subject to the NESHAP that was triggered by the limited duration change of source status from area to major brought about by the increase in PTE from the site remediation activity.

In the situation described above, the once in, always in policy would create an obvious disincentive for owners or operators to engage in site remediations, particularly since voluntary remediation would be affected by the final rule. Our intent is to not adopt requirements that create incentives to avoid a cleanup or result in the selection of less desirable or less protective remediation approaches. Therefore, we have determined that the once in, always in policy does not apply where a facility's status changes from area source to major source, solely as a result of remediation activities regulated by the Site Remediation NESHAP, where the facility returns to area source status after the cleanup activity.

III. Responses to Major Comments on Proposed Rule

Our responses to all of the substantive public comments on the proposal are presented in the BID which is available in Docket No. OAR–2002–0021.

A. Why Are We Promulgating NESHAP To Regulate HAP Emissions From Site Remediation Activities?

Comment: Several commenters disagreed with our decision to establish a NESHAP regulating HAP emissions from site remediation activities. The commenters argued that such a NESHAP is not needed for several reasons: the level of HAP emissions from the sources that would be subject to the final rule is too low to warrant regulation by a NESHAP, adequate air emissions controls already are imposed at sites subject to risk assessment, and a NESHAP discourages site owners and operators from initiating and conducting voluntary cleanups.

Response: Section 112 of the CAA requires that we establish MACT standards for the control of HAP from both new and existing major sources of HAP. Section 112(a)(1) defines a ''major source'' as ''* * * 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 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. * * * '' We have codified essentially this same definition into § 63.2 of the General Provisions to part 63. We have long interpreted this definition as requiring that all sources of HAP within a plant site must be aggregated, so long as the sources are geographically adjacent and under common control (see *e.g.*, 59 FR 12412, March 16, 1994). This interpretation was sustained by the court in *National Mining Ass'n* v. *EPA,* 59 F. 3d 1351, 1355–1359 (D.C. Cir. 1995). A consequence, then, is that sources of HAP which are part of a major source, but which would not themselves (viewed separately) be major sources, are still classified as major sources and are subject to the requirements of CAA section 112(c) and (d), which command us to list all categories of major sources and establish technology-based standards for those sources. The result, for purposes of site remediation activities, is that all such remediations conducted at locations which, taken as a whole are major sources, are themselves required to be controlled by MACT standards in the final rule.

We determined that there are major sources of HAP where site remediations are now being conducted or may be conducted in the future to clean up contaminated environmental media or certain stored or disposed materials that pose a reasonable potential threat to contaminate environmental media. The levels of HAP emissions from remediation activities at a given cleanup site depend on a combination of site-specific factors including the type of remediation processes used and activities conducted; the quantity, HAP composition, and other characteristics of the remediation material; and the time required to complete the cleanup. We recognize that at some cleanup sites the levels of HAP emissions from the remediation activities will be low. However, at other cleanup sites the potential level of HAP emissions from the remediation activities can be substantial and appropriate air pollution controls are needed to protect public health and the environment.

We already have established requirements under our RCRA hazardous waste corrective action and CERCLA Superfund programs which address the air emissions from certain remediation activities based largely on site-specific risk assessments. However, these requirements do not apply universally to all site remediations with the potential to emit HAP. There are site remediations not subject to these federally-enforceable requirements. To meet our congressional directive under CAA section 112, we are promulgating the final Site Remediation NESHAP applicable to those site remediations not subject to federally-enforceable requirements that will effectively control HAP emissions.

Finally, the fundamental objective of a site remediation is to mitigate a detected risk to public health or the environment by successfully completing the cleanup of media or other materials at the site that is contaminated by a hazardous substance. It is commendable when a site owner or operator voluntarily initiates and conducts a cleanup. However, the fact that a cleanup is being conducted voluntarily as opposed to being conducted to comply with a Federal or State regulatory requirement or fulfill a court directive does not obviate or excuse the use of appropriate air pollution controls to those site remediation activities with

the potential to emit substantial quantities of HAP.

B. How Did We Select the HAP To Be Regulated by the Final Rule?

Comment: Several commenters requested that we reconsider our selection of which HAP are regulated under the final rule to include metals and inorganic compounds listed as HAP. In particular, the commenters stated that beryllium and other heavy metals should be included because these HAP cause harm to public health and welfare. Other commenters supported our decision not to regulate remediation activities that emit metal HAP or other inorganic HAP. One commenter stated that the final rule should be based on a HAP list developed specifically for site remediation instead of using the list under 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

Response: A site remediation potentially could be required at any of a wide variety of industrial facilities, manufacturing plants, waste treatment and disposal facilities, and other types of sites. Consequently, the contaminating substances at a site requiring cleanup could be any of the organic, metal, or inorganic chemicals or groups of chemicals that are listed as HAP pursuant to CAA section 112(b). However, some of these contamination substances that are also listed as HAP have no or minimal potential to be emitted to the atmosphere from the site remediation activities performed at the site to clean up the contamination (notwithstanding that metal and other inorganic HAP may be present in the material being remediated).

In developing the proposed Site Remediation NESHAP, we considered all of the HAP listed pursuant to CAA section 112(b) for regulation by the proposed rule (see 67 FR 49413). Based on the information available to us at proposal regarding the cleanup of media contaminated with metals or other inorganic HAP, many of the remediation techniques used for these cleanups do not release the metals or inorganic HAP to the atmosphere. In cases where remediation material containing a metal or inorganic HAP is burned in an incinerator or other combustion unit, the combustion unit must already meet air standards under the CAA and RCRA that limit organic, particulate matter, metals, and chloride emissions. Therefore, we concluded that metals and other inorganic compounds listed as HAP pursuant to CAA section 112(b) do not need to be regulated by the final Site Remediation NESHAP. We specifically requested comment at proposal on our conclusion. We received some additional information from commenters supporting our decision not to include any metal or inorganic HAP on our list of regulated HAP for the final Site Remediation NESHAP. We received no information from commenters to support a determination that metal or inorganic HAP are being emitted from site remediation activities. Therefore, we continue to believe that metal and other inorganic compounds HAP do not need to be addressed by the final Site Remediation NESHAP.

In selecting the organic HAP to be regulated by the final Site Remediation NESHAP, we chose at proposal to be consistent with the approach we used for under 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations as well as other NESHAP promulgated for source categories with large diversity in the organic chemical constituents present in the materials managed at any given facility. Under this approach, a specific list of pollutants is selected that reasonably ensures MACT control of the organic HAP emitted from the source. We used this approach to develop the HAP list for under 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations by evaluating each chemical or chemical group listed as a HAP in CAA section 112(b) with respect to its potential to be emitted from a waste management or recovery operation (see 59 FR 1921).

Subpart DD under 40 CFR part 63 does not apply to OSWRO sources managing wastes received from site remediations. However, the data base that we used to select the list of HAP for subpart DD under 40 CFR part 63 included remediation wastes sent to hazardous waste TSDF. We concluded that this data base is also representative of the range of organic HAP chemicals having the potential to be emitted from the sites requiring cleanup of media contaminated with volatile or semi-volatile organics and other remediation material. Therefore, we proposed that same list of organic HAP used for the subpart DD under 40 CFR part 63 also be used for the final Site Remediation NESHAP. We requested comment at proposal regarding the use of this list of organic HAP for the final Site Remediation NESHAP. We received no new data from commenters, and have not ourselves found additional data since proposal to cause us to alter our conclusion. These data are the best information available representative of the range of organic HAP chemicals having the potential to be emitted from site remediation activities, and that it is most appropriate to use also the HAP list from subpart DD under 40 CFR part 63 for the Site Remediation NESHAP.

When we developed the HAP list for subpart DD under 40 CFR part 63, we evaluated each organic chemical or chemical group listed as a HAP in CAA section 112(b) with respect to its potential to be emitted from a waste management or recovery operation (see 59 FR 51921). The criteria used to characterize and evaluate emission potential was based on a chemical constituent's Henry's law constant, evaluation of the aqueous and organic volatility characteristics of the chemical, and the ability of the analytical test methods to quantitate the chemical. Based on our evaluation, we developed the list of specific organic HAP compounds or compound groups to be regulated under the final rule (Table 1 in subpart DD under 40 CFR part 63). We later decided to delete eight chemicals from our initial list because we concluded that there is low potential for these compounds to be emitted from OSWRO (see 61 FR 34153). Dimethyl hydrazine was one of the eight compounds we removed from the list. Table 1 in the proposed Site Remediation NESHAP inadvertently included dimethyl hydrazine as one of the regulated HAP. We have corrected Table 1 in the final Site Remediation NESHAP to accurately reflect our intent by deleting dimethyl hydrazine from the list.

C. How Do We Define Site Remediation in the Final Rule?

Comment: Commenters expressed the concern that, as proposed, the final rule applicability provisions are unclear and circular. Several commenters requested that we clearly define the term ''remediation'' or the remediation activities subject to the final rule. Commenters also stated that routine waste management activities (*e.g.*, tank clean-outs, removing spent catalyst from reactors, cleaning heat exchangers and other piping, etc.) are not site remediation activities and should be distinguished from site remediation activities subject to the final rule.

Response: We have written the regulatory language in the applicability section of the final rule to clarify our intent as to what is a site remediation for the purpose of implementing the Site Remediation NESHAP. The basis for all of our revisions to the proposed rule is consistency with our intent that the

final rule address HAP emissions from activities to clean up environmental media contaminated with HAP as well as clean up certain stored or disposed materials at a site that contain HAP and pose a reasonable potential threat to contaminating environmental media. It was never our intention that the final rule be interpreted to apply to activities at a facility required for management of waste generated by routine equipment maintenance activities or other types of activities necessary to continue day-to-day operations at a facility.

D. Why Does the Final Rule Not Apply to CERCLA Superfund and RCRA Corrective Action Cleanups?

Comment: We received comments supporting our proposal that site remediations conducted for CERCLA Superfund and RCRA corrective action cleanups not be subject to the final Site Remediation NESHAP. These commenters believe that these RCRA and CERCLA cleanup programs do have appropriate provisions which provide for the protection of public health and the environment from air pollutants emitted from site remediation activities on a site-specific basis. Other commenters opposed the exclusion of these site remediations from being subject to the final Site Remediation NESHAP because they assert that neither of the RCRA and CERCLA programs have air emission standards for site remediation activities and that the requirement of CAA section 112 is to establish NESHAP for HAP emissions from these activities. Among other things, such control could address any regulatory gaps in RCRA and CERCLA requirements.

Response: The RCRA hazardous waste corrective action and CERCLA Superfund programs do not establish national air standards for site remediations. These programs, however, do have provisions which provide for the protection of public health and the environment from air pollutants emitted from these activities on a site-specific basis. As we stated at proposal, the established Federal requirements provide an appropriate and effective regulatory approach to address air emissions from those remediation activities performed under CERCLA authority as a remedial action or a non-time critical removal action, or under RCRA authority at permitted or Federal Order RCRA corrective action sites.

The Superfund program is designed to protect public health and the environment while providing the flexibility to use effective and innovative remediation approaches that best suit the site-specific conditions at each CERCLA site (CERCLA section 121). The Superfund program conducts extensive evaluation of the contamination at each CERCLA site (see 40 CFR 300.430). As part of the evaluation process, a decision document (*i.e.*, Record of Decision (ROD)) is developed for response actions, documenting the extent of contamination and the cleanup method(s) to be used at the site. Under this process, a site-specific analysis, considering the impacts to air, soil and groundwater, is conducted and an appropriate remedy is selected. During the ROD process, the general public is given the opportunity for input in the decision-making process through public hearings and submission of written comments. The public plays an important role in identifying and characterizing site-specific factors, such as the type of contaminants, the level and extent of contamination and other site-specific factors. We believe this procedure results in selection of the best plan for cleaning up each site and achieving the program's goals.

As implemented under the requirements of RCRA, hazardous waste treatment, storage and disposal facilities must obtain a permit specifying requirements for managing hazardous waste. As a condition of obtaining this permit, facilities are required to undertake corrective action addressing releases of hazardous waste and hazardous constituents from units at the facility which do not themselves require RCRA permits (solid waste management units) (RCRA section 3004(u)). For such designated contamination areas at TSDF, requirements for the cleanup of the contamination are included in the facility's RCRA permit, or Federal Order where applicable. Such cleanup activities are known as ''corrective actions.'' Although RCRA is a separate program from Superfund, the RCRA permitting or Federal Order process for TSDF share several significant characteristics with Superfund cleanup activities at CERCLA sites. First, it is also the intent of the RCRA corrective action program to protect public health and the environment while allowing flexibility in choosing solutions to eliminate or reduce site contamination. Second, RCRA permitting and Federal Order procedures involve the public in the decision-making process through informal public meetings, public hearings or written comment. Finally, an extensive site-specific evaluation is performed at the RCRA facility to evaluate the extent of the contamination, while considering appropriate remedies through a multi-media (*i.e.*, air, soil, groundwater) perspective (see 67 FR 49406 for additional explanation).

E. Why Does the Final Rule Potentially Apply to State and Voluntary Cleanup Programs?

Comment: Many commenters requested that in addition to CERCLA Superfund and RCRA corrective action cleanups, that other cleanups conducted under Federal or State oversight not be subject to the final rule, where such cleanups are conducted following CERCLA or RCRA requirements. The commenters argued that these cleanups conducted under State Superfund, Brownfield, voluntary cleanup, or other similar programs are subject to emissions controls and requirements that are substantially similar to those in the CERCLA or RCRA programs.

Response: The final Site Remediation NESHAP applies only to site remediations that meet the three applicability conditions specified in the final rule. We have determined that site remediations at those sites that meet these applicability conditions warrant the implementation of air pollution controls to reduce the emission of organic HAP to the atmosphere. As discussed in our previous response, we are exempting from the final rule requirements those sites that meet the final rule applicability conditions where the site remediations are conducted for CERCLA (Superfund) or RCRA corrective action cleanups. This includes the site remediations in one of 39 States that the EPA has authorized to oversee cleanups at TSDF under RCRA corrective action. Site remediations administered under these federally-enforceable programs address the organic HAP emissions from the site remediations on a site-specific basis.

The overall objective of any site remediation, whether it be a Federal required, State required, or voluntary cleanup, is to remove the threat to human health and the environment posed by the presence of hazardous substances in the contaminated media and wastes that can potentially contaminate the media at the site. However, the actions taken at a given contamination site that remove the hazardous substances from water or soil by transferring those substances to the air is not in the best interest of protecting human health and the environment from exposure to these hazardous substances. Unlike CERCLA or RCRA corrective action cleanups, State regulatory and voluntary cleanup programs are not uniform on a national basis, any requirements imposed on a given site remediation are not federally-

enforceable by the EPA, and the programs may not specifically address site remediation air emissions. For these reasons, we cannot view these activities as the functional equivalent of MACT, and, therefore, we cannot justify extending the same exemption we provide for CERCLA Superfund or RCRA corrective action cleanups to site remediations conducted for State regulatory and voluntary cleanup programs. Therefore, we are maintaining the applicability of the final rule to those site remediations conducted for State regulatory and voluntary cleanup programs where the site remediation meets the applicability conditions specified in the final rule.

F. How Does the Final Rule Apply to Cleanups of Leaking Underground Storage Tanks?

Comment: Many commenters agreed with the decision to modify the site remediation source category listing to exclude remediation activities at leaking underground storage tanks (UST) located at gasoline service stations. However, commenters argued that because the types, sizes and purpose of UST used for the storage of motor fuels or heating oils at all types of commercial and industrial properties are comparable to those located at gasoline service stations, then remediation activities associated with any UST contamination cleanups regardless of location also should not be subject to the Site Remediation NESHAP.

Response: The rationale for our decision to modify description for the site remediation source category to exclude remediation activities from leaking UST located at gasoline service stations is based on our estimates of the total HAP emissions from a typical cleanup of contamination from the size and types of underground tanks commonly used at gasoline service station sites. These estimates indicate that the level of HAP emissions from these sites would be significantly below the major source threshold levels (*i.e.*, less than 10 tpy of a single HAP or 25 tpy of all HAP) (see 67 FR 49400). Gasoline service station sites are area sources. Site remediation was listed as a source category for MACT standard development to address HAP emissions at major sources where remediation technologies and practices also are used at the site to clean up contaminated environmental media (*e.g.*, soils, groundwaters, or surface waters) or other materials that pose a reasonable potential threat to contaminate environmental media. Our decision was not based on a determination that UST contamination cleanups regardless of location should not be included in the site remediation source category. Therefore, we believe that if a leaking UST cleanup is conducted at a major source site then it is appropriate (and indeed mandated) to require the cleanup activities comply with the final Site Remediation NESHAP requirements.

G. How Does the Final Rule Apply to Cleanups of Radioactive Mixed Waste?

Comment: Six commenters opposed the proposal that any site remediation involving the cleanup of radioactive mixed waste not be subject to the Site Remediation NESHAP. These commenters argued that the existing Federal regulations for mixed waste are not adequately addressing the HAP emissions from remediation activities at existing facilities managing these types of wastes. Two commenters expressed support for the proposal because they believe that mixed wastes are already appropriately and protectively managed under the Atomic Energy Act and Nuclear Waste Policy Act.

Response: Radioactive mixed wastes (RMW) are wastes that contain radioactive materials as well as wastes listed or identified as hazardous under RCRA. Radioactive mixed wastes must be managed according to RCRA subtitle C regulations. In addition, these wastes are subject to standards administered by the Nuclear Regulatory Commission (NRC) under the Atomic Energy Act (AEA) and Nuclear Waste Policy Act (NWPA) of 1982 that address the safe handling and disposal of radioactive waste.

In developing the air standards under CAA authority for stationary sources that potentially may manage wastes also subject to requirements under other legislative authorities, we consider the management practices required for these wastes to avoid inconsistencies between any CAA requirements that might be established and existing requirements under the other applicable authorities. We reviewed the special nature of existing requirements for managing radioactive mixed wastes with respect to requirements for the control of organic HAP emissions we proposed to establish under the final Site Remediation NESHAP. In certain cases, the air pollution controls used as the basis for the standards under the final Site Remediation NESHAP are not compatible with the NRC requirements for safe handling of radioactive mixed wastes. For example, drums used to store radioactive mixed waste cannot be sealed with vapor leak-tight covers because of unacceptable pressure buildup of hydrogen gas to levels that can potentially cause rupture of the drum or create a potentially serious explosion hazard (a hazard which, by any commonsense measure, exceeds risk posed by emission of organic HAP). (See Air Docket ID No. OAR–2002–0021; see also S. Rep. No 228, 101st Cong. 1st sess. at 168 (''* * * In cases where control strategies for two or more different pollutants are in actual conflict, the Administrator shall apply the same principle—maximum protection of human health shall be the objective test. * * *'').)

The generation of hydrogen gas is a result of the radiolytic decomposition of organic compounds (*i.e.*, plastics) and/or aqueous solutions within the container. Plastics are commonly used as a barrier to alpha radiation both in handling operations and in waste packaging. Over time, the alpha particle causes the hydrolysis of chemical bonds within the plastic material which results in the release of hydrogen gas. Likewise, hydrolysis of aqueous solutions will yield hydrogen. Additionally, radiation-induced degradation and biodegradation of organic low-exchange resin waste, which are also RMW, generated during water treatment at nuclear facilities, can result in the production of gaseous products (*i.e.*, hydrogen and carbon dioxide) which in turn can result in pressure buildup and failure of the container. Consequently, a drum used for storage of radioactive mixed wastes must be continuously vented through special filters in accordance with technical guidance issued by the NRC to prevent the hydrogen concentration in the drum from reaching dangerous levels. Because of pressure build-up inside the container, a vent for gaseous compounds is necessary to prevent failure of a high-integrity container (*i.e.*, vent designs incorporated into high integrity containers restrict the release of radionuclides from the container into the environment while allowing the gas to be vented). (See RCRA Docket Items F–91–CESP–00046 and F–94–CESF–S0001, which are part of the administrative record for the final rule.)

In accordance with the Waste Isolation Pilot Plant (WIPP), Carlsbad, New Mexico, Waste Acceptance Plan (WAP), wastes that are to be shipped to the WIPP must be in containers that are vented to prevent the buildup of pressure. The container vents must be filtered to ensure that no radioactive waste components are released. For example, the Hazardous Waste Permit for the WIPP, dated November 25, 2002, in section M1–1d describing container management practices states on page M1–8 ''* * * Because containers at the WIPP will contain radioactive waste,

safety concerns require that containers be continuously vented to obviate the buildup of gases within the container. These gases could result from radiolysis, which is the breakdown of moisture by radiation. The vents, which are nominally 0.75 in. (1.9 centimeters) in diameter, are generally installed on or near the lids of the containers. These vents are filtered so that gas can escape while particulates are retained. * * *'' In addition, the permit in the section describing the requirements for the standard transuranic mixed waste drums states on page M1–2, ''* * * One or more filtered vents (as described in section M1–1d) will be installed in the drum lid to prevent the escape of any radioactive particulates and to eliminate any potential of pressurization. * * *''

To comply with these requirements, the drum lid is punctured to release any buildup of potentially explosive hydrogen gas and a specially-designed, carbon composite membrane filter vent is attached. The function of this filter vent is to retain radionuclides inside a container while allowing hydrogen and other gases (*e.g.*, VOC) to pass through to the atmosphere. In particular, the carbon composite membrane used in the filter vent does not inhibit the passing of VOC from the container into the atmosphere.

Because it was judged an unsafe practice to store RMW drums and other containers with tight covers, and because the WIPP Waste Analysis Plan requires that containers be vented for shipment to the WIPP, we determined that many Department of Energy facilities may be unable to meet the tight cover control device criteria for containers as specified in the proposed Site Remediation NESHAP. In addition, we were unable to determine, if there were any available technologies that could be applied to the RMW containers that would control organic air emissions in a safe and cost-effective manner while also complying with WIPP and other AEA and NWPA requirements.

Information gathered and reviewed following proposal of the Site Remediation NESHAP does not indicate that the situation regarding the safety issue related to storage of RMW has changed since proposal. The potentially conflicting requirements for containers (and other storage units) to be vented under one set of rules versus the requirements for closed, tight fitting covers under the CAA rules remains to be resolved. We are not aware of any available device to control organic air emissions (such as an activated carbon filter) that can be used in combination with the carbon composite membrane filter vent on a RMW container. No available technologies have been identified that could be applied to the RMW containers that would control organic air emissions in a safe and cost-effective manner while also complying with WIPP and other AEA and NWPA requirements. With no known controls in place on these sources, the MACT floor for RMW sources (*e.g.*, RMW containers) appears to be no control beyond that already provided by the NRC and other applicable regulations. Codifying the same level of control already established under another regulatory authority as a MACT standard seems a needless expenditure of resources since it would not change existing practice or otherwise provide benefits not already provided by the existing regulations. Therefore, we have retained in the final rule an exemption from the air pollution control requirements under the final Site Remediation NESHAP for remediation material management units (*e.g.*, tanks, containers, and surface impoundments) managing RMW.

Although the technical information and data we have collected support inclusion of an exemption for remediation material management units managing RMW from the air pollution control requirements under the final Site Remediation NESHAP, we concluded from our review of this information that this is not the case for site remediation treatment process vents and equipment leaks. The technical and safety concerns for the required controls for organic emissions from containers and tanks managing RMW are not an issue with the controls required by the final Site Remediation NESHAP for treatment unit process vents and equipment leaks if applied to remediation material streams that are classified as RMW. We have not identified any conflicting regulatory requirements that would preclude the use of air pollution controls on these sources as is the case with tanks and containers. Also, since 1990, remediation material streams classified as RMW have been subject to, and in compliance with, the air pollution control requirements in the national air standards we promulgated under RCRA authority to control total organic emissions from hazardous waste TSDF treatment process vents (subpart AA in 40 CFR parts 264 and 265) and equipment leaks (subpart BB in 40 CFR parts 264 and 265). The air pollution control requirements under these RCRA air rules are the same as the requirements for site remediation treatment process vents and equipment leaks included in the final Site Remediation NESHAP. With demonstrated controls in place on these treatment unit and equipment component sources, MACT for these RMW sources (*i.e.,* process vents and equipment leaks) would be established at the control levels required under those rules. Because the technical issues related to safety concerns for RMW containers and other storage units do not apply to treatment unit process vents and equipment leaks, we have written the final Site Remediation NESHAP to limit the exemption to only remediation material management units managing RMW. Remediation activities involving the cleanup of RMW that meet the final rule applicability criteria are subject to standards for treatment unit process vents and equipment leaks under the final Site Remediation NESHAP.

H. How Does the Final Rule Apply to Short-Term Site Remediations at Affected Facilities?

Comment: Commenters supported our proposal to exempt short-term cleanups from being subject to the emissions limitations and work practice standards but requested longer allowable cleanup intervals. Commenters argued that the proposed 7-day initiation period from the time the contamination occurs and 30-day cleanup period are too short because they do not account for circumstances beyond the control of an owner or operator which may delay discovery of the contamination or completing the cleanup within 30 days.

Response: We reviewed our proposed regulatory language for the exemption and concluded that the proposal does not accurately reflect our intent. Therefore, we have written in the final rule the approach we use to implement the exemption. This approach preserves our original intent as to which site remediations warrant exemption as well as addresses the concerns raised by commenters regarding the situations when a short-term site remediation takes longer to complete than initially planned and extends beyond the allowable time interval because of circumstances beyond their control.

The purpose of the final Site Remediation NESHAP is to control organic HAP emissions released to the atmosphere during site remediations. Organic HAP emissions from in-situ treatment processes primarily occur when an air or gas stream from the remediation process is exhausted to the atmosphere. Organic HAP emissions can be released from extraction or excavation of contaminated material and the subsequent handling, treatment, and disposal of these materials. The

emissions do not occur prior to the time that these remediation activities actually start.

We recognize that activities necessary to plan, arrange, and schedule the site remediation may take more than 30 days. Also, we recognize that there may be delays in starting the site remediation due to circumstances beyond the control of a site owner or operator such as waiting for necessary permit approvals from a State or local agency, or scheduling of personnel or equipment contracted to complete the cleanup work.

Furthermore, a site remediation does not occur until a source of actual or potential hazardous substance contamination is discovered. In many cases, when the contamination is discovered may not be the same time that the contamination occurs. For example, the new owner or operator of a site may discover a contaminated source requiring remediation that occurred years earlier due to improper practices of the previous site owner. We recognize that in many situations it is difficult, if not impossible, for facility owners and operators, as well as enforcement personnel, to verify whether a given site remediation is initiated within 7 days of the contamination occurring. Therefore, we decided to eliminate any conditional requirements for the exemption related to when the contamination occurred. Instead, it is more appropriate and practical to base the time limit for the short-term exemption on the period that the on site work is performed for those activities with the actual potential to emit HAP.

For the final Site Remediation NESHAP, we adopted the approach of exempting short-term site remediations that can be completed within a given number of consecutive calendar days as determined from the day that any action is first initiated that removes, destroys, degrades, transforms, immobilizes, or otherwise manages the remediation materials. In adopting this approach, we exclude those activities that need to be completed to perform a site remediation but are not responsible for the generation of HAP emissions from site remediations, namely: activities required to characterize the type and extent of the contamination by collecting and analyzing samples, to obtain any permits required by State or local authorities to conduct the site remediation, to schedule workers and necessary equipment, and to arrange for any contractor assistance in performing the site remediation.

Given our revised regulatory approach for the short-term site remediation exemption, we re-evaluated the maximum time interval appropriate for the exemption. We proposed a maximum time interval of 30 days for the exemption. This proposed time interval included time to complete those sampling, planning, and scheduling activities that needed to perform a site remediation but are not part of the physical activities which cause HAP to be emitted at the cleanup site. Under the final rule, the exemption is based on the time interval required to complete only those remediation activities that actually emit or have a potential to emit HAP. We believe that the physical part of the site remediations we intend for this exemption to apply can reasonably be completed within a period much shorter than 30 days (*e.g.,* 1 week, 14 days). However, there are situations where a remediation at a particular site which normally should be completed within these shorter periods cannot be due to factors beyond the control of the owner or operator that curtail or delay the remediation activities (such as severe weather or machinery breakdowns). Therefore, we decided that selecting a maximum time interval of 30 days for the exemption will allow a sufficient period to complete the types of cleanups we intend for this exemption to apply to and to provide a reasonable amount of leeway to account for any unforeseen circumstances that may develop at a site.

Finally, it is our intention that the short-term exemption only be applicable to those site remediations for which the cleanup of the entire contaminated area at the site can be completed within 30 consecutive days. The exemption is not intended to be used for longer term cleanups of contaminated areas whereby the remediation activities at the site are started, stopped, and then re-started in a series of intervals with durations less than 30 days per interval for which the total time of all of the intervals required to complete the site remediation exceeds a total of 30 days.

I. How Does the Final Rule Apply to Remediation Materials Sent Off-Site From Affected Facilities?

Comment: Commenters opposed the proposed rule requirements on the transfer of remediation material to another party or site. The commenters asserted that proposed requirements are unnecessarily burdensome on both the shipping and receiving parties. Furthermore, requiring owners and operators to submit a written certification of intent to comply with the final rule adds paperwork with little or no environmental or health benefit. The requirements also have the potential to be an especially burdensome task for the off-site facility that are now an area source.

Response: The objective of a site remediation is to mitigate a detected risk to public health or the environment by successfully completing the cleanup of an area contaminated by a hazardous substance. At many remediation sites, the contaminated material is excavated or extracted and then shipped to another site for treatment or disposal. Simply moving contaminated material containing organic HAP from the cleanup site to another site across town or in another community does not address the potential for these HAP to be emitted to the air and, subsequently, pose a risk to public health or the environment. It merely transfers the risk to another locale. Nor does such a practice reflect the maximum emission reduction achievable, as required by CAA section 112(d)(2) and (3). Thus, there is a need to ensure that those remediation materials with the potential to emit organic HAP are managed and treated in units using appropriate air pollution controls regardless of where those units are located. To address this need, we are including in the final Site Remediation NESHAP the requirement that remediation material transferred to another party or shipped to another facility must be managed according to the air pollution control requirements specified in the final rule.

We believe that the transfer provision under the final Site Remediation NESHAP does not establish requirements that are burdensome on either the remediation material shipping or receiving parties. We expect that, for many of those situations where a remediation material is subject to the off-site transfer requirements under the final rule, the material will be sent to a facility that is already complying with subpart DD in 40 CFR part 63 or a hazardous waste TSDF already complying with the RCRA air standards under subparts AA, BB, and CC of 40 CFR part 264 or 265. The air pollution control requirements under subpart DD in 40 CFR part 63 and RCRA TSDF air rules are effectively the same as those required under the final Site Remediation NESHAP. Consequently, it is likely that many, if not all, of the sites receiving the types of remediation materials subject to the off-site transfer requirements will already be using the necessary air pollution controls to comply with these other CAA and RCRA air rules. Thus, the off-site transfer requirements in the final Site Remediation NESHAP should not impose a need for these sites to

purchase and install new air pollution controls.

While off-site waste and recovery operations and hazardous waste TSDF already should be properly equipped to receive and manage remediation materials from cleanup sites subject to the final Site Remediation NESHAP, there are no existing rules requiring all owners and operators performing cleanups of contaminated materials containing organic HAP to ship the remediation materials to such facilities. It is possible that there are special circumstances where remediation material is transferred to a facility other than a facility subject to subpart DD under 40 CFR part 63 or a hazardous waste TSDF. We also must address the potential for circumvention of the final rule's purpose at a site where the remediation material is simply excavated or extracted and then intentionally transferred outside the site's legal boundaries to avoid having to use air pollution controls. Thus, the level of control reflecting MACT provided by subpart DD under 40 CFR part 63 (and the corresponding RCRA subtitle C rules for air emissions) is not necessarily being provided for all remediation waste transfer operations, so a MACT standard would not merely duplicate existing regulatory requirements. In those cases where an off-site facility is receiving remediation material subject to regulation by the final Site Remediation NESHAP, but units at the facility currently are not using the air pollution controls required by the final Site Remediation NESHAP, the facility owner or operator has the option of declining to accept the remediation material from the cleanup site or installing the required air pollution controls on just those units that manage the remediation material.

While it is essential that the off-site transfer provision be included in the final Site Remediation NESHAP to ensure remediation materials from cleanup sites subject to the final rule are managed and treated in units using appropriate air pollution controls regardless of the units' location, we have reviewed the proposed recordkeeping, certification, and notification requirements associated with the off-site transfer provision. We can simplify the administrative requirements for the facility owners and operators and still effectively implement and enforce the off-site transfer provision. Therefore, we have written the final rule to simplify the recordkeeping and certification requirements for both owners and operators of facilities shipping as well as receiving the remediation materials.

Finally, the off-site transfer provision is not intended to trigger a title V permitting requirement for the owner or operator of a facility that currently is an area source. To address this situation, we have added in the final rule an explicit provision stating that the acceptance by a facility owner or operator of remediation material from remediation site subject to the final Site Remediation NESHAP does not, by itself, require the facility owner or operator to obtain a title V permit.

IV. Summary of Environmental, Energy, and Economic Impacts

We prepared estimates of the environmental, energy, and economic impacts for the proposed rule based on the best information available to us including remediation waste quantity and treatment practice data for the year 1997 and earlier. No new information or data applicable to the impact estimates were provided by commenters on the proposed rule. Since proposal we have reviewed our data sources to determine the availability of additional information to update and supplement our original database used for the impact estimates. We concluded that our original database remains the best available source of information available to us for estimating impacts for the final rule.

Furthermore, the changes made since proposal for the final rule do not change any of the assumptions we made for our original impact estimates. Therefore, our impact estimates for the proposed rule remain valid and applicable for the final rule. These impact estimates are summarized below.

A. What Are the Air Emission Impacts?

We estimated nationwide organic HAP emissions from the site remediations potentially subject to the final rule to be approximately 1,140 Mg/yr. Nationwide VOC emissions from regulated sources are estimated to be approximately 7,360 Mg/yr. (Although not all VOC are organic HAP, we may permissibly note the air benefits from controlling non-HAP pollutants such as VOC when considering a MACT standard. See S. Rep. 101–228, 101st Cong. 1st sess. 172). We estimate that implementation of the final rule will reduce these nationwide air emissions by approximately 50 percent to 570 Mg/yr of HAP and 3,680 Mg/yr of VOC.

B. What Are the Cost Impacts?

The nationwide total capital investment cost and the annual operating cost of the control equipment required to comply with the final rule are estimated to be approximately $18 million and $6 million per year, respectively. When fully implemented, the final rule is estimated to result in a total annual cost of approximately $9 million per year.

C. What Are the Economic Impacts?

The final rule will affect certain owners and operators of facilities that are major sources of HAP emissions and at which a site remediation is conducted to clean up soils, groundwaters, surface waters, or certain other materials contaminated with one or more of the organic HAP listed in the final rule. Because of the nature of activities regulated by the source category, a comprehensive list of NAICS codes cannot be compiled for businesses or facilities potentially regulated by the final rule. As a result, the economic impact analyses focused on a set of industries from the 1997 Biennial Reporting System (BRS) database that were known to be large quantity generators of hazardous waste and who were remediating hazardous waste as part of a site remediation. The data provides an adequate overview of the potential impacts of the final rule. However, we recognize that the actual industries directly impacted by the final rule in the year the final rule is implemented and the costs incurred by these industries may differ somewhat from the set of industries identified in the 1997 BRS data and the costs assigned to these industries for the purposes of the economic analysis.

In general, we did not find evidence of significant impacts at the industry level. From the BRS data, over 80 industries were predicted to have annual compliance costs as a result of the final rule, and 15 industries accounted for 91 percent of the national compliance cost estimate. We used an engineering or financial analysis to estimate impacts, which takes the form of the ratio of compliance costs to the value of sales (cost-to-sales ratio (CSR)). We calculated CSR for 12 industries and found all had CSR below 0.02 percent. The CSR are less than the lower quartile return on sales for all industries with profitability data available. We did not compute CSR for the remaining three industries because revenue data were not available.

The CSR will likely overstate the impact on firms and understate the impact on consumers. The CSR assumes that there are no changes in the market as a result of the higher costs of production faced by the firms and that the firms continue to produce the same quantities, sell at the same price and absorb the full amount of the compliance costs.

Small business impacts were particularly difficult to assess because of the uncertainty over the facilities that actually will be impacted by the final rule. As a result, we concluded that sufficient data and related information did not exist to conduct a small business screening analysis.

D. What Are the Non-Air Health, Environmental and Energy Impacts?

Compliance with the standards in the final rule requires using types of control equipment commonly in use to control organic emissions from process sources at many of the industrial facilities at which site remediations are most likely to occur. The non-air environmental and energy impacts associated with implementing the requirements of the final rule primarily are expected to result from the operation of these control devices. No significant adverse water, solid waste, or energy impacts are expected as a result of the final rule.

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.

It has been determined that the final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866, and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The information to be collected for the final Site Remediation NESHAP are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions in 40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The final rule requires maintenance inspections of the control devices but would not require any notifications or reports beyond those required by the General Provisions in subpart A to 40 CFR part 63. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual projected burden for this information collection to owners and operators of affected sources subject to the final rule (averaged over the first 3 years after the effective date of the promulgated rule) is estimated to be 341,737 labor-hours per year, with a total annual cost of $17.7 million per year. These estimates include a one-time performance test and report (with repeat tests where needed), one-time submission of an SSMP with semiannual reports for any event when the procedures in the plan were not followed, semiannual compliance reports, maintenance inspections, notifications, and recordkeeping. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this 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. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' regulations at 13 CFR 121.201; (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.

The final Site Remediation NESHAP sets minimum air standards under authority of the CAA to control HAP emissions to be met if a facility owner or operator conducts a site remediation subject to the final rule. The final rule places no requirement on any facility owner or operator to initiate site remediation activities. The duty for an owner or operator to conduct a site remediation is established under RCRA, CERCLA, State, or other regulatory authorities. Given that States and other parties often decide whether site remediation activities are to be conducted at a given facility, it is extremely difficult, if not impossible, for us to predict how many or what types of small entities will undertake such site remediation activities and in which cases these activities will be subject to the final Site Remediation NESHAP.

While we cannot predict the exact number or types of small entities that will be subject to the final Site Remediation NESHAP, we have structured the final rule applicability conditions and threshold levels to minimize any impacts on those small businesses that do conduct site

remediations. The final rule only applies to those site remediations conducted at a facility that is both a major source of HAP emissions (as defined in CAA section 112) and where there are other non-remediation stationary sources at the facility that meet one of the affected source definition specified for a source category which is regulated by another subpart under 40 CFR part 63. The facilities that meet these applicability conditions tend to be large businesses.

Furthermore, types of site remediations typically expected to occur at small businesses are not subject to the final Site Remediation NESHAP. For example, we specifically exclude from the final rule applicability those site remediations to clean up contamination resulting from leaking underground storage tanks at a gasoline service station, farm, or residential site (remediation activities at these sites were found not to exceed the threshold HAP emission levels required to be designated a major source). Also, we expect that the applicable thresholds for those site remediations required to use air pollution controls under the final Site Remediation NESHAP apply to few, if any, facilities that are small businesses. For example, use of air pollution controls are not required under the final rule for those site remediations that physically can be completed within 30 days or for which total quantity of organic HAP contained in the extracted remediation material is less than 1 Mg.

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, the 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 the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the 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 final rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the 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 the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of the final rule for any year has been estimated to be about $24 million. Thus, the final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, 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. Thus, the requirements of section 6 of the Executive Order do not apply to the final rule.

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

Executive Order 13175 (65 FR 67249, November 9, 2000) requires us to develop ''an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

We have concluded that the final Site Remediation NESHAP may have tribal implications since the types of site remediation activities subject to the final rule potentially could be conducted on tribal lands. However, we are not aware of any specific remediation activities on tribal lands presently being conducted that would be subject to the final rule. If a site remediation subject to the final rule is initiated on tribal lands in the future, it will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to the final rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, we nonetheless made attempts to invite tribal representatives to participate in the rulemaking activities early in the process of developing the final rule to permit them to have meaningful and timely input into its development. We contacted tribal representatives and groups directly to notify them of the final rule development activity and to solicit their participation. At proposal, we specifically requested comment on the proposed rule from tribal officials. No tribal representatives requested to participate in the rulemaking process, and we received no comments on the proposed rule from any tribal government.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant,'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of

the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, the final rule has been determined not to be ''economically significant'' as defined under Executive Order 12866.

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

The final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer 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 the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the Office of Management and Budget (OMB), with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rule involves technical standards. The EPA cites the following standards in the final rule: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 3, 4, 9, 18 (total organic HAP or total organic compounds), 21, 22, 25, 25A, 25D, 25E, 27, 305, 316 of 40 CFR part 60 appendix A, and Method 9095A in SW 846, ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods.'' Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 9, 21, 22, 25D, 25E, 27, 305, 316, and SW 846 Method 9095A. The search and review results have been documented and are placed in the docket (Docket ID No. OAR–2002–0021) for the final rule.

The search for emissions measurement procedures identified 10 other voluntary consensus standards. The EPA determined that eight of these 10 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the final rule were impractical alternatives to EPA test methods for the purposes of the final rule. Therefore, EPA does not intend to adopt these standards for this purpose. (See Docket ID No. OAR 2002–0021.)

Sections 63.7940 through 63.7944 to the final Site Remediation NESHAP specify the EPA testing methods to be used for demonstrating compliance with the final rule requirements. Under §§ 63.7(f) and 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. 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, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 20, 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 subpart GGGGG to read as follows:

Subpart GGGGG—National Emission Standards for Hazardous Air Pollutants: Site Remediation

Sec.

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What This Subpart Covers

§ 63.7880 What is the purpose of this subpart?

This subpart establishes national emissions limitations and work practice standards for hazardous air pollutants (HAP) emitted from site remediation activities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emissions limitations and work practice standards.

§ 63.7881 Am I subject to this subpart?

(a) This subpart applies to you if you own or operate a facility at which you conduct a site remediation, as defined in § 63.7957; and this site remediation, unless exempted under paragraph (b) or (c) of this section, meets all three of the following conditions specified in paragraphs (a)(1) through (3) of this section.

(1) Your site remediation cleans up a remediation material, as defined in § 63.7957.

(2) Your site remediation is co-located at your facility with one or more other stationary sources that emit HAP and meet an affected source definition specified for a source category that is regulated by another subpart under 40 CFR part 63. This condition applies regardless whether or not the affected stationary source(s) at your facility is subject to the standards under the applicable subpart(s).

(3) Your facility is a major source of HAP as defined in § 63.2. A major source emits or has the potential to emit any single HAP at the rate of 10 tons (9.07 megagrams) or more per year of any HAP or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year. All emissions of HAP from every source at your facility (i.e., both the site remediation activity and all other facility activities) must be considered in making this calculation.

(b) You are not subject to this subpart if your site remediation qualifies for any of one of the exemptions listed in paragraphs (b)(1) through (6) of this section.

(1) Your site remediation is not subject to this subpart if the site remediation only cleans up material that does not contain any of the HAP listed in Table 1 of this subpart.

(2) Your site remediation is not subject to this subpart if the site remediation will be performed under the authority of the Comprehensive Environmental Response and Compensation Liability Act (CERCLA) as a remedial action or a non time-critical removal action.

(3) Your site remediation is not subject to this subpart if the site

remediation will be performed under a Resource Conservation and Recovery Act (RCRA) corrective action conducted at a treatment, storage and disposal facility (TSDF) that is either required by your permit issued by either the U.S. Environmental Protection Agency (EPA) or a State program authorized by the EPA under RCRA section 3006; required by orders authorized under RCRA; or required by orders authorized under RCRA section 7003.

(4) Your site remediation is not subject to this subpart if the site remediation is conducted at a gasoline service station to clean up remediation material from a leaking underground storage tank.

(5) Your site remediation is not subject to this subpart if the site remediation is conducted at a farm or residential site.

(6) Your site remediation is not subject to this subpart if the site remediation is conducted at a research and development facility that meets the requirements under Clean Air Act (CAA) section 112(c)(7).

(c) Your site remediation is not subject to this subpart, except for the recordkeeping requirements specified in this paragraph, if the site remediation meets the all of the conditions in paragraphs (c)(1) through (3) of this section.

(1) Before beginning the site remediation, you determine for the remediation material that you will excavate, extract, pump, or otherwise remove during your site remediation that the total quantity of the HAP listed in Table 1 of this subpart which is contained in the material is less than 1 megagram per year (Mg/yr).

(2) You prepare and maintain at your facility written documentation to support your determination of the total HAP quantity used to demonstrate compliance with paragraph (c)(1) of this section. This documentation must include a description of your methodology and data you used for determining the total HAP content of the material.

(3) This exemption may be applied to more than one site remediation at your facility provided that the total quantity of the HAP listed in Table 1 of this subpart for all of your site remediations exempted under this provision is less than 1 Mg/yr.

(d) Your site remediation is not subject to the requirements of this subpart if all remediation activities at your facility subject to this subpart are completed and you have notified the Administrator in writing that all remediation activities subject to this subpart are completed. You must maintain records of compliance, in accordance with § 63.7953, for each remediation activity that was subject to this subpart. All future remediation activity meeting the applicability criteria in this section must comply with the requirements of this subpart.

§ 63.7882 What site remediation sources at my facility does this subpart affect?

(a) This subpart applies to each new, reconstructed, or existing affected source for your site remediation as designated by paragraphs (a)(1) through (3) of this section.

(1) *Process vents*. The affected source is the entire group of process vents associated with the in-situ and ex-situ remediation processes used at your site to remove, destroy, degrade, transform, or immobilize hazardous substances in the remediation material subject to remediation. Examples of such in-situ remediation processes include, but are not limited to, soil vapor extraction and bioremediation processes. Examples of such ex-situ remediation processes include but are not limited to, thermal desorption, bioremediation, and air stripping processes.

(2) *Remediation material management units*. Remediation material management unit means a tank, surface impoundment, container, oil-water separator, organic-water separator, or transfer system, as defined in § 63.7957, and is used at your site to manage remediation material. The affected source is the entire group of remediation material management units used for the site remediations at your site. For the purpose of this subpart, a tank or container that is also equipped with a vent that serves as a process vent, as defined in § 63.7957, is not a remediation material management unit, but instead this unit is considered to be a process vent affected source under paragraph (a)(1) of this section.

(3) *Equipment leaks*. The affected source is the entire group of equipment components (pumps, valves, etc.) used to manage remediation materials and meeting both of the conditions specified in paragraphs (a)(3)(i) and (ii) of this section. If either of these conditions do not apply to an equipment component, then that component is not part of the affected source for equipment leaks.

(i) The equipment component contains or contacts remediation material having a concentration of total HAP listed in Table 1 of this subpart equal to or greater than 10 percent by weight.

(ii) The equipment component is intended to operate for 300 hours or more during a calendar year in remediation material service, as defined in § 63.7957.

(b) Each affected source for your site is existing if you commenced construction or reconstruction of the affected source before July 30, 2002.

(c) Each affected source for your site is new if you commenced construction or reconstruction of the affected source on or after July 30, 2002. An affected source is reconstructed if it meets the definition of reconstruction in § 63.2.

§ 63.7883 When do I have to comply with this subpart?

(a) If you have an existing affected source, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you no later than October 9, 2006.

(b) If you have a new affected source that manages remediation material other than a radioactive mixed waste as defined in § 63.7957, then you must meet the compliance date specified in paragraph (b)(1) or (2) of this section, as applicable to your affected source.

(1) If the affected source's initial startup date is on or before October 8, 2003, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you by October 8, 2003.

(2) If the affected source's initial startup date is after October 8, 2003, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(c) If you have a new affected source that manages remediation material that is a radioactive mixed waste as defined in § 63.7957, then you must meet the compliance date specified in paragraph (c)(1) or (2) of this section, as applicable to your affected source.

(1) If the affected source's initial startup date is on or before October 8, 2003, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you no later than October 9, 2006.

(2) If the affected source's initial startup date is after October 8, 2003, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(d) If your facility is an area source that increases its emissions or its potential to emit such that it becomes a

major source of HAP as defined in § 63.2, then you must meet the compliance dates specified in paragraphs (d)(1) and (2) of this section.

(1) For each source at your facility that is a new affected source subject to this subpart, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(2) For all other affected sources subject to this subpart, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you no later than 3 years after your facility becomes a major source.

(e) You must meet the notification requirements, according to the schedule applicable to your facility, as specified in § 63.7950 and in 40 CFR part 63, subpart A. Some of the notifications must be submitted before you are required to comply with the emissions limitations and work practice standards in this subpart.

General Standards

§ 63.7884 What are the general standards I must meet for each site remediation with affected sources?

(a) For each site remediation with affected sources designated under § 63.7882, you must meet the standards specified in §§ 63.7885 through 63.7953, as applicable to your affected sources, unless your site remediation meets the requirements for an exemption under paragraph (b) of this section.

(b) A site remediation that is completed within 30 consecutive calendar days according to the conditions in paragraphs (b)(1) and (2) of this section is not subject to the standards under paragraph (a) of this section. This exemption cannot be used for a site remediation involving the staged or intermittent cleanup of remediation material whereby the remediation activities at the site are started, stopped, and then re-started in a series of intervals with durations less than 30-days per interval for which the total time of all of the intervals required to complete the site remediation exceeds a total of 30 days.

(1) The 30-day period for a site remediation is determined from the first day that any action is initiated that removes, destroys, degrades, transforms, immobilizes, or otherwise manages the remediation materials. The end of a site remediation is determined by the last day on which treatment or disposal of the remediation materials from the cleanup is completed. The following activities, when completed before beginning this initial action, are not counted as part of the 30-day period: activities to characterize the type and extent of the contamination by collecting and analyzing samples, activities to obtain permits from Federal, State, or local authorities to conduct the site remediation, activities to schedule workers and necessary equipment, and activities to arrange for contractor or third party assistance in performing the site remediation.

(2) You must prepare and maintain at your facility written documentation describing the exempted site remediation, and listing the initiation and completion dates for the site remediation.

§ 63.7885 What are the general standards I must meet for my affected process vents?

(a) For the process vents that comprise the affected source designated under § 63.7882, you must select and meet the requirements under one of the options specified in paragraph (b) of this section.

(b) For each affected process vent, except as exempted under paragraph (c) of this section, you must meet one of the options in paragraphs (b)(1) through (3) of this section.

(1) You control HAP emissions from the affected process vents according to the standards specified in §§ 63.7890 through 63.7893.

(2) You determine for the remediation material treated or managed by the process vented through the affected process vents that the average total volatile organic hazardous air pollutant (VOHAP) concentration, as defined in § 63.7957, of this material is less than 10 parts per million by weight (ppmw). Determination of the VOHAP concentration is made using the procedures specified in § 63.7943.

(3) If the process vent is also subject to another subpart under 40 CFR part 61 or 40 CFR part 63, you control emissions of the HAP listed in Table 1 of this subpart from the affected process vent in compliance with the standards specified in the applicable subpart. This means you are complying with all applicable emissions limitations and work practice standards under the other subpart (*e.g.*, you install and operate the required air pollution controls or have implemented the required work practice to reduce HAP emissions to levels specified by the applicable subpart). This provision does not apply to any exemption of the affected source from the emissions limitations and work practice standards allowed by the other applicable subpart.

(c) A process vent that meets the exemption requirements in paragraphs (c)(1) and (2) of this section is exempted from the requirements in paragraph (b) of this section.

(1) The process vent stream exiting the process vent meets the conditions in either paragraph (c)(1)(i) or (ii) of this section.

(i) The process vent stream flow rate is less than 0.005 cubic meters per minute (m^3/min) at standard conditions (as defined in 40 CFR 63.2); or

(ii) The process vent stream flow rate is less than 6.0 m^3/min at standard conditions (as defined in 40 CFR 63.2) and the total concentration of HAP listed in Table 1 of this subpart is less than 20 parts per million by volume (ppmv).

(2) You must demonstrate that the process vent stream meets the applicable exemption conditions in paragraph (c)(1) of this section using the procedures specified in § 63.694(m). You must prepare and maintain documentation at your facility to support your determination of the process vent stream flow rate. This documentation must include identification of each process vent exempted under this paragraph and the test results used to determine the process vent stream flow rate and total HAP concentration, as applicable to the exemption conditions for your process vent. You must perform a new determination of the process vent stream flow rate and total HAP concentration, as applicable to the exemption conditions for your process vent, whenever changes to operation of the unit on which the process vent is used could cause the process vent stream conditions to exceed the maximum limits of the exemption.

§ 63.7886 What are the general standards I must meet for my affected remediation material management units?

(a) For each remediation material management unit that is part of an affected source designated by § 63.7882, you must select and meet the requirements under one of the options specified in paragraph (b) of this section except for those remediation material management units exempted under paragraph (c) or (d) of this section.

(b) For each affected remediation material management unit, you must meet one of the options in paragraphs (b)(1) through (4) of this section.

(1) You control HAP emissions from the affected remediation material management unit according to the standards specified in paragraphs (b)(1)(i) through (v) of this section, as applicable to the unit.

(i) If the remediation material management unit is a tank, then you control HAP emissions according to the standards specified in §§ 63.7895 through 63.7898.

(ii) If the remediation material management unit is a container, then you control HAP emissions according to the standards specified in §§ 63.7900 through 63.7903.

(iii) If the remediation material management unit is a surface impoundment, then you control HAP emissions according to the standards specified in §§ 63.7905 through 63.7908.

(iv) If the remediation material management unit is a oil-water or organic-water separator, then you control HAP emissions according to the standards specified in §§ 63.7910 through 63.7913.

(v) If the remediation material management unit is a transfer system, then you control HAP emissions according to the standards specified in §§ 63.7915 through 63.7918.

(2) You determine for the remediation material placed in the remediation material management unit that the average total VOHAP concentration, as defined in § 63.7957, of this material is less than 500 ppmw. Determination of the total VOHAP concentration is made based on the remediation material composition at the point-of-extraction, as defined in § 63.7957, using the procedures specified in § 63.7943.

(3) If the remediation material management unit is also subject to another subpart under 40 CFR part 61 or 40 CFR part 63, you control emissions of the HAP listed in Table 1 of this subpart from the affected remediation material management unit in compliance with the standards specified in the applicable subpart. This means you are complying with all applicable emissions limitations and work practice standards under the other subpart (*e.g.*, you install and operate the required air pollution controls or have implemented the required work practice to reduce HAP emissions to levels specified by the applicable subpart). This provision does not apply to any exemption of the affected source from the emissions limitations and work practice standards allowed by the other applicable subpart.

(4) If the remediation material management unit is an open tank or surface impoundment used for a biological treatment process, you meet the requirements as specified in paragraphs (b)(4)(i) and (ii) of this section.

(i) You demonstrate that the biological treatment process conducted in the open tank or surface impoundment meets the performance levels specified in either § 63.684(b)(4)(i) or (ii).

(ii) You monitor the biological treatment process conducted in the open tank or surface impoundment according to the requirements in § 63.684(e)(4).

(c) A remediation material management unit is exempted from the requirements in paragraph (b) of this section if this unit is used for cleanup of radioactive mixed waste, as defined in § 63.7957, that is subject to applicable regulations, directives, and other requirements under the Atomic Energy Act, the Nuclear Waste Policy Act, or the Waste Isolation Pilot Plant Land Withdrawal Act.

(d) One or a combination of remediation material management units may be exempted at your discretion from the requirements in paragraph (b) of this section provided that the total annual quantity of HAP listed in Table 1 of this subpart contained in the remediation material placed in all of the remediation material management units exempted under this paragraph is less than 1 Mg/yr. For each remediation material management unit you select to be exempted under this provision, you must meet the requirements in paragraphs (d)(1) and (2) of this section.

(1) You must designate each of the remediation material management units you are selecting to be exempted under this paragraph by either submitting to the Administrator a written notification identifying the exempt units or permanently marking the exempt units at the faculty site. If you choose to prepare and submit a written notification, this notification must include a site plan, process diagram, or other appropriate documentation identifying each of the exempt units. If you choose to permanently mark the exempt units, each exempt unit must be marked in such a manner that it can be readily identified as an exempt unit from the other remediation material management units located at the site.

(2) You must prepare an initial determination of the total annual HAP quantity in the remediation material placed in the units exempted under this paragraph. This determination is based on the total quantity of the HAP listed in Table 1 of this subpart as determined at the point where the remediation material is placed in each exempted unit. You must perform a new determination whenever the extent of changes to the quantity or composition of the remediation material placed in the exempted units could cause the total annual HAP content in the remediation material to exceed 1 Mg/yr. You must maintain documentation to support the most recent determination of the total annual HAP quantity. This documentation must include the basis and data used for determining the organic HAP content of the remediation material.

§ 63.7887 What are the general standards I must meet for my affected equipment leak sources?

You must control HAP emissions from equipment leaks from each equipment component that is part of the affected source specified in § 63.7882 by implementing leak detection and control measures according to the standards specified in §§ 63.7920 through 63.7922.

§ 63.7888 How do I implement this rule at my facility using the cross-referenced requirements in other subparts?

(a) For the purposes of this subpart, when you read the term ''HAP listed in Table 1 of this subpart'' in a cross-referenced section under 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations, you should refer to Table 1 of this subpart.

(b) For the purposes of this subpart, when you read the term off-site material in a cross-referenced section under 40 CFR part 63, subpart DD—National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations you should substitute the term remediation material, as defined in § 63.7957.

(c) For the purposes of this subpart, when you read the term regulated material in a cross-referenced section under 40 CFR part 63, subparts OO, PP, QQ, RR, TT, UU, WW, and VV you should substitute the term remediation material, as defined in § 63.7957.

Process Vents

§ 63.7890 What emissions limitations and work practice standards must I meet for process vents?

(a) You must control HAP emissions from each new and existing process vent subject to § 63.7885(b)(1) according to emissions limitations and work practice standards in this section that apply to your affected process vents.

(b) For your affected process vents, you must meet one of the facility-wide emission limit options specified in paragraphs (b)(1) through (4) of this section. If you have multiple affected process vent streams, you may comply with this paragraph using a combination of controlled and uncontrolled process vent streams that achieve the facility-wide emission limit that applies to you.

(1) Reduce from all affected process vents the total emissions of the HAP

listed in Table 1 of this subpart to a level less than 1.4 kilograms per hour (kg/hr) and 2.8 Mg/yr (3.0 pounds per hour (lb/hr) and 3.1 tpy); or

(2) Reduce from all affected process vents the emissions of total organic carbon (TOC) (minus methane and ethane) to a level below 1.4 kg/hr and 2.8 Mg/yr (3.0 lb/hr and 3.1 tpy); or

(3) Reduce from all affected process vents the total emissions of the HAP listed in Table 1 of this subpart by 95 percent by weight or more; or

(4) Reduce from all affected process vents the emissions of TOC (minus methane and ethane) by 95 percent by weight or more.

(c) For each closed vent system and control device you use to comply with paragraph (b) of this section, you must meet the operating limit requirements and work practice standards in § 63.7925(c) through (j) that apply to your closed vent system and control device.

§ 63.7891 How do I demonstrate initial compliance with the emissions limitations and work practice standards for process vents?

(a) You must demonstrate initial compliance with the emissions limitations and work practice standards in § 63.7890(b) applicable to your affected process vents by meeting the requirements in paragraphs (b) through (d) of this section.

(b) You have measured or determined using the procedures for performance tests and design evaluations in § 63.7941 that emission levels from all of your affected process vents meet the facility-wide emission limits in § 63.7890(b) that apply to you, as follows in paragraphs (b)(1) through (4) of this section.

(1) If you elect to meet § 63.7890(b)(1), you demonstrate that the total emissions of the HAP listed in Table 1 of this subpart from all affected process vents at your facility are less than 1.4 kg/hr and 2.8 Mg/yr (3.0 lb/hr and 3.1 tpy).

(2) If you elect to meet § 63.7890(b)(2), you demonstrate that emissions of TOC (minus methane and ethane) from all affected process vents at your facility are less than 1.4 kg/hr and 2.8 Mg/yr (3.0 lb/hr and 3.1 tpy).

(3) If you elect to meet § 63.7890(b)(3), you demonstrate that the total emissions of the HAP listed in Table 1 of this subpart from all affected process vents are reduced by 95 percent by weight or more.

(4) If you elect to meet § 63.7890(b)(4), you demonstrate that the emissions of TOC (minus methane and ethane) from all affected process vents are reduced by 95 percent by weight or more.

(c) For each closed vent system and control device you use to comply with § 63.7890(b), you have met each requirement for demonstrating initial compliance with the emission limitations and work practice standards for a closed vent system and control device in § 63.7926.

(d) You have submitted a notification of compliance status according to the requirements in § 63.7950.

§ 63.7892 What are my inspection and monitoring requirements for process vents?

For each closed vent system and control device you use to comply with § 63.7890(b), you must monitor and inspect the closed vent system and control device according to the requirements in § 63.7927 that apply to you.

§ 63.7893 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for process vents?

(a) You must demonstrate continuous compliance with the emissions limitations and work practice standards in § 63.7890 applicable to your affected process vents by meeting the requirements in paragraphs (b) through (d) of this section.

(b) You must maintain emission levels from all of your affected process vents to meet the facility-wide emission limits in § 63.7890(b) that apply to you, as specified in the following paragraph (b)(1) through (4) of this section.

(1) If you elect to meet § 63.7890(b)(1), you maintain the total emissions of the HAP listed in Table 1 of this subpart from all affected process vents at your facility are less than 1.4 kg/hr and 2.8 Mg/yr (3.0 lb/hr and 3.1 tpy).

(2) If you elect to meet § 63.7890(b)(2), you maintain emissions of TOC (minus methane and ethane) from all affected process vents at your facility are less than 1.4 kg/hr and 2.8 Mg/yr (3.0 lb/hr and 3.1 tpy).

(3) If you elect to meet § 63.7890(b)(3), you maintain the total emissions of the HAP listed in Table 1 of this subpart from all affected process vents are reduced by 95 percent by weight or more.

(4) If you elect to meet § 63.7890(b)(4), you maintain that the emissions of TOC (minus methane and ethane) from all affected process vents are reduced by 95 percent by weight or more.

(c) For each closed vent system and control device you use to comply with § 63.7890(b), you have met each requirement for demonstrating continuous compliance with the emission limitations and work practice standards for a closed vent system and control device in § 63.7928.

(d) Keeping records to document continuous compliance with the requirements of this subpart according to the requirements in § 63.7952.

Tanks

§ 63.7895 What emissions limitations and work practice standards must I meet for tanks?

(a) You must control HAP emissions from each new and existing tank subject to § 63.7886(b)(1)(i) according to emissions limitations and work practice standards in this section that apply to your affected tanks.

(b) For each affected tank, you must install and operate air pollution controls that meet the requirements in paragraphs (b)(1) through (4) of this section that apply to your tank.

(1) Unless your tank is used for a waste stabilization process, as defined in § 63.7957, you must determine the maximum HAP vapor pressure (expressed in kilopascals (kPa)) of the remediation material placed in your tank using the procedures specified in § 63.7944.

(2) If the maximum HAP vapor pressure of the remediation material you place in your tank is less than 76.6 kPa, then you must determine which tank level controls (*i.e.*, Tank Level 1 or Tank Level 2) apply to your tank as shown in Table 2 of this subpart, and based on your tank's design capacity (expressed in cubic meters (m^3)) and the maximum HAP vapor pressure of the remediation material you place in this tank. If your tank is required by Table 2 of this subpart to use Tank Level 1 controls, then you must meet the requirements in paragraph (c) of this section. If your tank is required by Table 2 of this subpart to use Tank Level 2 controls, then you must meet the requirements in paragraph (d) of this section

(3) If maximum HAP vapor pressure of the remediation material you place in your tank is 76.6 kPa or greater, then the tank must use one of the Tank Level 2 controls specified in paragraphs (d)(3) through (5) of this section. Use of floating roofs under paragraph (d)(1) or (2) of this section is not allowed for tanks managing these remediation materials.

(4) A tank used for a waste stabilization process, as defined in § 63.7957, must use one of Tank Level 2 controls, as specified in paragraph (d) of this section, that is appropriate for your waste stabilization process.

(c) If you use Tank Level 1 controls, you must install and operate a fixed roof according to the requirements in § 63.902. As an alternative to using this

fixed roof, you may choose to use one of Tank Level 2 controls in paragraph (d) of this section.

(d) If you use Tank Level 2 controls, you must meet the requirements of one of the options in paragraphs (d)(1) through (5) of this section.

(1) Install and operate a fixed roof with an internal floating roof according to the requirements in § 63.1063(a)(1)(i), (a)(2), and (b); or

(2) Install and operate an external floating roof according to the requirements in § 63.1063(a)(1)(ii), (a)(2), and (b); or

(3) Install and operate a fixed roof vented through a closed vent system to a control device according to the requirements in § 63.685(g). You must meet the emissions limitations and work practice standards in § 63.7925 that apply to your closed vent system and control device; or

(4) Install and operate a pressure tank according to the requirements in § 63.685(h); or

(5) Locate the tank inside a permanent total enclosure and vent emissions from the enclosure through a closed vent system to a control device that is an enclosed combustion device according to the requirements in § 63.685(i). You must meet the emissions limitations and work practice standards in § 63.7925 that apply to your closed vent system and control device.

(e) As provided in § 63.6(g), you may request approval from the EPA to use an alternative to the work practice standards in this section that apply to your tanks. If you request for permission to use an alternative to the work practice standards, you must submit the information described in § 63.6(g)(2).

§ 63.7896 How do I demonstrate initial compliance with the emissions limitations and work practice standards for tanks?

(a) You must demonstrate initial compliance with the emissions limitations and work practice standards in § 63.7895 that apply to your affected tanks by meeting the requirements in paragraphs (b) through (h) of this section, as applicable to your containers.

(b) You have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (b)(1) and (2) of this section.

(1) You have determined the applicable tank control levels specified in § 63.7895(b) for the tanks to be used for your site remediation.

(2) You have determined, according to the procedures § 63.7944, and recorded the maximum HAP vapor pressure of the remediation material placed in each affected tank subject to § 63.7886(b)(1)(i) that does not use Tank Level 2 controls.

(c) You must demonstrate initial compliance of each tank determined under paragraph (b) of this section to require Tank Level 1 controls if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (c)(1) through (3) of this section.

(1) Each tank using Tank Level 1 controls is equipped with a fixed roof and closure devices according to the requirements in § 63.902(b) and (c) and you have records documenting the design.

(2) You have performed an initial visual inspection of the fixed roof and closure devices for defects according to the requirements in § 63.906(a) and you have records documenting the inspection results.

(3) You will operate the fixed roof and closure devices according to the requirements in § 63.902.

(d) You must demonstrate initial compliance of each tank determined under paragraph (b) of this section to require Tank Level 2 controls and using a fixed roof with an internal floating roof according to § 63.7895(d)(1) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (d)(1) through (3) of this section.

(1) Each tank is equipped with an internal floating roof that meets the requirements in § 63.1063(a) and you have records documenting the design.

(2) You will operate the internal floating roof according to the requirements in § 63.1063(b).

(3) You have performed an initial visual inspection according to the requirements in § 63.1063(d)(1) and you have a record of the inspection results.

(e) You must demonstrate initial compliance of each tank determined under paragraph (b) of this section to require Tank Level 2 controls and using an external floating roof according to § 63.7895(d)(2) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (e)(1) through (3) of this section.

(1) Each tank is equipped with an external floating roof that meets the requirements in § 63.1063(a) and you have records documenting the design.

(2) You will operate the external floating roof according to the requirements in § 63.1063(b).

(3) You have performed an initial seal gap measurement inspection according to the requirements in § 63.1063(d)(3) and you have records of the measurement results.

(f) You must demonstrate initial compliance of each tank determined under paragraph (b) of this section to require Tank Level 2 controls and using a fixed roof vented to a control device according to § 63.7895(d)(3) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (f)(1) through (4) of this section.

(1) Each tank is equipped with a fixed roof and closure devices according to the requirements in § 63.902(b) and (c) and you have records documenting the design.

(2) You have performed an initial visual inspection of fixed roof and closure devices for defects according to the requirements in § 63.695(b)(3) and you have records documenting the inspection results.

(3) You will operate the fixed roof and closure devices according to the requirements in § 63.685(g).

(4) You have met each applicable requirement for demonstrating initial compliance with the emission limitations and work practice standards for a closed vent system and control device in § 63.7926.

(g) You must demonstrate initial compliance of each tank determined under paragraph (b) of this section to require Tank Level 2 controls and operates as a pressure tank according to § 63.7895(d)(4) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (g)(1) and (2) of this section.

(1) Each tank is designed to operate as a pressure tank according to the requirements in § 63.685(h), and you have records documenting the design.

(2) You will operate the pressure tank and according to the requirements in § 63.685(h).

(h) You must demonstrate initial compliance of each tank determined under paragraph (b) of this section to require Tank Level 2 controls and using a permanent total enclosure vented to an enclosed combustion device according to § 63.7895(d)(5) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (h)(1) and (2) of this section.

(1) You have submitted as part of your notification of compliance status a

signed statement that you have performed the verification procedure according to the requirements in § 63.685(i), and you have records of the supporting calculations and measurements.

(2) You have met each applicable requirement for demonstrating initial compliance with the emission limitations and work practice standards for a closed vent system and control device in § 63.7926.

§ 63.7897 What are my inspection and monitoring requirements for tanks?

(a) You must visually inspect each of your tanks using Tank Level 1 controls for defects at least annually according to the requirements in § 63.906(a).

(b) You must inspect and monitor each of your tanks using Tank Level 2 controls according to the requirements in paragraphs (b)(1) through (5), as applicable to your tanks.

(1) If you use a fixed roof with an internal floating roof according to § 63.7895(d)(1), you must visually inspect the fixed roof and internal floating roof according to the requirements in § 63.1063(d)(1) and (2).

(2) If you use an external floating roof according to § 63.7895(d)(2), you must visually inspect the external floating roof according to the requirements in § 63.1063(d)(1) and inspect the seals according to the requirements in § 63.1063(d)(2) and (3).

(3) If you use a fixed roof vented to a control device according to § 63.7895(d)(3), you must meet requirements in paragraphs (b)(3)(i) and (ii) of this section.

(i) You must visually inspect the fixed roof and closure devices for defects according to the requirements in § 63.695(b)(3).

(ii) You must monitor and inspect the closed vent system and control device according to the requirements in § 63.7927 that apply to you.

(4) If you use a pressure tank according to § 63.7895(d)(4), you must visually inspect the tank and its closure devices for defects at least annually to ensure they are operating according to the design requirements in § 63.685(h).

(5) If you use a permanent total enclosure vented to an enclosed combustion device according to § 63.7895(d)(5), you must meet requirements in paragraphs (b)(5)(i) and (ii) of this section.

(i) You must perform the verification procedure for the permanent total enclosure at least annually according to the requirements in § 63.685(i).

(ii) You must monitor and inspect the closed vent system and control device according to the requirements in § 63.7927 that apply to you.

§ 63.7898 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for tanks?

(a) You must demonstrate continuous compliance with the emissions limitations and work practice standards in § 63.7895 applicable to your affected tanks by meeting the requirements in paragraphs (b) through (d) of this section.

(b) You must demonstrate continuous compliance with the requirement to determine the applicable tank control level specified in § 63.7895(b) for each affected tank by meeting the requirements in paragraphs (b)(1) through (3) of this section.

(1) Keeping records of the tank design capacity according to the requirements in § 63.1065(a).

(2) For tanks subject to § 63.7886(b)(1)(ii) and not using Tank Level 2 controls, meeting the requirements in paragraphs (b)(2)(i) and (ii) of this section.

(i) Keeping records of the maximum HAP vapor pressure determined according to the procedures in § 63.7944 for the remediation material placed in each affected tank.

(ii) Performing a new determination of the maximum HAP vapor pressure whenever changes to the remediation material managed in the tank could potentially cause the maximum HAP vapor pressure to increase to a level that is equal to or greater than the maximum HAP vapor pressure for the tank design capacity specified in Table 2. You must keep records of each determination.

(3) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(c) You must demonstrate continuous compliance for each tank determined to require Tank Level 1 controls by meeting the requirements in paragraphs (c)(1) through (5) of this section.

(1) Operating and maintaining the fixed roof and closure devices according to the requirements in § 63.902(c).

(2) Visually inspecting the fixed roof and closure devices for defects at least annually according to the requirements in § 63.906(a).

(3) Repairing defects according to the requirements in § 63.63.906(b).

(4) Recording the information specified in § 63.907(a)(3) and (b).

(5) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(d) You must demonstrate continuous compliance for each tank determined to require Tank Level 2 controls and using a fixed roof with an internal floating roof according to § 63.7895(d)(1) by meeting the requirements in paragraphs (d)(1) through (5) of this section.

(1) Operating and maintaining the internal floating roof according to the requirements in § 63.1063(b).

(2) Visually inspecting the internal floating roof according to the requirements in § 63.1063(d)(1) and (2).

(3) Repairing defects according to the requirements in § 63.1063(e).

(4) Recording the information specified in § 63.1065(b) through (d).

(5) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(e) You must demonstrate continuous compliance for each tank determined to require Tank Level 2 controls and using an external floating roof according to § 63.7895(d)(2) by meeting the requirements in paragraphs (e)(1) through (5) of this section.

(1) Operating and maintaining the external floating roof according to the requirements in § 63.1063(b).

(2) Visually inspecting the external floating roof according to the requirements in § 63.1063(d)(1) and inspecting the seals according the requirements in § 63.1063(d)(2) and (3).

(3) Repairing defects according to the requirements in § 63.1063(e).

(4) Recording the information specified in § 63.1065(b) through (d).

(5) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(f) You must demonstrate continuous compliance for each tank determined to require Tank Level 2 controls and using a fixed roof vented to a control device according to § 63.7895(d)(3) by meeting the requirements in paragraphs (f)(1) through (6) of this section.

(1) Operating and maintaining the fixed roof and closure devices according to the requirements in § 63.685(g).

(2) Visually inspecting the fixed roof and closure devices for defects at least annually according to the requirements in § 63.695(b)(3)(i).

(3) Repairing defects according to the requirements in § 63.695(b)(4).

(4) Recording the information specified in § 63.696(e).

(5) Meeting each applicable requirement for demonstrating continuous compliance with the emission limitations and work practice standards for a closed vent system and control device in § 63.7928.

(6) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(g) You must demonstrate continuous compliance for each tank determined to

require Tank Level 2 controls and operated as a pressure tank according to § 63.7895(d)(4) by meeting the requirements in paragraphs (g)(1) through (3) of this section.

(1) Operating and maintaining the pressure tank and closure devices according to the requirements in § 63.685(h).

(2) Visually inspecting each pressurized tank and closure devices for defects at least annually to ensure they are operating according to the design requirements in § 63.685(h), and recording the results of each inspection.

(3) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(h) You must demonstrate continuous compliance for each tank determined to require Tank Level 2 controls and using a permanent total enclosure vented to an enclosed combustion device according to § 63.7895(d)(5) by meeting the requirements in paragraphs (h)(1) through (4) of this section.

(1) Performing the verification procedure for the enclosure annually according to the requirements in § 63.685(i).

(2) Recording the information specified in § 63.696(f).

(3) Meeting each applicable requirement for demonstrating continuous compliance with the emissions limitations and work practice standards for a closed vent system and control device in § 63.7928.

(4) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

Containers

§ 63.7900 What emissions limitations and work practice standards must I meet for containers?

(a) You must control HAP emissions from each new and existing container subject to § 63.7886(b)(1)(ii) according to emissions limitations and work practice standards in this section that apply to your affected containers.

(b) For each container having a design capacity greater than 0.1 m^3 you must meet the requirements in paragraph (b)(1) or (2) of this section that apply to your container except at the times the container is used for treatment of remediation material by a waste stabilization process, as defined in § 63.7957. As an alternative for any container subject to this paragraph, you may choose to meet the requirements in paragraph (d) of this section.

(1) If the design capacity of your container is less than or equal to 0.46 m^3, then you must use controls according to the standards for Container Level 1 controls as specified in § 63.922. As an alternative, you may choose to use controls according to either of the standards for Container Level 2 controls as specified in § 63.923.

(2) If the design capacity of your container is greater than 0.46 m^3, then you must use controls according to the standards for Container Level 2 controls as specified in § 63.923 except as provided for in paragraph (b)(3) of this section.

(3) As an alternative to meeting the standards in paragraph (b)(2) of this section for containers with a capacity greater than 0.46 m^3, if you determine that either of the conditions in paragraphs (b)(3)(i) or (ii) apply to the remediation material placed in your container, then you may use controls according to the standards for Container Level 1 controls as specified in § 63.922.

(i) Vapor pressure of every organic constituent in the remediation material placed in your container is less than 0.3 kPa at 20°C; or

(ii) Total concentration of the pure organic constituents having a vapor pressure greater than 0.3 kPa at 20°C in the remediation material placed in your container is less than 20 percent by weight.

(c) At times when a container having a design capacity greater than 0.1 m^3 is used for treatment of a remediation material by a waste stabilization process as defined in § 63.7957, you must control air emissions from the container during the process whenever the remediation material in the container is exposed to the atmosphere according to the standards for Container Level 3 controls as specified in § 63.924. You must meet the emissions limitations and work practice standards in § 63.7925 that apply to your closed vent system and control device.

(d) As an alternative to meeting the requirements in paragraph (b) of this section, you may choose to use controls on your container according to the standards for Container Level 3 controls as specified in § 63.924. You must meet the emissions limitations and work practice standards in § 63.7925 that apply to your closed vent system and control device.

(e) As provided in § 63.6(g), you may request approval from the EPA to use an alternative to the work practice standards in this section that apply to your containers. If you request for permission to use an alternative to the work practice standards, you must submit the information described in § 63.6(g)(2).

§ 63.7901 How do I demonstrate initial compliance with the emissions limitations and work practice standards for containers?

(a) You must demonstrate initial compliance with the emissions limitations and work practice standards in § 63.7990 that apply to your affected containers by meeting the requirements in paragraphs (b) through (e) of this section, as applicable to your containers.

(b) You have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (b)(1) and (2) of this section.

(1) You have determined the applicable container control levels specified in § 63.7990 for the containers to be used for your site remediation.

(2) You have determined and recorded the maximum vapor pressure or total organic concentration for the remediation material placed in containers with a design capacity greater than 0.46 m^3, and do not use Container Level 2 or Level 3 controls.

(c) You must demonstrate initial compliance of each container determined under paragraph (b) of this section to require Container Level 1 controls if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (c)(1) and (2) of this section.

(1) Each container using Container Level 1 controls will be one of the containers specified in § 63.922(b).

(2) You will operate each container cover and closure device according to the requirements in § 63.922(d).

(d) You must demonstrate initial compliance of each container determined under paragraph (b) of this section to require Container Level 2 controls if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (d)(1) through (4) of this section.

(1) Each container using Container Level 2 controls will be one of the containers specified in § 63.923(b).

(2) You will transfer remediation materials into and out of each container according to the procedures in § 63.923(d).

(3) You will operate and maintain the container covers and closure devices according to the requirements in § 63.923(d).

(4) You have records that the container meets the applicable U.S. Department of Transportation

regulations, or you have conducted an initial test of each container for no detectable organic emissions using the procedures in § 63.925(a), and have records documenting the test results, or you have demonstrated within the last 12 months that each container is vapor-tight according to the procedures in § 63.925(a) and have records documenting the test results.

(e) You must demonstrate initial compliance of each container determined under paragraph (b) of this section to require Container Level 3 controls if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (e)(1) and (2) of this section.

(1) For each permanent total enclosure you use to comply with § 63.7900, you have performed the verification procedure according to the requirements in § 63.924(c)(1), and prepare records of the supporting calculations and measurements.

(2) You have met each applicable requirement for demonstrating initial compliance with the emission limitations and work practice standards for a closed vent system and control device in § 63.7926.

§ 63.7902 What are my inspection and monitoring requirements for containers?

(a) You must inspect each container using Container Level 1 or Container Level 2 controls according to the requirements in § 63.926(a).

(b) If you use Container Level 3 controls, you must meet requirements in paragraphs (b)(1) and (2) of this section, as applicable to your site remediation.

(1) You must perform the verification procedure for each permanent total enclosure annually according to the requirements in § 63.924(c)(1).

(2) You must monitor and inspect each closed vent system and control device according to the requirements in § 63.7927 that apply to you.

§ 63.7903 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for containers?

(a) You must demonstrate continuous compliance with the emissions limitations and work practice standards in § 63.7990 applicable to your affected containers by meeting the requirements in paragraphs (b) through (e) of this section.

(b) You must demonstrate continuous compliance with the requirement to determine the applicable container control level specified in § 63.7990(b) for each affected tank by meeting the requirements in paragraphs (b)(1) through (3) of this section.

(1) Keeping records of the quantity and design capacity for each type of container used for your site remediation and subject to § 63.7886(b)(1)(ii).

(2) For containers subject to § 63.7886(b)(1)(ii) with a design capacity greater than 0.46 m^3 and not using Container Level 2 or Container Level 3 controls, meeting the requirements in paragraphs (b)(2)(i) and (ii) of this section.

(i) Keeping records of the maximum vapor pressure or total organic concentration for the remediation material placed in the containers, as applicable to the conditions in § 63.7900(b)(3)(i) or (ii) for which your containers qualify to use Container Level 1 controls.

(ii) Performing a new determination whenever changes to the remediation material placed in the containers could potentially cause the maximum vapor pressure or total organic concentration to increase to a level that is equal to or greater than the conditions specified in § 63.7900(b)(3)(i) or (ii), as applicable to your containers. You must keep records of each determination.

(3) Keeping records to document compliance with the requirements according to the requirements in § 63.7952.

(c) You must demonstrate continuous compliance for each container determined to require Container Level 1 controls by meeting the requirements in paragraphs (c)(1) through (5) of this section.

(1) Operating and maintaining covers for each container according to the requirements in § 63.922(d) .

(2) Inspecting each container annually according to the requirements in § 63.926(a)(2).

(3) Emptying or repairing each container according to the requirements in § 63.926(a)(3).

(4) Keeping records of an inspection that includes the information in paragraphs (a)(4)(i) and (ii) of this section.

(i) Date of each inspection; and

(ii) If a defect is detected during an inspection, the location of the defect, a description of the defect, the date of detection, the corrective action taken to repair the defect, and if repair is delayed, the reason for any delay and the date completion of the repair is expected.

(5) Keeping records to document compliance with the requirements according to the requirements in § 63.7952.

(d) You must demonstrate continuous compliance for each container determined to require Container Level 2 controls by meeting the requirements in paragraphs (d)(1) through (6) of this section.

(1) Transferring remediation material in and out of the container according to the requirements in § 63.923(c).

(2) Operating and maintaining container covers according to the requirements in § 63.923(d).

(3) Inspecting each container annually according to the requirements in § 63.926(a)(2).

(4) Emptying or repairing containers according to the requirements in § 63.926(a)(3).

(5) Keeping records of each inspection that include the information in paragraphs (d)(5)(i) and (ii) of this section.

(i) Date of each inspection; and

(ii) If a defect is detected during an inspection, the location of the defect, a description of the defect, the date of detection, the corrective action taken to repair the defect, and if repair is delayed, the reason for any delay and the date completion of the repair is expected.

(6) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(e) You must demonstrate continuous compliance for each container determined to require Container Level 3 controls by meeting the requirements in paragraphs (e)(1) through (4) of this section.

(1) Performing the verification procedure for the enclosure annually according to the requirements in § 63.685(i).

(2) Recording the information specified in § 63.696(f).

(3) Meeting each applicable requirement for demonstrating continuous compliance with the emissions limitations and work practice standards for a closed vent system and control device in § 63.7928.

(4) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

Surface Impoundments

§ 63.7905 What emissions limitations or work practice standards must I meet for surface impoundments?

(a) You must control HAP emissions from each new and existing surface impoundment subject to § 63.7886(b)(1)(iii) according to emissions limitations and work practice standards in this section that apply to your affected surface impoundments.

(b) For each affected surface impoundment, you must install and

operate air pollution controls that meet either of the options in paragraphs (b)(1) or (2) of this section.

(1) Install and operate a floating membrane cover according to the requirements in § 63.942; or

(2) Install and operate a cover vented through a closed vent system to a control device according to the requirements in § 63.943. You must meet the emissions limitations and work practice standards in § 63.7925 that apply to your closed vent system and control device.

(c) As provided in § 63.6(g), you may request approval from the EPA to use an alternative to the work practice standards in this section that apply to your surface impoundments. If you request for permission to use an alternative to the work practice standards, you must submit the information described in § 63.6(g)(2).

§ 63.7906 How do I demonstrate initial compliance with the emissions limitations or work practice standards for surface impoundments?

(a) You must demonstrate initial compliance with the emissions limitations and work practice standards in § 63.7905 that apply to your affected surface impoundments by meeting the requirements in paragraphs (b) and (c) of this section, as applicable to your surface impoundments.

(b) You must demonstrate initial compliance of each surface impoundment using a floating membrane cover according to § 63.7905(b)(1) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (b)(1) through (3) of this section.

(1) You have installed a floating membrane cover and closure devices that meet the requirements in § 63.942(b), and you have records documenting the design and installation.

(2) You will operate the cover and closure devices according to the requirements in § 63.942(c).

(3) You have performed an initial visual inspection of each surface impoundment and closure devices according to the requirements in § 63.946(a), and you have records documenting the inspection results.

(c) You must demonstrate initial compliance of each surface impoundment using a cover vented to a control device according to § 63.7905(b)(2) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (c)(1) through (4) of this section.

(1) You have installed a cover and closure devices that meet the requirements in § 63.943(b), and have records documenting the design and installation.

(2) You will operate the cover and closure devices according to the requirements in § 63.943(c).

(3) You have performed an initial visual inspection of each cover and closure devices according to the requirements in § 63.946(b), and have records documenting the inspection results.

(4) You have met each applicable requirement for demonstrating initial compliance with the emission limitations and work practice standards for a closed vent system and control device in § 63.7926.

§ 63.7907 What are my inspection and monitoring requirements for surface impoundments?

(a) If you use a floating membrane cover according to § 63.7905(b)(1), you must visually inspect the floating membrane cover and its closure devices at least annually according to the requirements in § 63.946(a).

(b) If you use a cover vented to a control device according to § 63.7905(b)(2), you must meet requirements in paragraphs (b)(1) and (2) of this section.

(1) You must visually inspect the cover and its closure devices for defects according to the requirements in § 63.946(b).

(2) You must monitor and inspect the closed vent system and control device according to the requirements in § 63.7927 that apply to you.

§ 63.7908 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for surface impoundments?

(a) You must demonstrate continuous compliance with the emissions limitations and work practice standards in § 63.7905 applicable to your affected surface impoundments by meeting the requirements in paragraphs (b) and (c) of this section as applicable to your surface impoundments.

(b) You must demonstrate continuous compliance for each surface impoundment using a floating membrane cover according to § 63.7905(b)(1) by meeting the requirements in paragraphs (b)(1) through (5) of this section.

(1) Operating and maintaining the floating membrane cover and closure devices according to the requirements in § 63.942(c).

(2) Visually inspecting the floating membrane cover and closure devices for defects at least annually according to the requirements in § 63.946(a).

(3) Repairing defects according to the requirements in § 63.946(c).

(4) Recording the information specified in § 63.947(a)(2) and (a)(3).

(5) Keeping records to document compliance with the requirements according to the requirements in § 63.7952.

(c) You must demonstrate continuous compliance for each surface impoundment using a cover vented to a control device according to § 63.7905(b)(2) by meeting the requirements in paragraphs (c)(1) through (6) of this section.

(1) Operating and maintaining the cover and its closure devices according to the requirements in § 63.943(c).

(2) Visually inspecting the cover and its closure devices for defects at least annually according to the requirements in § 63.946(b).

(3) Repairing defects according to the requirements in § 63.946(c).

(4) Recording the information specified in § 63.947(a)(2) and (a)(3).

(5) Meeting each applicable requirement for demonstrating continuous compliance with the emission limitations and work practice standards for a closed vent system and control device in § 63.7928.

(6) Keeping records to document compliance with the requirements according to the requirements in § 63.7952.

Separators

§ 63.7910 What emissions limitations and work practice standards must I meet for separators?

(a) You must control HAP emissions from each new and existing oil-water separator and organic-water separator subject to § 63.7886(b)(1)(iv) according to emissions limitations and work practice standards in this section that apply to your affected separators.

(b) For each affected separator, you must install and operate air pollution controls that meet one of the options in paragraphs (b)(1) through (3) of this section.

(1) Install and operate a floating roof according to the requirements in § 63.1043. For portions of the separator where it is infeasible to install and operate a floating roof, such as over a weir mechanism, you must comply with the requirements specified in paragraph (b)(2) of this section.

(2) Install and operate a fixed roof vented through a closed vent system to a control device according to the requirements in § 63.1044. You must

meet the emissions limitations and work practice standards in § 63.7925 that apply to your closed vent system and control device.

(3) Install and operate a pressurized separator according to the requirements in § 63.1045.

(c) As provided in § 63.6(g), you may request approval from the EPA to use an alternative to the work practice standards in this section that apply to your separators. If you request for permission to use an alternative to the work practice standards, you must submit the information described in § 63.6(g)(2).

§ 63.7911 How do I demonstrate initial compliance with the emissions limitations and work practice standards for separators?

(a) You must demonstrate initial compliance with the emissions limitations and work practice standards in § 63.7910 that apply to your affected separators by meeting the requirements in paragraphs (b) through (d) of this section, as applicable to your separators.

(b) You must demonstrate initial compliance of each separator using a floating roof according to § 63.7910(b)(1) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (b)(1) through (4) of this section.

(1) You have installed a floating roof and closure devices that meet the requirements in § 63.1043(b), and you have records documenting the design and installation.

(2) You will operate the floating roof and closure devices according to the requirements in § 63.1043(c).

(3) You have performed an initial seal gap measurement inspection using the procedures in § 63.1046(b), and you have records documenting the measurement results.

(4) You have performed an initial visual inspection of the floating roof and closure devices for defects according to the requirements in § 63.1047(b)(2), and you have records documenting the inspection results.

(5) For any portions of the separator using a fixed roof vented to a control device according to § 63.7910(b)(1), you have met the requirements in paragraphs (c)(1) through (4) of this section.

(c) You must demonstrate initial compliance of each separator using a fixed roof vented to a control device according to § 63.7910(b)(2) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (c)(1) through (4) of this section.

(1) You have installed a fixed roof and closure devices that meet the requirements in § 63.1042(b), and you have records documenting the design and installation.

(2) You will operate the fixed roof and its closure devices according to the requirements in § 63.1042(c).

(3) You have performed an initial visual inspection of the fixed roof and closure devices for defects according to the requirements in § 63.1047(a).

(4) You have met each applicable requirement for demonstrating initial compliance with the emission limitations and work practice standards for a closed vent system and control device in § 63.7926.

(d) You must demonstrate initial compliance of each pressurized separator that operates as a closed system according to § 63.7910(b)(3) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (d)(1) and (2) of this section.

(1) You have installed a pressurized separator that operates as a closed system according to the requirements in § 63.1045(b)(1) and (b)(2), and you have records of the design and installation.

(2) You will operate the pressurized separator as a closed system according to the requirements in § 63.1045(b)(3).

§ 63.7912 What are my inspection and monitoring requirements for separators?

(a) If you use a floating roof according to § 63.7910(b)(1), you must meet requirements in paragraphs (a)(1) and (2) of this section.

(1) Measure the seal gaps at least annually according to the requirements in § 63.1047(b)(1).

(2) Visually inspect the floating roof at least annually according to the requirements in § 63.1047(b)(2).

(b) If you use a cover vented to a control device according to § 63.7910(b)(1) or (2), you must meet requirements in paragraphs (b)(1) and (2) of this section.

(1) You must visually inspect the cover and its closure devices for defects according to the requirements in § 63.1047(c).

(2) You must monitor and inspect the closed vent system and control device according to the requirements in § 63.7927 that apply to you.

(c) If you use a pressurized separator that operates as a closed system according to § 63.7910(b)(3), you must visually inspect each pressurized separator and closure devices for defects at least annually to ensure they are operating according to the design requirements in § 63.1045(b).

§ 63.7913 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for separators?

(a) You must demonstrate continuous compliance with the emissions limitations and work practice standards in § 63.7910 applicable to your affected separators by meeting the requirements in paragraphs (b) through (d) of this section as applicable to your surface impoundments.

(b) You must demonstrate continuous compliance for each separator using a floating roof according to § 63.7910(b)(1) by meeting the requirements in paragraphs (b)(1) through (6) of this section.

(1) Operating and maintaining the floating roof according to the requirements in § 63.1043(b).

(2) Performing seal gap measurement inspections at least annually according to the requirements in § 63.1047(b)(1).

(3) Visually inspecting the floating roof at least annually according to the requirements in § 63.1047(b)(2).

(4) Repairing defects according to the requirements in § 63.1047(d).

(5) Recording the information specified in § 63.1048(a) and (b).

(6) Keeping records to document compliance with the requirements according to the requirements in § 63.7952.

(c) You must demonstrate continuous compliance for each separator using a cover vented to a control device according to § 63.7905(b)(1) or (2) by meeting the requirements in paragraphs (c)(1) through (6) of this section.

(1) Operating and maintaining the fixed roof and its closure devices according to the requirements in § 63.1042.

(2) Performing visual inspections of the fixed roof and its closure devices for defects at least annually according to the requirements in § 63.1047(a).

(3) Repairing defects according to the requirements in § 63.1047(d).

(4) Recording the information specified in § 63.1048(a).

(5) Meeting each applicable requirement for demonstrating continuous compliance with the emission limitations and work practice standards for a closed vent system and control device in § 63.7928.

(6) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(d) You must demonstrate continuous compliance for each pressurized

separator operated as a closed system according to § 63.7910(b)(3) by meeting the requirements in paragraphs (d)(1) and (2) of this section.

(1) Operating the pressurized separator at all times according to the requirements in § 63.1045.

(2) Visually inspecting each pressurized tank and closure devices for defects at least annually to ensure they are operating according to the design requirements in § 63.1045(b), and recording the results of each inspection.

Transfer Systems

§ 63.7915 What emissions limitations and work practice standards must I meet for transfer systems?

(a) You must control HAP emissions from each new and existing transfer system subject to § 63.7886(b)(1)(v) according to emissions limitations and work practice standards in this section that apply to your affected transfer systems.

(b) For each affected transfer system that is an individual drain system as defined in § 63.7957, you must install and operate controls according to the requirements in § 63.962.

(c) For each affected transfer system that is not an individual drain system as defined in § 63.7957, you must use one of the transfer systems specified in paragraphs (c)(1) through (3) of this section.

(1) A transfer system that uses covers according to the requirements in § 63.689(d).

(2) A transfer system that consists of continuous hard-piping. All joints or seams between the pipe sections shall be permanently or semi-permanently sealed (e.g., a welded joint between two sections of metal pipe or a bolted and gasketed flange).

(3) A transfer system that is enclosed and vented through a closed vent system to a control device according to the requirements specified in paragraphs (c)(3)(i) and (ii) of this section.

(i) The transfer system is designed and operated such that an internal pressure in the vapor headspace in the enclosure is maintained at a level less than atmospheric pressure when the control device is operating, and

(ii) The closed vent system and control device are designed and operated to meet the emissions limitations and work practice standards in § 63.7925 that apply to your closed vent system and control device.

(d) As provided in § 63.6(g), you may request approval from the EPA to use an alternative to the work practice standards in this section that apply to your transfer systems. If you request for permission to use an alternative to the work practice standards, you must submit the information described in § 63.6(g)(2).

§ 63.7916 How do I demonstrate initial compliance with the emissions limitations and work practice standards for transfer systems?

(a) You must demonstrate initial compliance with the emissions limitations and work practice standards in § 63.7915 that apply to your affected transfer systems by meeting the requirements in paragraphs (b) through (e) of this section, as applicable to your transfer systems.

(b) You must demonstrate initial compliance of each individual drain system using controls according to § 63.7915(b) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (b)(1) through (3) of this section.

(1) You have installed air emission controls for each individual drain system and junction box according to the requirements in § 63.962(a) and (b), and you have records documenting the installation and design.

(2) You will operate the air emission controls according to the requirements in § 63.962(b)(5).

(3) You have performed an initial visual inspection of each individual drain system according to the requirements in § 63.964(a), and you have records documenting the inspection results.

(c) You must demonstrate initial compliance of each transfer system using covers according to § 63.7915(c)(1) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (c)(1) through (3) of this section.

(1) Each transfer system is equipped with covers and closure devices according to the requirements in § 63.689(d)(1) through (4), and you have records documenting the design and installation.

(2) You have performed an initial inspection of each cover and its closure devices for defects according to the requirements in § 63.695(d)(1) through (5), and you have records documenting the inspection results.

(3) You will operate each cover and its closure devices according to the requirements in § 63.689(5).

(d) You must demonstrate initial compliance of each transfer system that consists of hard piping according to § 63.7915(c)(2) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (d)(1) and (2) of this section.

(1) You have installed a transfer system that consists entirely of hard piping and meets the requirements in § 63.7915(c)(2), and you have records documenting the design and installation.

(2) You have performed an initial inspection of the entire transfer system to verify that all joints or seams between the pipe sections are permanently or semi-permanently sealed (*e.g.,* a welded joint between two sections of metal pipe or a bolted and gasketed flange), and you have records documenting the inspection results.

(e) You must demonstrate initial compliance of each transfer system that is enclosed and vented to a control device according to § 63.7915(e)(3) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (e)(1) and (2) of this section.

(1) You have installed a transfer system that is designed and operated such that an internal pressure in the vapor headspace in the enclosure is maintained at a level less than atmospheric pressure when the control device is operating, and you have records documenting the design and installation.

(2) You have met each applicable requirement for demonstrating initial compliance with the emission limitations and work practice standards for a closed vent system and control device in § 63.7926.

§ 63.7917 What are my inspection and monitoring requirements for transfer systems?

(a) If you operate an individual drain system as a transfer system according to § 63.7915(b), you must visually inspect each individual drain system at least annually according to the requirements in § 63.964(a).

(b) If you operate a transfer system using covers according to § 63.7915(c)(1), you must inspect each cover and its closure devices for defects according to the requirements in § 63.695(d)(1) through (5).

(c) If you operate a transfer system consisting of hard piping according to § 63.7915(c)(2), you must annually inspect the entire pipeline and all joints for leaks and other defects. In the event that a defect is detected, you must repair the leak or defect according to the

requirements of paragraph (e) of this section.

(d) If you operate a transfer system that is enclosed and vented to a control device according to § 63.7915(c)(3), you must meet requirements in paragraphs (d)(1) and (2) of this section.

(1) You must annually inspect all enclosure components (e.g., enclosure sections, closure devices, fans) for defects that would prevent an internal pressure in the vapor headspace in the enclosure from continuously being maintained at a level less than atmospheric pressure when the control device is operating. In the event that a defect is detected, you must repair the defect according to the requirements of paragraph (e) of this section.

(2) You must monitor and inspect the closed vent system and control device according to the requirements in § 63.7927 that apply to you.

(e) If you are subject to paragraph (c) or (d) of this section, you must repair all detected defects as specified in paragraphs (e)(1) through (3) of this section.

(1) You must make first efforts at repair of the defect no later than 5 calendar days after detection and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in paragraph (e)(2) of this section.

(2) Repair of a defect may be delayed beyond 45 calendar days if you determine that repair of the defect requires emptying or temporary removal from service of the transfer system and no alternative transfer system is available at the site to accept the material normally handled by the system. In this case, you must repair the defect the next time the process or unit that is generating the material handled by the transfer system stops operation. Repair of the defect must be completed before the process or unit resumes operation.

(3) You must maintain a record of the defect repair according to the requirements specified in § 63.7952.

§ 63.7918 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for transfer systems?

(a) You must demonstrate continuous compliance with the emissions limitations and work practice standards in § 63.7915 applicable to your affected transfer system by meeting the requirements in paragraphs (b) through (e) of this section as applicable to your transfer systems.

(b) You must demonstrate continuous compliance for each individual drain system using controls according to § 63.7915(b) by meeting the requirements in paragraphs (b)(1) through (5) of this section.

(1) Operating and maintaining the air emission controls for individual drain systems according to the requirements in § 63.962.

(2) Visually inspecting each individual drain system at least annually according to the requirements in § 63.964(a).

(3) Repairing defects according to the requirements in § 63.964(b).

(4) Recording the information specified in § 63.965(a).

(5) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(c) You must demonstrate continuous compliance for each transfer system using covers according to § 63.7915(c)(1) by meeting the requirements in paragraphs (c)(1) through (4) of this section.

(1) Operating and maintaining each cover and its closure devices according to the requirements in § 63.689(d)(1) through (5).

(2) Performing inspections of each cover and its closure devices for defects at least annually according to the requirements in § 63.695(d)(1) through (5).

(3) Repairing defects according to the requirements in § 63.695(5)

(4) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(d) You must demonstrate continuous compliance for each transfer system that consists of hard piping according to § 63.7915(c)(2) by meeting the requirements in paragraphs (d)(1) through (4) of this section.

(1) Operating and maintaining the pipeline to ensure that all joints or seams between the pipe sections remain permanently or semi-permanently sealed (*e.g.*, a welded joint between two sections of metal pipe or a bolted and gasketed flange).

(2) Inspecting the pipeline for defects at least annually according to the requirements in § 63.7918(c).

(3) Repairing defects according to the requirements in § 63.7918(e).

(4) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(e) You must demonstrate continuous compliance for each transfer system that is enclosed and vented to a control device according to § 63.7915(e)(3) by meeting the requirements in paragraphs (e)(1) through (5) of this section.

(1) Operating and maintaining the enclosure to ensure that the internal pressure in the vapor headspace in the enclosure is maintained continuously at a level less than atmospheric pressure when the control device is operating.

(2) Inspecting the enclosure and its closure devices for defects at least annually according to the requirements in § 63.7918(d).

(3) Repairing defects according to the requirements in § 63.7918(e).

(4) Meeting each applicable requirement for demonstrating continuous compliance with the emission limitations and work practice standards for a closed vent system and control device in § 63.7928.

(5) Keeping records to document compliance with the requirements according to the requirements in § 63.7952.

Equipment Leaks

§ 63.7920 What emissions limitations and work practice standards must I meet for equipment leaks?

(a) You must control HAP emissions from each new and existing equipment subject to § 63.7887 according to emissions limitations and work practice standards in this section that apply to your affected equipment.

(b) For your affected equipment, you must meet the requirements in either paragraph (b)(1) or (2) of this section.

(1) Control equipment leaks according to all applicable requirements under 40 CFR part 63, subpart TT—National Emission Standards for Equipment Leaks—Control Level 1; or

(2) Control equipment leaks according to all applicable requirements under 40 CFR part 63, subpart UU—National Emission Standards for Equipment Leaks—Control Level 2.

(c) If you use a closed vent system and control device to comply with this section, as an alternative to meeting the standards in § 63.1015 or § 63.1034 for closed vent systems and control devices, you may elect to meet the requirements in §§ 63.7925 through 63.7928 that apply to your closed vent system and control device.

(d) As provided in § 63.6(g), you may request approval from the EPA to use an alternative to the work practice standards in this section that apply to your equipment. If you request for permission to use an alternative to the work practice standards, you must submit the information described in § 63.6(g)(2).

§ 63.7921 How do I demonstrate initial compliance with the emissions limitations and work practice standards for equipment leaks?

(a) You must demonstrate initial compliance with the emissions

limitations and work practice standards in § 63.7920 that apply to your affected equipment by meeting the requirements in paragraphs (b) and (c) of this section, as applicable to your affected sources.

(b) If you control equipment leaks according to the requirements under § 63.7920(b)(1), you must demonstrate initial compliance if you have met the requirements in paragraphs (b)(1) and (2) of this section.

(1) You include the information required in § 63.1018(a)(1) in your notification of compliance status report.

(2) You have submitted as part of your notification of compliance status a signed statement that:

(i) You will meet the requirements in §§ 63.1002 through 63.1016 that apply to your affected equipment.

(ii) You have identified the equipment subject to control according to the requirements in § 63.1003, including equipment designated as unsafe to monitor, and have records supporting the determinations with a written plan for monitoring the equipment according to the requirements in § 63.1003(c)(4).

(c) If you control equipment leaks according to the requirements under § 63.7920(b)(2), you must demonstrate initial compliance if you have met the requirements in paragraphs (c)(1) and (2) of this section.

(1) You have included the information required in § 63.1039(a) in your notification of compliance status report.

(2) You have submitted as part of your notification of compliance status a signed statement that:

(i) You will meet the requirements in §§ 63.1021 through 63.1037 that apply to your affected equipment.

(ii) You have identified the equipment subject to control according to the requirements in § 63.1022, including equipment designated as unsafe to monitor, and have records supporting the determinations with a written plan for monitoring the equipment according to the requirements in § 63.1022(c)(4).

§ 63.7922 How do I demonstrate continuous compliance with the work practice standards for equipment leaks?

(a) You must demonstrate continuous compliance with the emissions limitations and work practice standards in § 63.7920 applicable to your affected equipment by meeting the requirements in paragraphs (b) through (d) of this section that apply to you.

(b) If you control equipment leaks according to the requirements under § 63.7920(b)(1), you must demonstrate continuous compliance by inspecting, monitoring, repairing, and maintaining records according to the requirements in §§ 63.1002 through 63.1018 that apply to your affected equipment.

(c) If you control equipment leaks according to the requirements under § 63.7920(b)(2), you must demonstrate continuous compliance by inspecting, monitoring, repairing, and maintaining records according to the requirements in §§ 63.1021 through 63.1039 that apply to your affected equipment.

(d) You must keep records to demonstrate compliance with the requirements according to the requirements in § 63.7952.

Closed Vent Systems and Control Devices

§ 63.7925 What emissions limitations and work practice standards must I meet for closed vent systems and control devices?

(a) For each closed-vent system and control device you use to comply with requirements in §§ 63.7890 through 63.7922, as applicable to your affected sources, you must meet the emissions limitations and work practice standards in this section.

(b) Whenever gases or vapors containing HAP are vented through the closed-vent system to the control device, the control device must be operating except at those times listed in either paragraph (b)(1) or (2) of this section.

(1) The control device may be bypassed for the purpose of performing planned routine maintenance of the closed-vent system or control device in situations when the routine maintenance cannot be performed during periods that the emission point vented to the control device is shutdown. On an annual basis, the total time that the closed-vent system or control device is bypassed to perform routine maintenance must not exceed 240 hours per each calendar year.

(2) The control device may be bypassed for the purpose of correcting a malfunction of the closed-vent system or control device. You must perform the adjustments or repairs necessary to correct the malfunction as soon as practicable after the malfunction is detected.

(c) For each closed vent system, you must meet the work practice standards in § 63.693(c).

(d) For each control device other than a flare or a control device used to comply with the facility-wide process vent emission limits in § 63.7890(b), you must control HAP emissions to meet either of the emissions limits in paragraphs (d)(1) or (2) of this section except as provided for in paragraph (f) of this section.

(1) Reduce emissions of total HAP listed in Table 1 of this subpart or TOC (minus methane and ethane) from each control device by 95 percent by weight; or

(2) Limit the concentration of total HAP listed in Table 1 of this subpart or TOC (minus methane and ethane) from each combustion control device (a thermal incinerator, catalytic incinerator, boiler, or process heater) to 20 ppmv or less on a dry basis corrected to 3 percent oxygen.

(e) If you use a flare for your control device, then you must meet the requirements for flares in § 63.11(b).

(f) If you use a process heater or boiler for your control device, then as alternative to meeting the emissions limits in paragraph (d) of this section you may choose to comply with one of the work practice standards in paragraphs (f)(1) through (3) of this section.

(1) Introduce the vent stream into the flame zone of the boiler or process heater and maintain the conditions in the combustion chamber at a residence time of 0.5 seconds or longer and at a temperature of 760°C or higher; or

(2) Introduce the vent stream with the fuel that provides the predominate heat input to the boiler or process heater (*i.e.*, the primary fuel); or

(3) Introduce the vent stream to a boiler or process heater for which you either have been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces; or has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(g) For each control device other than a flare, you must meet each operating limit in paragraphs (g)(1) through (6) of this section that applies to your control device.

(1) If you use a regenerable carbon adsorption system, you must:

(i) Maintain the hourly average total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the stream mass flow established in the design evaluation or performance test.

(ii) Maintain the hourly average temperature of the adsorption bed during regeneration (except during the cooling cycle) greater than or equal to the temperature established during the design evaluation or performance test.

(iii) Maintain the hourly average temperature of the adsorption bed after regeneration (and within 15 minutes after completing any cooling cycle) less than or equal to the temperature established during the design evaluation.

(iv) Maintain the frequency of regeneration greater than or equal to the

frequency established during the design evaluation.

(2) If you use a nonregenerable carbon adsorption system, you must maintain the hourly average temperature of the adsorption bed less than or equal to the temperature established during the design evaluation or performance test.

(3) If you use a condenser, you must maintain the daily average condenser exit temperature less than or equal to the temperature established during the design evaluation or performance test.

(4) If you use a thermal incinerator, you must maintain the daily average firebox temperature greater than or equal to the temperature established in the design evaluation or during the performance test.

(5) If you use a catalytic incinerator, you must maintain the daily average temperature difference across the catalyst bed greater than or equal to the minimum temperature difference established during the performance test or design evaluation.

(6) If you use a boiler or process heater to comply with an emission limit in paragraph (d) of this section, you must maintain the daily average firebox temperature within the operating level established during the design evaluation or performance test.

(h) If you use a carbon adsorption system as your control, you must meet each work practice standard in paragraphs (h)(1) through (3) of this section that applies to your control device.

(1) If you use a regenerable carbon adsorption system, you must:

(i) Replace the existing adsorbent in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation.

(ii) Follow the disposal requirements for spent carbon in § 63.693(d)(4).

(2) If you use a nonregenerable carbon adsorption system, you must:

(i) Replace the existing adsorbent in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation.

(ii) Meet the disposal requirements for spent carbon in § 63.693(d)(4)(ii).

(3) If you use a nonregenerative carbon adsorption system, you may choose to comply with the requirements in paragraphs (h)(3)(i) and (ii) of this section as an alternative to the requirements in paragraph (h)(2) of this section. You must:

(i) Immediately replace the carbon canister or carbon in the control device when the monitoring device indicates breakthrough has occurred according to the requirements in § 63.693(d)(4)(iii)(A), or replace the carbon canister or carbon in the control device at regular intervals according to the requirements in § 63.693(d)(4)(iii)(B).

(ii) Follow the disposal requirements for spent carbon in § 63.693(d)(4)(ii).

(i) If you use a catalytic incinerator, you must replace the existing catalyst bed with a bed that meets the replacement specifications before the age of the bed exceeds the maximum allowable age established in the design evaluation or during the performance test.

(j) As provided in § 63.6(g), you may request approval from the EPA to use an alternative to the work practice standards in this section that apply to your closed vent systems and control devices. If you request for permission to use an alternative to the work practice standards, you must submit the information described in § 63.6(g)(2).

§ 63.7926 How do I demonstrate initial compliance with the emission limitations and work practice standards for closed vent systems and control devices?

(a) You must demonstrate initial compliance with the emissions limitations and work practice standards in this subpart applicable to your closed vent system and control device by meeting the requirements in paragraphs (b) through (h) of this section that apply to your closed vent system and control device.

(b) You must demonstrate initial compliance with the closed vent system work practice standards in § 63.7925(c) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (b)(1) and (2) of this section.

(1) You have installed a closed vent system that meets the requirements in § 63.695(c)(1) and (2), and you have records documenting the equipment design and installation.

(2) You have performed the initial inspection of the closed vent system according to the requirements in § 63.695(c)(1)(i) or (ii), and you have records documenting the inspection results.

(c) You must demonstrate initial compliance of each control device subject to the emissions limits in § 63.7925(d) with the applicable emissions limit in § 63.7925(d) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (c)(1) and (2) of this section that apply to you.

(1) For the emissions limit in § 63.7925(d)(1), the emissions of total HAP listed in Table 1 of this subpart or TOC (minus methane and ethane) from the control device, measured or determined according to the procedures for performance tests and design evaluations in § 63.7941, are reduced by at least 95 percent by weight.

(2) For the emissions limit in § 63.7925(d)(2), the concentration of total HAP listed in Table 1 of this subpart or TOC (minus methane and ethane) from the combustion control device, measured by a performance test or determined by a design evaluation according to the procedures in § 63.7941, do not exceed 20 ppmv on a dry basis corrected to 3 percent oxygen.

(d) You must demonstrate initial compliance of each control device subject to operating limits in § 63.7925(g) with the applicable limits if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (d)(1) and (2) of this section.

(1) You have established an appropriate operating limit(s) for each of the operating parameter applicable to your control device as specified in § 63.7925(g)(1) through (6).

(2) You have a record of the applicable operating parameter data during the performance test or design evaluation during which the emissions met the applicable limit.

(e) You must demonstrate initial compliance with the spent carbon replacement and disposal work practice standards for carbon adsorption systems in § 63.7925(h) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you will comply with each work practice standard that applies to your carbon adsorption system.

(f) You must demonstrate initial compliance with the catalyst replacement work practice standards for catalytic incinerators in § 63.7925(i) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you will comply with the specified work practice standard.

(g) You must demonstrate initial compliance of each flare with the work practice standards in § 63.7925(e) if you have submitted as part of your

notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (g)(1) through (3) of this section.

(1) Each flare meets the requirements in § 63.11(b).

(2) You have performed a visible emissions test, determined the net heating value of gas being combusted, and determined the flare exit velocity as required in § 63.693(h)(2).

(3) You will operate each flare according to the requirements in § 63.11(b).

(h) You must demonstrate initial compliance of each boiler or process heater with the work practice standards in § 63.7925(f) if you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (h)(1) through (3) of this section.

(1) For the work practice standards in § 63.7925(f)(1), you have records documenting that the boiler or process heater is designed to operate at a residence time of 0.5 seconds or greater and maintain the combustion zone temperature at 760°C or greater.

(2) For the work practice standard in § 63.7925(f)(2), you have records documenting that the vent stream is introduced with the fuel according to the requirements in § 63.693(g)(1)(iv), or that the vent stream is introduced to a boiler or process heater that meets the requirements in § 63.693(g)(1)(v).

(3) For the work practice standard in § 63.7925(f)(3), you have records documenting you either have been issued a final permit under 40 CFR part 270 and your boiler or process heater complies with the requirements of 40 CFR part 266, subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces; or has been certified in compliance with the interim status requirements of 40 CFR part 266, subpart H.

§ 63.7927 What are my inspection and monitoring requirements for closed vent systems and control devices?

(a) You must comply with the requirements in paragraphs (a)(1) and (2) of this section for each closed vent system.

(1) You must monitor and inspect each closed vent system according to the requirements in either paragraph (a)(1)(i) or (ii) of this section.

(i) You must monitor, inspect, and repair defects according to the requirements in § 63.695(c)(1)(ii) through (c)(3); or

(ii) You must monitor and inspect the closed vent system according to the requirements in § 63.172(f) through (j) and record the information in § 63.181.

(2) If your closed vent system includes a bypass device, you must meet the requirements in either paragraph (a)(2)(i) or (ii) of this section.

(i) Use a flow indicator to determine if the presence of flow according to the requirements in § 63.693(c)(2)(i); or

(ii) Use a seal or locking device and make monthly inspections as required by § 63.693(c)(2)(ii).

(b) If you use a regenerable carbon adsorption system, you must meet the requirements in paragraphs (b)(1) through (3) of this section.

(1) Use a continuous parameter monitoring system (CPMS) to measure and record the hourly average total regeneration stream mass flow during each carbon adsorption cycle.

(2) Use a CPMS to measure and record the hourly average temperature of the adsorption bed during regeneration (except during the cooling cycle).

(3) Use a CPMS to measure and record the hourly average temperature of the adsorption bed after regeneration (and within 15 minutes of after completing any cooling cycle).

(c) If you use a nonregenerable carbon adsorption system, you must use a CPMS to measure and record the hourly average temperature of the adsorption bed or you must monitor the concentration of organic compounds in the exhaust vent stream according to the requirements in § 63.693(d)(4)(iii)(A).

(d) If you use a condenser, you must use a CPMS to measure and record the hourly average condenser exit temperature and determine and record the daily average condenser exit temperature.

(e) If you use a thermal incinerator, you must use a CPMS to measure and record the hourly average firebox temperature and determine and record the daily average firebox temperature.

(f) If you use a catalytic incinerator, you must use a CPMS with two temperature sensors to measure and record the hourly average temperature at the inlet of the catalyst bed, the hourly average temperature at the outlet of the catalyst bed, the hourly average temperature difference across the catalyst bed, and to determine and record the daily average temperature difference across the catalyst bed.

(g) If you use a boiler or process heater to meet an emission limitation, you must use a CPMS to measure and record the hourly average firebox temperature and determine and record the daily average firebox temperature.

(h) If you use a flare, you must monitor the operation of the flare using a heat sensing monitoring device according to the requirements in § 63.693(h)(3).

(i) If you introduce the vent stream into the flame zone of a boiler or process heater according to the requirements in § 63.7925(f)(1), you must use a CPMS to measure and record the combustion zone temperature.

§ 63.7928 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for closed vent systems and control devices?

(a) You must demonstrate continuous compliance with the emissions limitations and work practice standards in this subpart applicable to your closed vent system and control device by meeting the requirements in paragraphs (b) through (j) of this section as applicable to your closed vent system and control device.

(b) You must demonstrate continuous compliance with the closed vent system work practice standards in § 63.7925(c) by meeting the requirements in paragraphs (b)(1) through (7) of this section.

(1) For a closed vent system designed to operate with no detectable organic emissions, visually inspecting the closed vent system at least annually, monitoring after a repair or replacement using the procedures in § 63.694(k), and monitoring at least annually according to the requirements in § 63.695(c)(1)(ii).

(2) For a closed vent system designed to operate below atmospheric pressure, visually inspecting the closed vent system at least annually according to the requirements in § 63.695(c)(2)(ii).

(3) Repairing defects according to the requirements in § 63.695(c)(3).

(4) Keeping records of each inspection that include the information in paragraphs (b)(4)(i) through (iii) of this section:

(i) A closed vent system identification number (or other unique identification description you select).

(ii) Date of each inspection.

(iii) If a defect is detected during an inspection, the location of the defect, a description of the defect, the date of detection, the corrective action taken to repair the defect, and if repair is delayed, the reason for any delay and the date completion of the repair is expected.

(5) If you elect to monitor the closed vent system according to the requirements in § 63.172(f) through (j), recording the information in § 63.181.

(6) If the closed vent system is equipped with a flow indicator, recording the information in § 63.693(c)(ii)(i).

(7) If the closed vent system is equipped with a seal or locking device,

visually inspecting the seal or closure mechanism at least monthly according to the requirements in § 63.693(c)(ii)(i), and recording the results of each inspection.

(c) You must demonstrate continuous compliance of each control device subject to the emissions limits in § 63.7925(d) with the applicable emissions limit in § 63.7925(d) by meeting the requirements in paragraphs (c)(1) and (2) of this section.

(1) For the emission limit in § 63.7925(d)(1), maintaining the reduction in emissions of total HAP listed in Table 1 of this subpart or TOC (minus methane and ethane) from the control device at 95 percent by weight or greater.

(2) For the emission limit in § 63.7925(d)(2), maintaining the concentration of total HAP listed in Table 1 of this subpart or TOC (minus methane and ethane) from the control device at 20 ppmv or less.

(d) You must demonstrate continuous compliance of each control device subject to operating limits in § 63.7925(g) with the applicable limits by meeting the requirements in paragraphs (d)(1) through (4) of this section.

(1) Maintaining each operating limit according to the requirements in § 63.7925(g) as applicable to the control device.

(2) Monitoring and inspecting each control device according to the requirements in § 63.7927(b) through (i) as applicable to the control device.

(3) Operating and maintaining each continuous monitoring system according to the requirements in § 63.7945, and collecting and reducing data according to the requirements in § 63.7946.

(4) Keeping records to document compliance with the requirements of this subpart according to the requirements in § 63.7952.

(e) You must demonstrate continuous compliance with the spent carbon replacement and disposal work practice standards for regenerable carbon adsorption systems in § 63.7925(h)(1) by meeting the requirements in paragraphs (e)(1) through (3) of this section.

(1) Replacing the adsorbent as required by § 63.7925(h)(1)(i).

(2) Following the disposal requirements for spent carbon in § 63.693(d)(4)(ii).

(3) Keeping records to document compliance with the requirements of the work practice standards.

(f) You must demonstrate continuous compliance with the spent carbon replacement and disposal work practice standards for nonregenerable carbon adsorption systems in § 63.7925(h)(2) by meeting the requirements in paragraphs (f)(1) through (3) of this section.

(1) Replacing the adsorbent as required by the work practice standard in § 63.7925(h)(2)(i).

(2) Following the disposal requirements for spent carbon in § 63.693(d)(4)(ii).

(3) Keeping records to document compliance with the requirements of the work practice standards.

(g) You must demonstrate continuous compliance with the spent carbon replacement and disposal work practice standards for nonregenerable carbon adsorption systems in § 63.7925(h)(3) by meeting the requirements in paragraphs (g)(1) through (3) of this section.

(1) Monitoring the concentration level of the organic compounds in the exhaust vent for the carbon adsorption system as required in § 63.7927(c), immediately replacing the carbon canister or carbon in the control device when breakthrough is indicated by the monitoring device, and recording the date of breakthrough and carbon replacement. Or, you must replace the carbon canister or carbon in the control device at regular intervals and record the date of carbon replacement.

(2) Following the disposal requirements for spent carbon in § 63.693(d)(4)(ii).

(3) Keeping records to document compliance with the requirements of the work practice standards.

(h) You must demonstrate continuous compliance with the catalyst replacement work practice standards for catalytic incinerators in § 63.7925(i) by meeting the requirements in paragraphs (h)(1) and (2) of this section.

(1) Replacing the existing catalyst bed as required in § 63.7925(i).

(2) Keeping records to document compliance with the requirements of the work practice standards.

(i) You must demonstrate continuous compliance of each flare with the work practice standards in § 63.7925(e) by meeting the requirements in paragraphs (i)(1) through (5) of this section.

(1) Operating the flare with no visible emissions except for up to 5 minutes in any 2 consecutive hours according to the requirements in § 63.11(b)(4).

(2) Monitoring the presence of a pilot flare according to the requirements in § 63.7927(h) and maintaining a pilot flame and flare flame at all times that emissions are not vented to the flare according to the requirements in § 63.11(b)(5).

(3) Operating the flare with an exit velocity according to the requirements in § 63.11(b)(6) through (8).

(4) Operating the flare with a net heating value of the gas being combusted according to the requirements in § 63.11(b)(6)(ii).

(5) Keeping records to document compliance with the requirements of the work practice standards.

(j) You must demonstrate continuous compliance of each boiler or process heater with the work practice standards in § 63.7925(f) by meeting the requirements in paragraphs (j)(1) through (3) of this section.

(1) For the work practice standards in § 63.7925(f)(1), you must demonstrate continuous compliance by meeting the requirements in paragraphs (j)(1)(i) through (iv).

(i) Maintaining conditions in the combustion chamber at a residence time of 0.5 seconds or longer and at a combustion zone temperature at 760°C or greater whenever the vent stream is introduced to the flame zone of the boiler or process heater.

(ii) Monitoring each boiler or process heater according to the requirements in § 63.7927(i).

(iii) Operating and maintaining each continuous monitoring system according to the requirements in § 63.7945, and collecting and reducing data according to the requirements in § 63.7946.

(iv) Keeping records to document compliance with residence time design requirement.

(2) For the work practice standards in § 63.7925(f)(2), you maintain the boiler or process heater operations such that the vent stream is introduced with the fuel according to the requirements in § 63.693(g)(1)(iv), or that the vent stream is introduced to a boiler or process heater that meets the requirements in § 63.693(g)(1)(v).

(3) For the work practice standard in § 63.7925(f)(3), you remain in compliance with all terms and conditions of the final permit under 40 CFR part 270 and your boiler or process heater complies with the requirements of 40 CFR part 266, subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces; or in compliance with the interim status requirements of 40 CFR part 266, subpart H, as applicable to your boiler or process heater.

General Compliance Requirements

§ 63.7935 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emissions limitations (including operating limits) and the work practice standards in this subpart at all times,

except during periods of startup, shutdown, and malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(d) During periods of startup, shutdown, and malfunction, you must operate according to the SSMP.

(e) You must report each instance in which you did not meet each emissions limitation and each operating limit that applies to you. This includes periods of startup, shutdown, and malfunction. You must also report each instance in which you did not meet the requirements for work practice standards that apply to you. These instances are deviations from the emissions limitations and work practice standards in this subpart. These deviations must be reported according to the requirements in § 63.7951.

(f) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating according to the SSMP. We will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

(g) For each monitoring system required in this section, you must develop and make available for inspection by the permitting authority, upon request, a site-specific monitoring plan that addresses the following:

(1) Installation of the continuous monitoring system sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.*, on or downstream of the last control device).

(2) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system.

(3) Performance evaluation procedures and acceptance criteria (*e.g.*, calibrations).

(h) In your site-specific monitoring plan, you must also address the following:

(1) Ongoing operation and maintenance procedures according to the general requirements of § 63.8(c)(1), (3), (4)(ii), (7), and (8).

(2) Ongoing data quality assurance procedures according to the general requirements of § 63.8(d).

(3) Ongoing recordkeeping and reporting procedures according to the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

(i) You must operate and maintain the continuous monitoring system according to the site-specific monitoring plan.

(j) You must conduct a performance evaluation of each continuous monitoring according to your site-specific monitoring plan.

§ 63.7936 What requirements must I meet if I transfer remediation material off-site to another facility?

(a) If you transfer to another facility a remediation material generated by your remediation activities and having an average total VOHAP concentration equal to or greater than 10 ppmw (as determined using the procedures specified in § 63.7943), then you must transfer the remediation material to a facility that meets the requirements in paragraph (b) of this section. You must record the name, street address, and telephone number of the facility where you send this remediation material.

(b) You may elect to transfer the remediation material to one of the following facilities:

(1) A facility where your remediation material will be directly disposed in a landfill or other land disposal unit according to all applicable Federal and State requirements.

(2) A facility subject to 40 CFR part 63, subpart DD where the exemption under § 63.680(b)(2)(iii) is waived and air emissions from the management of your remediation material at the facility are controlled according to all applicable requirements in the subpart for an off-site material. Prior to sending your remediation material, you must obtain a written statement from the owner or operator of the facility to which you send your remediation material acknowledging that the exemption under § 63.680(b)(2)(iii) will be waived for all remediation material received at the facility from you and your material will be managed as an off-site material at the facility according to all applicable requirements. This statement must be signed by the responsible official of the receiving facility, provide the name and address of the receiving facility, and a copy sent to the appropriate EPA Regional Office at the addresses listed in 40 CFR 63.13.

(3) A facility where your remediation material will be managed according to all applicable requirements under this Subpart.

(i) You must prepare and include a notice with each shipment or transport of remediation material from your site. This notice must state that the remediation material contains organic HAP that are to be treated according to the provisions of this subpart. When the transport is continuous or ongoing (for example, discharge to a publicly owned treatment works), the notice must be submitted to the receiving facility owner or operator initially and whenever there is a change in the required treatment.

(ii) You may not transfer the remediation material unless the owner or operator of the facility receiving your remediation material has submitted to the EPA a written certification that he or she will manage remediation material received from you according to the requirements of §§ 63.7885 through 63.7957. The receiving facility owner or operator may revoke the written certification by sending a written statement to the EPA and to you providing at least 90 days notice that they rescind acceptance of responsibility for compliance with the regulatory provisions listed in this section. Upon expiration of the notice period, you may not transfer your remediation material to the facility.

(iii) By providing the written certification to the EPA, the receiving facility owner or operator accepts responsibility for compliance with the regulatory provisions listed in paragraph (b)(3) of this section with respect to any shipment of remediation material covered by the written certification. Failure to abide by any of those provisions with respect to such shipments may result in enforcement action by the EPA against the certifying entity according to the enforcement provisions applicable to violations of these provisions by owners or operators of sources.

(iv) Written certifications and revocation statements to the EPA from the receiving facility owner or operator must be signed by the responsible official of the receiving facility, provide the name and address of the receiving facility, and a copy sent to the appropriate EPA Regional Office at the addresses listed in 40 CFR 63.13. Such written certifications are not transferable.

(c) Acceptance by a facility owner or operator of remediation material from a site remediation subject to this Subpart does not, by itself, require the facility owner or operator to obtain a title V permit under 40 CFR 70.3 or 40 CFR 71.3.

§ 63.7937 How do I demonstrate initial compliance with the general standards?

(a) You must demonstrate initial compliance with the general standards in §§ 63.7884 through 63.7887 that apply to your affected sources by meeting the requirements in paragraphs (b) through (d) of this section, as applicable to you.

(b) You must demonstrate initial compliance with the general standards in § 63.7885 that apply to your affected process vents by meeting the requirements in paragraphs (b)(1) through (4) of this section, as applicable to your process vents.

(1) If HAP emissions are controlled from the affected process vents according to the emission limitations and work practice standards specified in § 63.7885(b)(1), you have met the initial compliance requirements in § 63.7891.

(2) If the remediation material treated or managed by the process vented through the affected process vents has an average total VOHAP less than 10 ppmw according to § 63.7885(b)(2), you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have determined, according to the procedures § 63.7943, and recorded the average VOHAP concentration of the remediation material placed in the affected remediation material management unit.

(3) If HAP emissions are controlled from the affected process vents to meet standards in another subpart under 40 CFR part 61 or 40 CFR part 63 according to § 63.7885(b)(3), you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (b)(3)(i) and (ii) of this section.

(i) You include in your statement the citations for the specific emission limitations and work practice standards that apply to the process vents under the subpart in 40 CFR part 61 or 40 CFR part 63 that the vents are also subject.

(ii) You are complying with all applicable emissions limitations and work practice standards specified by the applicable subpart.

(4) For each process vent exempted according to § 63.7885(c), you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (b)(4)(i) and (ii) of this section.

(i) You identify in your statement each process vent that qualifies for an exemption and the exemption conditions in § 63.7885(c)(1)(i) or (ii) that apply to each exempted process vent.

(ii) You have performed the measurements and prepared the documentation required in § 63.7885(c)(2) that demonstrates that each exempted process vent stream meets the applicable exemption conditions in § 63.7885(c)(1).

(c) You must demonstrate initial compliance with the general standards in § 63.7886 that apply to your affected remediation material management units by meeting the requirements in paragraphs (c)(1) through (6) of this section, as applicable to your remediation material management units.

(1) If the remediation material management unit uses air pollution controls according to the standards specified in § 63.7886(b)(1), you have met the initial compliance requirements applicable to the remediation material management unit in §§ 63.7896, 63.7901, 63.7906, 63.7911, or 63.7816.

(2) If the remediation material managed in the affected remediation material managements has an average total VOHAP less than 500 ppmw according to § 63.7886(b)(2), you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have determined, according to the procedures § 63.7943, and recorded the average VOHAP concentration of the remediation material placed in the affected remediation material management unit.

(3) If HAP emissions are controlled from the affected remediation material management units to meet standards in another subpart under 40 CFR part 61 or 40 CFR part 63 according to § 63.7886(b)(3), you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (c)(3)(i) and (ii) of this section.

(i) You include in your statement the citations for the specific emission limitations and work practice standards that apply to the remediation material management units under the subpart in 40 CFR part 61 or 40 CFR part 63 that the units are also subject.

(ii) You are complying with all applicable emissions limitations and work practice standards specified by the applicable subpart.

(4) If HAP emissions are controlled from the affected remediation material management unit that is an open tank or surface impoundment used for a biological treatment process according to § 63.7886(b)(4), you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (c)(4)(i) and (ii) of this section.

(i) You have performed the measurements and prepared the documentation required in § 63.7886(b)(4)(i) that demonstrates that each unit meets the applicable performance levels.

(ii) You will monitor the biological treatment process conducted in each unit according the requirements in § 63.7886(4)(i).

(5) For each remediation material management unit used for cleanup of radioactive mixed waste and exempted according to § 63.7886(c), you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (c)(5)(i) and (ii) of this section.

(i) You include in your statement the citations for the specific requirements that apply to the remediation material management units under regulations, directives, and other requirements under the Atomic Energy Act, the Nuclear Waste Policy Act, or the Waste Isolation Pilot Plant Land Withdrawal Act.

(ii) You are complying with all requirements that apply to the remediation material management units under the applicable regulations or directives.

(6) For each remediation material management unit exempted according to § 63.7886(d), you have submitted as part of your notification of compliance status, specified in § 63.7950, a signed statement that you have met the requirements in paragraphs (c)(6)(i) and (ii) of this section.

(i) You have designated according to the requirements in § 63.7886(d)(1) each of the remediation material management units you are selecting to be exempted.

(ii) You have performed an initial determination and prepared the documentation required in § 63.7886(d)(2) that demonstrates that the total annual HAP quantity (based on the HAP listed in Table 1 of this subpart) in the remediation material placed in all of the designated exempted remediation material management units will be less than 1 Mg/yr.

(d) You must demonstrate initial compliance with the general standards in § 63.7887 that apply to your affected equipment leak sources by meeting the requirements in § 63.7921.

§ 63.7938 How do I demonstrate continuous compliance with the general standards?

(a) You must demonstrate continuous compliance with the general standards in §§ 63.7884 through 63.7887 that apply to your affected sources by meeting the requirements in paragraphs (b) through (d) of this section, as applicable to you.

(b) You have demonstrated continuous compliance with the general standards in § 63.7885 that apply to your affected process vents by meeting the requirements in paragraphs (b)(1) through (4) of this section, as applicable to your process vents.

(1) If HAP emissions are controlled from the affected process vents according to the emission limitations and work practice standards specified in § 63.7885(b)(1), you must demonstrate continuous compliance by meeting the requirements in § 63.7893.

(2) If the remediation material treated or managed by the process vented through the affected process vents has an average total VOHAP less than 10 ppmw according to § 63.7885(b)(2), you must demonstrate continuous compliance by performing a new determination and preparing new documentation as required in § 63.7886(c)(2) to show that the total VOHAP concentration of the remediation material remains less than 10 ppmw.

(3) If HAP emissions are controlled from the affected process vents to meet standards in another subpart under 40 CFR part 61 or 40 CFR part 63 according to § 63.7885(b)(3), you must demonstrate continuous compliance by complying with all applicable emissions limitations and work practice standards specified by the applicable subpart.

(4) For each process vent exempted according to § 63.7885(c), you must demonstrate continuous compliance by performing new measurements and preparing new documentation as required in § 63.7885(c)(2) that demonstrates that each exempted process vent stream meets the applicable exemption conditions in § 63.7885(c)(1).

(c) You must demonstrate continuous compliance with the general standards in § 63.7886 that apply to your affected remediation material management units by meeting the requirements in paragraphs (c)(1) through (6) of this section, as applicable to your remediation material management units.

(1) If the remediation material management unit uses air pollution controls according to the standards specified in § 63.7886(b)(1), you must demonstrate continuous compliance by meeting the requirements applicable to the remediation material management unit in §§ 63.7898, 63.7903, 63.7908, 63.7913, or 63.7818.

(2) If the remediation material managed in the affected remediation material managements has an average total VOHAP concentration less than 500 ppmw according to § 63.7886(b)(2), you must demonstrate continuous compliance by performing a new determination and preparing new documentation as required in § 63.7886(c)(2) to show that the total VOHAP concentration of the remediation material remains less than 500 ppmw.

(3) If HAP emissions are controlled from the affected remediation material management units to meet standards in another subpart under 40 CFR part 61 or 40 CFR part 63 according to § 63.7886(b)(3), you must demonstrate continuous compliance by meeting all applicable emissions limitations and work practice standards specified by the applicable subpart.

(4) If HAP emissions are controlled from the affected remediation material management unit that is an open tank or surface impoundment used for a biological treatment process according to § 63.7886(b)(4), you must demonstrate continuous compliance by meeting the requirements in paragraphs (c)(4)(i) and (ii) of this section.

(i) Performing new measurements and preparing new documentation as required in § 63.7886(4)(i) that demonstrates that each unit meets the applicable performance levels.

(ii) Monitoring the biological treatment process conducted in each unit according the requirements in § 63.7886(4)(i).

(5) For each remediation material management unit used for cleanup of radioactive mixed waste and exempted according to § 63.7886(c), you must demonstrate continuous compliance by meeting all requirements that apply to the remediation material management units under the applicable regulations or directives.

(6) For each remediation material management unit exempted according to § 63.7886(d), you must demonstrate continuous compliance by performing new measurements and preparing new documentation as required in § 63.7886(d)(2) to show that the total annual HAP quantity (based on the HAP listed in Table 1 of this subpart) in the remediation material placed in all of the designated exempted remediation material management units remains less than 1 Mg/yr.

(d) You have demonstrated continuous compliance with the general standards in § 63.7887 that apply to your affected equipment leak sources by meeting the requirements in § 63.7923.

Performance Tests

§ 63.7940 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) You must conduct a performance test or design evaluation for each existing affected source within 180 calendar days after the compliance date that is specified in § 63.7883.

(b) For each work practice standard that applies to you where initial compliance is not demonstrated using a performance test or design evaluation, you must demonstrate initial compliance within 30 calendar days after the compliance date that is specified in § 63.7883 for your affected source.

(c) For new sources, you must conduct initial performance tests and other initial compliance demonstrations according to the provisions in § 63.7(a)(2)(i) and (ii).

§ 63.7941 How do I conduct a performance test, design evaluation, or other type of initial compliance demonstration?

(a) You must conduct a performance test or design evaluation to demonstrate initial compliance for each new or existing affected source that is subject to an emission limit in this subpart. You must report the results of the performance test or design evaluation according to the requirements in § 63.7950(e)(1).

(b) If you choose to conduct a performance test to demonstrate initial compliance, you must conduct the test according to the requirements in § 63.7(e)(1) and paragraphs (b)(1) through (5) of this section.

(1) You must conduct three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour.

(2) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(3) You must conduct each performance test using the test methods and procedures in § 63.694(l).

(4) Follow the procedures in paragraphs (b)(4)(i) through (iii) of this section to determine compliance with the facility-wide total organic mass emissions rate in § 63.7890(a)(1)(i).

(i) Determine compliance with the total organic mass flow rate using Equation 1 of this section as follows:

$$E_h = \left(0.0416 \times 10^{-6}\right) Q_{sd} \sum_{i=1}^{n} \left(C_i \times MW_i\right) \qquad \text{(Eq. 1)}$$

Where:

E_h = Total organic mass flow rate, kg/h;

Q_{sd} = Volumetric flow rate of gases entering or exiting control device (or exiting the process vent if no control device is used), as determined by Method 2 of 40 CFR part 60, appendix A, dscm/h;

n = Number of organic compounds in the vent gas;

C_i = Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18 of 40 CFR part 60, appendix A;

MW_i = Molecular weight of organic compound i in the vent gas,kg/kg-mol;

(ii) Determine compliance with the annual total organic emissions rate using Equation 2 of this section as follows:

$$E_A = E_h \times H \qquad \text{(Eq. 2)}$$

Where:

E_A = Total organic mass emissions rate, kilograms per year;

E_h = Total organic mass flow rate for the process vent, kg/h;

H = Total annual hours of operation for the affected unit, h.

(iii) Determine compliance with the total organic emissions limit from all affected process vents at the facility by summing the total hourly organic mass emissions rates (E_h as determined in Equation 1 of this section) and summing the total annual organic mass emissions rates (E_A, as determined in Equation 2 of this section) for all affected process vents at the facility.

(5) Determine compliance with the 95 percent reduction limit in § 63.7890(a)(2)(i) for the combination of all affected process vents at the facility using Equations 3 and 4 of this section to calculate control device inlet and outlet concentrations and Equation 5 of this section to calculate control device emission reductions for process vents as follows:

$$E_i = K_2 \left(\sum_{j=1}^{n} C_{ij} M_{ij}\right) Q_i \qquad \text{(Eq. 3)}$$

$$E_o = K_2 \left(\sum_{j=1}^{n} C_{oj} M_{oj}\right) Q_o \qquad \text{(Eq. 4)}$$

Where:

C_{ij}, C_{oj} = Concentration of sample component j of the gas stream at the inlet and outlet of the control device, dry basis, parts per million by volume. For uncontrolled vents, $C_{ij} = C_{oj}$ and equal the concentration exiting the vent;

E_i, E_o = Mass rate of total organic compounds (TOC) (minus methane and ethane) or total HAP, from Table 1 of this subpart, at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour. For uncontrolled vents, $E_i = E_o$ and equal the concentration exiting the vent;

M_{ij}, M_{oj} = Molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, gram/gram-mole. For uncontrolled vents, $M_{ij} = M_{oj}$ and equal the gas stream molecular weight exiting the vent;

Q_i, Q_o = Flowrate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meters per minute (dscm/min). For uncontrolled vents, $Q_i = Q_o$ and equals the flowrate exiting the vent;

K_2 = Constant, 2.494×10^{-6} (parts per million) $^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram)(minute/hour, where standard temperature (gram-mole per standard cubic meter) is 20°C);

n = the number of components in the sample.

$$R_v = \frac{\sum_{j=1}^{n} E_i - \sum_{j=1}^{n} E_o}{\sum_{j=1}^{n} E_i} \times 100 \qquad \text{(Eq. 5)}$$

Where:

R_v = Overall emissions reduction for all affected process vents, percent

E_i = Mass rate of TOC (minus methane and ethane) or total HAP, from Table 1 of this subpart, at the inlet to the control device, or exiting the vent for uncontrolled vents, as calculated in this section, kilograms TOC per hour or kilograms HAP per hour;

E_o = Mass rate of TOC (minus methane and ethane) or total HAP, from Table 1 of this subpart, at the outlet to the control device, or exiting the vent for uncontrolled vents, as calculated in this section, kilograms TOC per hour or kilograms HAP per hour. For vents without a control device, $E_o = E_i$;

n = number of affected source process vents.

(c) If you use a carbon adsorption system, condenser, vapor incinerator, boiler, or process heater to meet an emission limit in this subpart, you may choose to perform a design evaluation to demonstrate initial compliance instead of a performance test. You must perform a design evaluation according to the general requirements in § 63.693(b)(8) and the specific requirements in § 63.694(d)(2)(ii) for a carbon adsorption system (including establishing carbon replacement schedules and associated requirements), § 63.694(e)(2)(ii) for a condenser, § 63.694(f)(2)(ii) for a vapor incinerator, or § 63.694(g)(2)(i)(B) for a boiler or process heater.

(d) During the performance test or design evaluation, you must collect the appropriate operating parameter monitoring system data, average the operating parameter data over each test run, and set operating limits, whether a minimum or maximum value, based on the average of values for each of the three test runs. If you use a control device design analysis to demonstrate control device performance, then the minimum or maximum operating parameter value must be established based on the control device design analysis and supplemented, as necessary, by the control device manufacturer recommendations or other applicable information.

(e) If you control air emissions from an affected source by introducing the vent stream into the flame zone of a boiler or process heater according to the requirements in § 63.693(g)(1)(iii), you must conduct a performance test or design evaluation to demonstrate that the boiler or process heater meets the applicable emission limit while operating at a residence time of 0.5 seconds or greater and at a combustion zone temperature of 760°C or higher.

(f) You must conduct a performance evaluation for each continuous monitoring system according to the requirements in § 63.8(e).

(g) If you are required to conduct a visual inspection of an affected source, you must conduct the inspection according to the procedures in § 63.906(a)(1) for Tank Level 1 controls, § 63.1063(d) for Tank Level 2 controls, § 63.946(a) for a surface impoundment equipped with a floating membrane

cover, § 63.946(b) for a surface impoundment equipped with a cover and vented to a control device, § 63.1047(a) for a separator with a fixed roof, § 63.1047(c) for a separator equipped with a fixed roof and vented to a control device, § 63.695(c)(1)(i) or (c)(2)(i) for a closed vent system, and § 63.964(a) for individual drain systems.

(h) If you use Container Level 1 controls, you must conduct a test to demonstrate that the container operates with no detectable organic emissions using Method 21 (40 CFR part 60, appendix A) and the procedures in § 63.925(a).

(i) If you use Container Level 2 controls, you must conduct a test to demonstrate that the container operates with no detectable organic emissions or that the container is vapor-tight. You must conduct the test using Method 21 (40 CFR part 60, appendix A) and the procedures in § 63.925(a) to demonstrate that the container operates with no detectable organic emissions or Method 27 (40 CFR part 60, appendix A) and the procedures in § 63.925(b) to demonstrate that the container is vapor-tight.

(j) If you locate an affected source inside a permanent total enclosure that is vented to a control device, you must demonstrate that the enclosure meets the verification criteria in section 5 of Procedure T in 40 CFR 52.741, appendix B.

(k) If you use a fixed roof or a floating roof to control air emissions from a separator, you must conduct a test to demonstrate that the roof operates with no detectable organic emissions using Method 21 (40 CFR part 60, appendix A) and the procedures in § 63.1046(a). If you use a floating roof, you also must measure the seal gaps according to the procedures in § 63.1046(b).

(l) If you use a flare to control air emissions, you must conduct a visible emissions test using Method 22 in 40 CFR part 60, appendix A, and the procedures in § 63.11(b)(4).

(m) For each initial compliance demonstration that requires a performance test or design evaluation, you must report the results in your notification of compliance status according to the requirements in § 63.7950(e)(1). For each initial compliance demonstration that does not require a performance test or design evaluation, you must submit a notification of compliance status according to the requirements in § 63.7950(e)(2).

§ 63.7942 When must I conduct subsequent performance tests?

For non-flare control devices, you must conduct performance tests at any time the EPA requires you to according to § 63.7(3).

§ 63.7943 How do I determine the average VOHAP concentration of my remediation material?

(a) General requirements. You must determine the average total VOHAP concentration of a remediation material at the point-of-extraction using either direct measurement as specified in paragraph (b) of this section or by knowledge as specified in paragraph (c) of this section.

(b) Direct measurement. To determine the average total VOHAP concentration of a remediation material at the point-of-extraction using direct measurement, you must use the procedures in paragraphs (b)(1) through (3) of this section.

(1) Sampling. Samples of each material stream must be collected at the point-of-extraction in a manner such that volatilization of organics contained in the sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

(i) The averaging period to be used for determining the average total VOHAP concentration for the material stream on a mass-weighted average basis must be designated and recorded. The averaging period can represent any time interval that you determine is appropriate for the material stream but must not exceed 1 year. For streams that are combined, an averaging period representative for all streams must be selected.

(ii) No less than four samples must be collected to represent the complete range of HAP compositions and HAP quantities that occur in each material stream during the entire averaging period due to normal variations in the material stream(s). Examples of such normal variations are variation of the HAP concentration within a contamination area.

(iii) All samples must be collected and handled according to written procedures you prepare and document in a site sampling plan. This plan must describe the procedure by which representative samples of the material stream(s) are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan must be maintained on site in the facility operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures according to the guidance found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication No. SW–846 or Method 25D in 40 CFR part 60, appendix A.

(2) Analysis. Each collected sample must be prepared and analyzed according to either one of the methods listed in § 63.694(b)(2)(ii), or any current EPA Contracts Lab Program method (or future revisions) capable of identifying all the HAP in Table 1 of this subpart.

(3) Calculations. The average total VOHAP concentration ($\bar{C}$) on a mass-weighted basis must be calculated by using the results for all samples analyzed according to paragraph (c)(2) of this section and Equation 1 of this section as follows:

$$\overline{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} \left(Q_i \times C_i\right) \qquad \text{(Eq. 1)}$$

Where:

$\bar{C}$ = Average VOHAP concentration of the material on a mass-weighted basis, ppmw.

i = Individual sample ''i'' of the material.

n = Total number of samples of the material collected (at least 4 per stream) for the averaging period (not to exceed 1 year).

Q_i = Mass quantity of material stream represented by C_i, kilograms per hour (kg/hr).

Q_T = Total mass quantity of all material during the averaging period, kg/hr.

C_i = Measured VOHAP concentration of sample ''i'' as determined according to the requirements of paragraph (a)(3)(ii) of this section, ppmw.

(c) Knowledge of the material. To determine the average total VOHAP concentration of a remediation material at the point-of-extraction using knowledge, you must use the procedures in paragraphs (c)(1) through (3) of this section.

(1) Documentation must be prepared that presents the information used as the basis for your knowledge of the material stream's average VOHAP concentration. Examples of information that may be used as the basis for knowledge include: material balances for the source(s) generating each material stream; species-specific chemical test data for the material stream from previous testing that are still applicable to the current material stream; test data for material from the contamination area(s) being remediated.

(2) If test data are used as the basis for knowledge, then you must document

the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the average VOHAP concentration. For example, you may use HAP concentration test data for the material stream that are validated according to Method 301 in 40 CFR part 63, appendix A as the basis for knowledge of the material. This information must be provided for each material stream where streams are combined.

(3) If you use species-specific chemical concentration test data as the basis for knowledge of the material, you may adjust the test data to the corresponding average VOHAP concentration value which would be obtained had the material samples been analyzed using Method 305. To adjust these data, the measured concentration for each individual HAP chemical species contained in the material is multiplied by the appropriate species-specific adjustment factor (f_{m305}) listed in Table 1 of this subpart.

(d) In the event that you and us disagree on a determination using knowledge of the average total VOHAP concentration for a remediation material, then the results from a determination of VOHAP concentration using direct measurement by Method 305 in 40 CFR part 60 appendix A, as specified in paragraph (b) of this section, will be used to determine compliance with the applicable requirements of this subpart. We may perform or request that you perform this determination using direct measurement.

§ 63.7944 How do I determine the maximum HAP vapor pressure of my remediation material?

(a) You must determine the maximum HAP vapor pressure of your remediation material using either direct measurement as specified in paragraph (b) of this section or by knowledge as specified in paragraph (c) of this section.

(b) Direct measurement to determine the maximum HAP vapor pressure.

(1) Sampling. A sufficient number of samples must be collected to be representative of the remediation material contained in the tank. All samples must be collected and handled according to written procedures prepared by you and documented in a site sampling plan. This plan must describe the procedure by which representative samples of the remediation material are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan must be maintained on site in the facility site operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures according to the guidance found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication No. SW–846 or Method 25D in 40 CFR part 60, appendix A.

(2) Analysis. Any one of the following methods may be used to analyze the samples and compute the maximum HAP vapor pressure of the remediation material:

(i) Method 25E in 40 CFR part 60 appendix A;

(ii) Methods described in American Petroleum Institute Bulletin 2517, ''Evaporation Loss from External Floating Roof Tanks,'';

(iii) Methods obtained from standard reference texts;

(iv) ASTM Method 2879–83; or

(v) Any other method approved by the Administrator.

(c) Use of knowledge to determine the maximum HAP vapor pressure. Documentation must be prepared and recorded that presents the information used as the basis for your knowledge that the maximum HAP vapor pressure of the remediation material is less than the maximum vapor pressure limit listed in Table 2 of this subpart for the applicable tank design capacity category.

(d) In the event that you and us disagree on a determination using knowledge of the maximum HAP vapor pressure of the remediation material, then the results from a determination of maximum HAP vapor pressure using direct measurement by Method 25E in 40 CFR part 60 appendix A, as specified in paragraph (b) of this section, will be used to determine compliance with the applicable requirements of this subpart. We may perform or request that you perform this determination using direct measurement.

Continuous Monitoring Systems

§ 63.7945 What are my monitoring installation, operation, and maintenance requirements?

(a) Each CPMS must meet the requirements in paragraphs (a)(1) through (4) of this section.

(1) Complete a minimum of one cycle of operation for each successive 15-minute period.

(2) To calculate a valid hourly value, you must have at least three of four equally spaced data values (or at least two, if that condition is included to allow for periodic calibration checks) for that hour from a CPMS that is not out of control according to the monitoring plan referenced in § 63.7935.

(3) To calculate the average emissions for each averaging period, you must have at least 75 percent of the hourly averages for that period using only block hourly average values that are based on valid data (*i.e.*, not from out-of-control periods).

(4) Unless otherwise specified, each CPMS must determine the hourly average of all recorded readings and daily average, if required.

(b) You must record the results of each inspection, calibration, and validation check.

(c) You must conduct a performance evaluation for each CPMS according to the requirements in § 63.8(e) and your site-specific monitoring plan.

§ 63.7946 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section and your site-specific monitoring plan required in § 63.7935.

(b) Except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, out of control periods and required quality assurance or control activities in data averages and calculations used to report emissions or operating levels, nor may such data be used in fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

§ 63.7947 What are my monitoring alternatives?

(a) As an alternative to the parametric monitoring required in this subpart, you may install, calibrate, and operate a continuous emission monitoring system (CEMS) to measure the control device outlet total organic emissions or organic HAP emissions concentration.

(1) The CEMS used on combustion control devices must include a diluent gas monitoring system (for O_2 or CO_2) with the pollutant monitoring system in order to correct for dilution (*e.g.*, to 0 percent excess air).

(2) Each CEMS must complete a minimum of one cycle of operation

(sampling, analyzing, and data recording) for each successive 15-minute period. Data must be reduced as specified in § 63.8(g)(2).

(3) You must conduct a performance evaluation of the CEMS according to the requirements in § 63.8 and Performance Specification 8 (for a total organic emissions CEMS) or Performance Specification 9 (for a HAP emissions CEMS) and Performance Specification 3 (for an O_2 or CO_2 CEMS) of 40 CFR part 60, appendix B. The relative accuracy provision of Performance Specification 8, sections 2.4 and 3 need not be conducted.

(4) You must prepare a site-specific monitoring plan for operating, calibrating, and verifying the operation of your CEMS according to the requirements in §§ 63.8(c), (d), and (e).

(5) You must establish the emissions concentration operating limit according to paragraphs (a)(5)(i) and (ii) of this section.

(i) During the performance test, you must monitor and record the total organic or HAP emissions concentration at least once every 15 minutes during each of the three test runs.

(ii) Use the data collected during the performance test to calculate and record the average total organic or HAP emissions concentration maintained during the performance test. The average total organic or HAP emissions concentration, corrected for dilution as appropriate, is the maximum operating limit for your control device.

(b) You must maintain the daily (24-hour) average total organic or HAP emissions concentration in the exhaust vent stream of the control device outlet less than or equal to the site-specific operating limit established during the performance test.

Notification, Reports, and Records

§ 63.7950 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(e), 63.8(f)(4) and (6), and 63.9(b) through (h) that apply to you.

(b) As specified in § 63.9(b)(2), if you start up your affected source before October 8, 2003, you must submit an Initial Notification not later than 120 calendar days after October 8, 2003.

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed affected source on or after October 8, 2003, you must submit an Initial Notification no later than 120 calendar days after initial startup.

(d) 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).

(e) If you are required to conduct a performance test, design evaluation, or other initial compliance demonstration, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii).

(1) For each initial compliance demonstration that includes a performance test or design evaluation, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2). You must submit the complete design evaluation and supporting documentation.

(2) For each initial compliance demonstration that does not include a performance test, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

(f) You must provide written notification to the Administrator of the alternative standard selected under § 63.1006(b)(5) or (6) before implementing either of the provisions.

§ 63.7951 What reports must I submit and when?

(a) Compliance report due dates. Unless the Administrator has approved a different schedule, you must submit a semiannual compliance report to your permitting authority according to the requirements specified in paragraphs (a)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.7883 and ending on June 30 or December 31, whichever date comes first after the compliance date that is specified for your affected source.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after your first compliance report is due.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of the dates specified in paragraphs (a)(1) through (4) of this section.

(b) Compliance report contents. Each compliance report must include the information specified in paragraphs (b)(1) through (3) of this section and, as applicable, paragraphs (b)(4) through (9) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took action consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there were no deviations from any emissions limitations (including operating limit), work practice standards, or operation and maintenance requirements, a statement that there were no deviations from the emissions limitations, work practice standards, or operation and maintenance requirements during the reporting period.

(6) If there were no periods during which a continuous monitoring system (including a CPMS or CEMS) was out-of-control as specified by § 63.8(c)(7), a statement that there were no periods during which the CPMS was out-of-control during the reporting period.

(7) For each deviation from an emissions limitation (including an operating limit) that occurs at an affected source for which you are not using a continuous monitoring system (including a CPMS or CEMS) to comply with an emissions limitation or work practice standard required in this subpart, the compliance report must contain the information specified in paragraphs (b)(1) through (4) and (b)(7)(i) and (ii) of this section. This requirement includes periods of startup, shutdown, and malfunction.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause) as applicable and the corrective action taken.

(8) For each deviation from an emissions limitation (including an operating limit) or work practice standard occurring at an affected source where you are using a continuous monitoring system (including a CPMS or CEMS) to comply with the emissions limitations or work practice standard in this subpart, you must include the information specified in paragraphs (b)(1) through (4) and (b)(8)(i) through (xi) of this section. This requirement includes periods of startup, shutdown, and malfunction.

(i) The date and time that each malfunction started and stopped.

(ii) The date and time that each continuous monitoring system was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration that each continuous monitoring system was out-of-control, including the information in § 63.8(c)(8).

(iv) 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.

(v) A summary of the total duration of the deviations during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) 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 unknown causes.

(vii) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of continuous monitoring system downtime as a percent of the total source operating time during the reporting period.

(viii) A brief description of the process units.

(ix) A brief description of the continuous monitoring system.

(x) The date of the latest continuous monitoring system certification or audit.

(xi) A description of any changes in continuous monitoring systems, processes, or controls since the last reporting period.

(9) You must include the information on equipment leaks required in periodic reports by § 63.1018(a) or § 63.1039(b).

(c) Immediate startup, shutdown, and malfunction report. If you had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report according to the requirements of § 63.10(d)(5)(ii) .

(d) Part 70 monitoring report. If you have obtained a title V operating permit for an affected source pursuant to 40 CFR part 70 or 40 CFR part 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report for an affected source along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all the required information concerning deviations from any emissions limitation or operation and maintenance requirement in this subpart, submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report does not otherwise affect any obligation you may have to report deviations from permit requirements for an affected source to your permitting authority.

§ 63.7952 What records must I keep?

(a) You must keep the records specified in paragraphs (a)(1) through (4) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(1) and (b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startups, shutdowns, and malfunctions.

(3) Results of performance tests and performance evaluations as required by § 63.10(b)(2)(viii).

(4) The records of initial and ongoing determinations for affected sources that are exempt from control requirements under this subpart.

(b) For each continuous monitoring system, you must keep the records as described in paragraphs (b)(1) and (2) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi) that apply to your continuous monitoring system.

(2) Performance evaluation plans, including previous (i.e., superseded) versions of the plan as required in § 63.8(d)(3).

(c) You must keep the records required by this subpart to show continuous compliance with each emissions limitation, work practice standard, and operation and maintenance requirement that applies to you.

(d) You must record, on a semiannual basis, the information in § 63.696(g) for planned routine maintenance of a control device for emissions from process vents.

§ 63.7953 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep your files of all information (including all reports and notifications) for 5 years following the date of each occurrence, measurement, maintenance, action taken to correct the cause of a deviation, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records off-site for the remaining 3 years.

(d) If, after the remediation activity is completed, there is no other remediation activity at the facility, and you are no longer the owner of the facility, you may keep all records for the completed remediation activity at an off-site location provided you notify the Administrator in writing of the name, address and contact person for the off-site location.

Other Requirements and Information

§ 63.7955 What parts of the General Provisions apply to me?

Table 3 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.7956 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the EPA, or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the EPA, has the authority to implement and enforce this subpart. You should contact your EPA Regional Office (see list in § 63.13) 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 section 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the

Administrator of EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are listed in paragraphs (a)(1) through (4) of this section.

(1) Approval of alternatives to the non-opacity emissions limitations and work practice standards in this subpart under § 63.6(g).

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.7957 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in § 63.2, and in this section. If a term is defined both in this section and in another subpart cross-referenced by this subpart, then the term will have the meaning given in this section for purposes of this subpart.

Boiler means an enclosed combustion device that extracts useful energy in the form of steam and is not an incinerator or a process heater.

Closed vent system means a system that is not open to the atmosphere and is composed of hard-piping, ductwork, connections, and, if necessary, fans, blowers, or other flow-inducing device that conveys gas or vapor from an emissions point to a control device.

Closure device means a cap, hatch, lid, plug, seal, valve, or other type of fitting that prevents or reduces air pollutant emissions to the atmosphere by blocking an opening in a cover when the device is secured in the closed position. Closure devices include devices that are detachable from the cover (*e.g.*, a sampling port cap), manually operated (*e.g.*, a hinged access lid or hatch), or automatically operated (*e.g.*, a spring-loaded pressure relief valve).

Container means a portable unit used to hold material. Examples of containers include, but are not limited to drums, dumpsters, roll-off boxes, bulk cargo containers commonly known as portable tanks or totes, cargo tank trucks, dump trucks, and rail cars. For the purpose of this subpart, a front-end loader, excavator, backhoe, or other type of self-propelled excavation equipment is not a container.

Continuous record means documentation of data values measured at least once every 15 minutes and recorded at the frequency specified in this subpart.

Continuous recorder means a data recording device that either records an instantaneous data value at least once every 15 minutes or records 15-minutes or more frequent block averages.

Control device means equipment used recovering, removing, oxidizing, or destroying organic vapors. Examples of such equipment include but are not limited to carbon adsorbers, condensers, vapor incinerators, flares, boilers, and process heaters.

Cover means a device that prevents or reduces air pollutant emissions to the atmosphere by forming a continuous barrier over the remediation material managed in a unit. A cover may have openings (such as access hatches, sampling ports, gauge wells) that are necessary for operation, inspection, maintenance, and repair of the unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the unit (such as a tarp) or a cover may be formed by structural features permanently integrated into the design of the unit.

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 emissions limitation (including any 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 emissions limitation,(including any operating limit), or work practice standard in this subpart during startup, shutdown, or malfunction, regardless or whether or not such failure is permitted by this subpart.

Emissions limitation means any emissions limit, opacity limit, operating limit, or visible emissions limit.

Emissions point means an individual tank, surface impoundment, container, oil-water, organic-water separator, transfer system, vent, or enclosure.

Enclosure means a structure that surrounds a tank or container, captures organic vapors emitted from the tank or container, and vents the captured vapor through a closed vent system to a control device.

Equipment means each pump, pressure relief device, sampling connection system, valve, and connector used in remediation material service at a facility.

External floating roof means a pontoon-type or double-deck type cover that rests on the liquid surface in a tank with no fixed roof.

Facility means all contiguous or adjoining property that is under common control including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof. A unit or group of units within a contiguous property that are not under common control (*e.g.*, a wastewater treatment unit located at the facility but is owned by a different company) is a different facility.

Fixed roof means a cover that is mounted on a unit in a stationary position and does not move with fluctuations in the level of the liquid managed in the unit.

Flame zone means the portion of the combustion chamber in a boiler or process heater occupied by the flame envelope.

Floating roof means a cover consisting of a double deck, pontoon single deck, or internal floating cover which rests upon and is supported by the liquid being contained, and is equipped with a continuous seal.

Flow indicator means a device that indicates whether gas is flowing, or whether the valve position would allow gas to flow in a bypass line.

Hard-piping means pipe or tubing that is manufactured and properly installed according to relevant standards and good engineering practices.

Individual drain system means a stationary system used to convey wastewater streams or residuals to a remediation material management unit or to discharge or disposal. The term includes hard-piping, all drains and junction boxes, together with their associated sewer lines and other junction boxes (*e.g.*, manholes, sumps, and lift stations) conveying wastewater streams or residuals. For the purpose of this subpart, an individual drain system is not a drain and collection system that is designed and operated for the sole purpose of collecting rainfall runoff (*e.g.*, stormwater sewer system) and is segregated from all other individual drain systems.

Internal floating roof means a cover that rests or floats on the liquid surface (but not necessarily in complete contact with it inside a tank that has a fixed roof).

Maximum HAP vapor pressure means the sum of the individual HAP equilibrium partial pressure exerted by

remediation material at the temperature equal to either: the monthly average temperature as reported by the National Weather Service when the remediation material is stored or treated at ambient temperature; or the highest calendar-month average temperature of the remediation material when the remediation material is stored at temperatures above the ambient temperature or when the remediation material is stored or treated at temperatures below the ambient temperature. For the purpose of this subpart, maximum HAP vapor pressure is determined using the procedures specified in § 63.7944.

No detectable organic emissions means no escape of organics to the atmosphere as determined using the procedure specified in § 63.694(k).

Oil-water separator means a separator as defined for this subpart that is used to separate oil from water.

Operating parameter value means a minimum or maximum value established for a control device or treatment process parameter which, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has complied with an applicable emissions limitation or standard.

Organic-water separator means a separator as defined for this subpart that is used to separate organics from water.

Point-of-extraction means a point above ground where you can collect samples of a remediation material before or at the first point where organic constituents in the material have the potential to volatilize and be released to the atmosphere and before placing the material in a remediation material management unit or treatment process. For the purpose this subpart, the first point where the organic constituents in the remediation material have the potential to volatilize and be released to the atmosphere is not a fugitive emissions point due to an equipment leak from any of the following equipment components: pumps, compressors, valves, connectors, instrumentation systems, or safety devices.

Process heater means an enclosed combustion device that transfers heat released by burning fuel directly to process streams or to heat transfer liquids other than water.

Process vent means any open-ended pipe, stack, duct, or other opening intended to allow the passage of gases, vapors, or fumes to the atmosphere and this passage is caused by mechanical means (such as compressors, vacuum-producing systems or fans) or by process-related means (such as volatilization produced by heating). For the purposes of this subpart, a process vent is neither a safety device (as defined in this section) nor a stack, duct or other opening used to exhaust combustion products from a boiler, furnace, heater, incinerator, or other combustion device.

Radioactive mixed waste means a material that contains both hazardous waste subject to RCRA and source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954.

Remediation material means a material that contains one or more of the HAP listed in Table 1 of this subpart, and this material is one of the following:

(1) A material found in naturally occurring media such as soil, groundwater, surface water, sediments, or a mixture of such materials with liquids, sludges, or solids which is inseparable by simple mechanical removal processes and is made up primarily of media. This material does not include debris as defined in 40 CFR 268.2.

(2) A material found in intact or substantially intact containers, tanks, storage piles, or other storage units that requires clean up because this material poses a reasonable potential threat to contaminating media. Examples of these materials include, but are not limited to, solvents, oils, paints, and other volatile or semi-volatile organic liquids found in buried drums, cans, or other containers; gasoline, fuel oil, or other fuels in leaking underground storage tanks; and solid materials containing volatile or semi-volatile organics in unused or abandoned piles. Remediation material is not a waste or residue generated by routine equipment maintenance activities performed at a facility such as, but not limited to, tank bottoms and sludges removed during tank cleanouts; sludges and sediments removed from active wastewater treatment tanks, surface impoundments, or lagoons; spent catalyst removed from process equipment; residues removed from air pollution control equipment; and debris removed during heat exchanger and pipeline cleanouts.

Remediation material management unit means a tank, container, surface impoundment, oil-water separator, organic-water separator, or transfer system used to remove, destroy, degrade, transform, immobilize, or otherwise manage remediation material.

Remediation material service means any time when a pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, or instrumentation system contains or contacts remediation material.

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 to prevent physical damage or permanent deformation to equipment by venting gases or vapors during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose 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 this vapor headspace 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 equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, combustible, explosive, reactive, or hazardous materials.

Separator means a remediation material management unit, generally a tank, used to separate oil or organics from water. A separator consists of not only the separation unit but also the forebay and other separator basins, skimmers, weirs, grit chambers, sludge hoppers, and bar screens that are located directly after the individual drain system and prior to any additional treatment units such as an air flotation unit clarifier or biological treatment unit. Examples of a separator include, but are not limited to, an API separator, parallel-plate interceptor, and corrugated-plate interceptor with the associated ancillary equipment.

Site remediation means one or more activities or processes used to remove, destroy, degrade, transform, immobilize, or otherwise manage remediation material. The monitoring or measuring of contamination levels in environmental media using wells or by sampling is not considered to be a site remediation.

Sludge means sludge as defined in § 260.10 of this chapter.

Soil means unconsolidated earth material composing the superficial geologic strata (material overlying bedrock), consisting of clay, silt, sand,

or gravel size particles (sizes as classified by the U.S. Soil Conservation Service), or a mixture of such materials with liquids, sludges, or solids which is inseparable by simple mechanical removal processes and is made up primarily of soil.

Stabilization process means any physical or chemical process used to either reduce the mobility of contaminants in media or eliminate free liquids as determined by Test Method 9095—Paint Filter Liquids Test in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication No. SW–846, Third Edition, September 1986, as amended by Update I, November 15, 1992. (As an alternative, you may use any more recent, updated version of Method 9095 approved by the EPA). A stabilization process includes mixing remediation material with binders or other materials, and curing the resulting remediation material and binder mixture. Other synonymous terms used to refer to this process are fixation or solidification. A stabilization process does not include the adding of absorbent materials to the surface of remediation material, without mixing, agitation, or subsequent curing, to absorb free liquid.

Surface impoundment means a unit that is a natural topographical depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquids. Examples of surface impoundments include holding, storage, settling, and aeration pits, ponds, and lagoons.

Tank means a stationary unit that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) which provide structural support and is designed to hold an accumulation of liquids or other materials.

Temperature monitoring device means a piece of equipment used to monitor temperature and having an accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius (°C) or ±1.2 degrees °C, whichever value is greater.

Transfer system means a stationary system for which the predominant function is to convey liquids or solid materials from one point to another point within waste management operation or recovery operation. For the purpose of this subpart, the conveyance of material using a container (as defined of this subpart) or self-propelled vehicle (*e.g.*, a front-end loader) is not a transfer system. Examples of a transfer system include but are not limited to a pipeline, an individual drain system, a gravity-operated conveyor (such as a chute), and a mechanically-powered conveyor (such as a belt or screw conveyor).

Treatment process means a process in which remediation material is physically, chemically, thermally, or biologically treated to destroy, degrade, or remove hazardous air pollutants contained in the material. A treatment process can be composed of a single unit (*e.g.*, a steam stripper) or a series of units (*e.g.*, a wastewater treatment system). A treatment process can be used to treat one or more remediation material streams at the same time.

Volatile organic hazardous air pollutant (VOHAP) concentration means the fraction by weight of the HAP listed in Table 1 of this subpart that are contained in the remediation material as measured using Method 305, 40 CFR part 63, appendix A and expressed in terms of parts per million (ppm). As an alternative to using Method 305, 40 CFR part 63, appendix A, you may determine the HAP concentration of the remediation material using any one of the other test methods specified in § 63.694(b)(2)(ii). When a test method specified in § 63.694(b)(2)(ii) other than Method 305 in 40 CFR part 63, appendix A is used to determine the speciated HAP concentration of the contaminated material, the individual compound concentration may be adjusted by the corresponding f_{m305} listed in Table 1 of this subpart to determine a VOHAP concentration.

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 CAA.

Tables to Subpart GGGGG of Part 63

TABLE 1 TO SUBPART GGGGG OF PART 63.—LIST OF HAZARDOUS AIR POLLUTANTS.

CAS No.[a]	Compound name	f_{m305}
75070	Acetaldehyde	1.000
75058	Acetonitrile	0.989
98862	Acetophenone	0.314
107028	Acrolein	1.000
107131	Acrylonitrile	0.999
107051	Allyl chloride	1.000
71432	Benzene (includes benzene in gasoline)	1.000
98077	Benzotrichloride (isomers and mixture)	0.958
100447	Benzyl chloride	1.000
92524	Biphenyl	0.864
542881	Bis(chloromethyl)ether[b]	0.999
75252	Bromoform	0.998
106990	1,3-Butadiene	1.000
75150	Carbon disulfide	1.000
56235	Carbon Tetrachloride	1.000
43581	Carbonyl sulfide	1.000
133904	Chloramben	0.633
108907	Chlorobenzene	1.000
67663	Chloroform	1.000
107302	Chloromethyl methyl ether[b]	1.000
126998	Chloroprene	1.000
98828	Cumene	1.000
94757	2,4-D, salts and esters	0.167
334883	Diazomethane[c]	0.999
132649	Dibenzofurans	0.967
96128	1,2-Dibromo-3-chloropropane	1.000
106467	1,4-Dichlorobenzene(p)	1.000
107062	Dichloroethane (Ethylene dichloride)	1.000
111444	Dichloroethyl ether (Bis(2-chloroethyl ether))	0.757

TABLE 1 TO SUBPART GGGGG OF PART 63.—LIST OF HAZARDOUS AIR POLLUTANTS.—Continued

CAS No.[a]	Compound name	f_{m305}
542756	1,3-Dichloropropene	1.000
79447	Dimethyl carbamoyl chloride[c]	0.150
57147	1,1-Dimethyl hydrazine	.....
64675	Diethyl sulfate	0.0025
77781	Dimethyl sulfate	0.086
121697	N,N-Dimethylaniline	0.0008
51285	2,4-Dinitrophenol	0.0077
121142	2,4-Dinitrotoluene	0.0848
123911	1,4-Dioxane (1,4-Diethyleneoxide)	0.869
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)	0.939
106887	1,2-Epoxybutane	1.000
140885	Ethyl acrylate	1.000
100414	Ethyl benzene	1.000
75003	Ethyl chloride (Chloroethane)	1.000
106934	Ethylene dibromide (Dibromoethane)	0.999
107062	Ethylene dichloride (1,2-Dichloroethane)	1.000
151564	Ethylene imine (Aziridine)	0.867
75218	Ethylene oxide	1.000
75343	Ethylidene dichloride (1,1-Dichloroethane)	1.000
	Glycol ethers[d] that have a Henry's Law constant value equal to or greater than 0.1 Y/X(1.8×10^{-6} atm/gm-mole/m^3) at 25° C.	([e])
118741	Hexachlorobenzene	0.97
87683	Hexachlorobutadiene	0.88
67721	Hexachloroethane	0.499
110543	Hexane	1.000
78591	Isophorone	0.506
58899	Lindane (all isomers)	1.000
67561	Methanol	0.855
74839	Methyl bromide (Bromomethane)	1.000
74873	Methyl chloride (Chloromethane)	1.000
71556	Methyl chloroform (1,1,1-Trichloroethane)	1.000
78933	Methyl ethyl ketone (2-Butanone)	0.990
74884	Methyl iodide (Iodomethane)	1.000
108101	Methyl isobutyl ketone (Hexone)	0.979
624839	Methyl isocyanate	1.000
80626	Methyl methacrylate	0.999
1634044	Methyl tert butyl ether	1.000
75092	Methylene chloride (Dichloromethane)	1.000
91203	Naphthalene	0.994
98953	Nitrobenzene	0.394
79469	2-Nitropropane	0.989
82688	Pentachloronitrobenzene (Quintobenzene)	0.839
87865	Pentachlorophenol	0.0898
75445	Phosgene[c]	1.000
123386	Propionaldehyde	0.999
78875	Propylene dichloride (1,2-Dichloropropane)	1.000
75569	Propylene oxide	1.000
75558	1,2-Propylenimine (2-Methyl aziridine)	0.945
100425	Styrene	1.000
96093	Styrene oxide	0.830
79345	1,1,2,2-Tetrachloroethane	0.999
127184	Tetrachloroethylene (Perchloroethylene)	1.000
108883	Toluene	1.000
95534	o-Toluidine	0.152
120821	1,2,4-Trichlorobenzene	1.000
71556	1,1,1-Trichloroethane (Methyl chloroform)	1.000
79005	1,1,2-Trichloroethane (Vinyl trichloride)	1.000
79016	Trichloroethylene	1.000
95954	2,4,5-Trichlorophenol	0.108
88062	2,4,6-Trichlorophenol	0.132
121448	Triethylamine	1.000
540841	2,2,4-Trimethylpentane	1.000
108054	Vinyl acetate	1.000
593602	Vinyl bromide	1.000
75014	Vinyl chloride	1.000
75354	Vinylidene chloride (1,1-Dichloroethylene)	1.000
1330207	Xylenes (isomers and mixture)	1.000
95476	o-Xylenes	1.000
108383	m-Xylenes	1.000
106423	p-Xylenes	1.000

Notes:

1. f_{m305} = Fraction measure factor in Method 305, 40 CFR part 63, appendix A.
[a] CAS numbers refer to the Chemical Abstracts Services registry number assigned to specific compounds, isomers, or mixtures of compounds.
[b] Denotes a HAP that hydrolyzes quickly in water, but the hydrolysis products are also HAP chemicals.
[c] Denotes a HAP that may react violently with water.
[d] Denotes a HAP that hydrolyzes slowly in water.
[e] The f_{m305} factors for some of the more common glycol ethers can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

TABLE 2 TO SUBPART GGGGG OF PART 63.—CONTROL LEVELS AS REQUIRED BY § 63.7895(a) FOR TANKS MANAGING REMEDIATION MATERIAL WITH A MAXIMUM HAP VAPOR PRESSURE LESS THAN 76.6 kPa

If your tank design capacity is . . .	And the maximum HAP vapor pressure of the remediation material placed in your tank is . . .	Then your tank must use . . .
1. Less than 38 m^3	Less than 76.6 kPa	Tank Level 1 controls under § 63.7895(b).
2. At least 38 m^3 but less than 151 m^3	Less than 13.1 kPa	Tank Level 1 controls under § 63.7895(b).
3. 151 m^3 or greater	Less than 0.7 kPa	Tank Level 1 controls under § 63.7895(b).
4. at least 38 m^3 but less than 151 m^3	13.1 kPa or greater	Tank Level 2 controls under § 63.7895(c).
5. 151 m^3 or greater	0.7 kPa or greater	Tank Level 2 controls under § 63.7895(c)

As stated in § 63.7940, you must comply with the applicable General Provisions requirements according to the following table:

TABLE 3 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG

Citation	Subject	Brief description	Applies to subpart GGGGG
§ 63.1	Applicability	Initial Applicability Determination; Applicability After Standard Established; Permit Requirements; Extensions, Notifications.	Yes.
§ 63.2	Definitions	Definitions for part 63 standards	Yes.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards	Yes.
§ 63.4	Prohibited Activities	Prohibited Activities; Compliance date; Circumvention, Severability.	Yes.
§ 63.5	Construction/Reconstruction	Applicability; applications; approvals	Yes.
§ 63.6(a)	Applicability	General Provisions (GP) apply unless compliance extension GP apply to area sources that become major.	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for 112(f).	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes.
§ 63.6(b)(6)	[Reserved]		
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were an area source.	Yes.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources	Comply according to date in subpart, which must be no later than 3 years after effective date. For 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes.
§ 63.6(c)(3)–(4)	[Reserved]		
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes.
§ 63.6(d)	[Reserved]		
§ 63.6(e)(1)–(2)	Operation & Maintenance	Operate to minimize emissions at all times. Correct malfunctions as soon as practicable. Operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes.
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan (SSMP).	Requirement for startup, shutdown and malfunction (SSM) and SSMP. Content of SSMP.	Yes with the exception of containers using either Level 1 or Level 2 controls.

TABLE 3 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG—Continued

Citation	Subject	Brief description	Applies to subpart GGGGG
§ 63.6(f)(1)	Compliance Except During SSM	You must comply with emissions standards at all times except during SSM.	Yes.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard	Yes.
§ 63.6(h)	Opacity/Visible Emissions (VE) Standards	Requirements for opacity and visible emissions limits.	No. No opacity standards.
§ 63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§ 63.6(j)	Presidential Compliance Exemption	President may exempt source category from requirement to comply with final rule.	Yes.
§ 63.7(a)(1)–(2)	Performance Test Dates	Dates for Conducting Initial Performance Testing and Other Compliance Demonstrations. Must conduct 180 days after first subject to final rule.	Yes.
§ 63.7(a)(3)	CAA Section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes.
§ 63.7(b)(1)	Notification of Performance Test	Must notify Administrator 60 days before the test.	Yes.
§ 63.7(b)(2)	Notification of Rescheduling	If rescheduling a performance test is necessary, must notify Administrator 5 days before scheduled date of rescheduled date.	Yes.
§ 63.7(c)	Quality Assurance/Test Plan	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with: Test plan approval procedures; performance audit requirements; internal and External QA procedures for testing.	
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests	Performance tests must be conducted under representative conditions. Cannot conduct performance tests during SSM. Not a violation to exceed standard during SSM.	Yes.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests	Must conduct according to rule and EPA test methods unless Administrator approves alternative.	Yes.
§ 63.7(e)(3)	Test Run Duration	Must have three test runs of at least one hour each. Compliance is based on arithmetic mean of three runs. Conditions when data from an additional test run can be used.	Yes.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes.
§ 63.7(g)	Performance Test Data Analysis	Must include raw data in performance test report. Must submit performance test data 60 days after end of test with the Notification of Compliance Status. Keep data for 5 years.	Yes.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements	Subject to all monitoring requirements in standard.	Yes.
§ 63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of part 60 apply.	Yes.
§ 63.8(a)(3)	[Reserved].		
§ 63.8(a)(4)	Monitoring with Flares	Unless your rule says otherwise, the requirements for flares in 63.11 apply.	Yes.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing monitoring systems. Must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise. If more than one monitoring system on an emissions point, must report all monitoring system results, unless one monitoring system is a backup.	Yes.

TABLE 3 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG—Continued

Citation	Subject	Brief description	Applies to subpart GGGGG
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)	Routine and Predictable SSM	Follow the SSM plan for routine repairs. Keep parts for routine repairs readily available. Reporting requirements for SSM when action is described in SSM plan.	Yes
§ 63.8(c)(1)(ii)	SSM not in SSMP	Reporting requirements for SSM when action is not described in SSM plan.	Yes.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance (O&M) Requirements.	How Administrator determines if source complying with operation and maintenance requirements. Review of source O&M procedures, records, Manufacturer's instructions, recommendations, and inspection of monitoring system.	Yes.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Must install to get representative emissions and parameter measurements. Must verify operational status before or at performance test.	Yes.
§ 63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.	CMS must be operating except during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts.	No.
§ 63.8(c)(4)(i)–(ii)	Continuous Monitoring System (CMS) Requirements.	COMS must have a minimum of one cycle of sampling and analysis for each successive 10-second period and one cycle of data recording for each successive 6-minute period. CEMS must have a minimum of one cycle of operation for each successive 15-minute period.	Yes. However, COMS are not applicable. Requirements for CPMS are listed in §§ 63.7900 and 63.7913.
§ 63.8(c)(5)	COMS Minimum Procedures	COMS minimum procedures	No.
§ 63.8(c)(6)	CMS Requirements	Zero and High level calibration check requirements.	Yes. However requirements for CPMS are addressed in §§ 63.7900 and 63.7913.
§ 63.8(c)(7)–(8)	CMS Requirements	Out-of-control periods, including reporting	Yes.
§ 63.8(d)	CMS Quality Control	Requirements for CMS quality control, including calibration, etc. Must keep quality control plan on record for 5 years. Keep old versions for 5 years after revisions.	Yes.
§ 63.8(e)	CMS Performance Evaluation	Notification, performance evaluation test plan, reports.	Yes.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Procedures for Administrator to approve alternative monitoring.	Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test	Procedures for Administrator to approve alternative relative accuracy tests for CEMS.	No.
§ 63.8(g)(1)–(4)	Data Reduction	COMS 6-minute averages calculated over at least 36 evenly spaced data points. CEMS 1-hour averages computed over at least four equally spaced data points.	Yes. However, COMS are not applicable. Requirements for CPMS are addressed in §§ 63.7900 and 63.7913.
§ 63.8(g)(5)	Data Reduction	Data that cannot be used in computing averages for CEMS and COMS.	No.
§ 63.9(a)	Notification Requirements	Applicability and State Delegation	Yes.
§ 63.9(b)(1)–(5)	Initial Notifications.	Submit notification 120 days after effective date. Notification of intent to construct/reconstruct; Notification of commencement of construct/reconstruct; Notification of startup. Contents of each.	Yes.
§ 63.9(c)	Request for Compliance Extension	Can request if cannot comply by date or if installed BACT/LAER.	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.
§ 63.9(e)	Notification of Performance Test	Notify Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of VE/Opacity Test	Notify Administrator 30 days prior	No.

TABLE 3 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG—Continued

Citation	Subject	Brief description	Applies to subpart GGGGG
§ 63.9(g)	Additional Notifications When Using CMS	Notification of performance evaluation. Notification using COMS data. Notification that exceeded criterion for relative accuracy.	Yes. However, there are no opacity standards.
§ 63.9(h)(1)–(6)	Notification of Compliance Status	Contents. Due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after. When to submit to Federal vs. State authority.	Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines	Procedures for Administrator to approve change in when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information	Must submit within 15 days after the change	Yes.
§ 63.10(a)	Recordkeeping/Reporting	Applies to all, unless compliance extension. When to submit to Federal vs. State authority. Procedures for owners of more than 1 source.	Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting	General Requirements. Keep all records readily available. Keep for 5 years.	Yes.
§ 63.10(b)(2)(i)–(iv)	Records related to SSM	Occurrence of each of operation (process equipment). Occurrence of each malfunction of air pollution equipment. Maintenance on air pollution control equipment. Actions during startup, shutdown, and malfunction.	Yes.
§ 63.10(b)(2)(vi) and (x–xi).	CMS Records	Malfunctions, inoperative, out-of-control. Calibration checks. Adjustments, maintenance.	Yes.
§ 63.10(b)(2)(vii)–(ix)	Records	Measurements to demonstrate compliance with emissions limitations. Performance test, performance evaluation, and visible emissions observation results. Measurements to determine conditions of performance tests and performance evaluations.	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	No.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting Initial Notification and Notification of Compliance Status.	Yes.
§ 63.10(b)(3)	Records	Applicability Determinations	Yes.
§ 63.10(c)	Records	Additional Records for CMS	No.
§ 63.10(d)(1)	General Reporting Requirements	Requirement to report	Yes.
§ 63.10(d)(2)	Report of Performance Test Results	When to submit to Federal or State authority	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations	What to report and when	No.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports	Contents and submission	Yes.
§ 63.10(e)(1)–(2)	Additional CMS Reports	Must report results for each CEM on a unit Written copy of performance evaluation Three copies of COMS performance evaluation.	Yes. However, COMS are not applicable.
§ 63.10(e)(3)	Reports	Excess Emissions Reports	No.
§ 63.10(e)(3)(i–iii)	Reports	Schedule for reporting excess emissions and parameter monitor exceedance (now defined as deviations).	No.
§ 63.10(e)(3)(iv–v)	Excess Emissions Reports	Requirement to revert to quarterly submission if there is an excess emissions and parameter monitor exceedance (now defined as deviations). Provision to request semi-annual reporting after compliance for one year. Submit report by 30th day following end of quarter or calendar half. If there has not been an exceedance or excess emissions (now defined as deviations), report contents is a statement that there have been no deviations.	No.
§ 63.10(e)(3)(iv–v)	Excess Emissions Reports	Must submit report containing all of the information in §§ 63.10(c)(5–13) and 63.8(c)(7–8).	No.

TABLE 3 TO SUBPART GGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART GGGGG—Continued

Citation	Subject	Brief description	Applies to subpart GGGGG
§ 63.10(e)(3)(vi–viii)	Excess Emissions Report and Summary Report.	Requirements for reporting excess emissions for CMSs (now called deviations). Requires all of the information in §§ 63.10(c)(5–13) and 63.8(c)(7–8).	No.
§ 63.10(e)(4)	Reporting COMS data	Must submit COMS data with performance test data.	No.
§ 63.10(f)	Waiver for Recordkeeping/Reporting	Procedures for Administrator to waive	Yes.
§ 63.11	Flares	Requirements for flares	Yes.
§ 63.12	Delegation	State authority to enforce standards	Yes.
§ 63.13	Addresses	Addresses where reports, notifications, and requests are sent.	Yes.
§ 63.14	Incorporation by Reference	Test methods incorporated by reference	Yes.
§ 63.15	Availability of Information	Public and confidential information	Yes

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October 8, 2003

Part III

Securities and Exchange Commission

17 CFR Parts 239, 274, and 275
Fund of Funds Investments; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 274, and 275

[Release Nos. 33–8297; IC–26198; File No. S7–18–03]

RIN 3235–AI30

Fund of Funds Investments

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is proposing three new rules under the Investment Company Act of 1940 that address the ability of an investment company to acquire shares of another investment company. Section 12(d)(1) of the Act prohibits, subject to certain exceptions, so-called ''fund of funds'' arrangements, in which one investment company invests in the shares of another. The proposed rules would broaden the ability of an investment company to invest in shares of another investment company consistent with the protection of investors and the purposes of the Act. The Commission also is proposing amendments to forms used by investment companies to register under the Investment Company Act and offer their shares under the Securities Act of 1933. The proposed amendments would improve the transparency of the expenses of funds of funds by requiring that the expenses of the acquired funds be aggregated and shown as an additional expense in the fee table of the fund of funds.

DATES: Comments must be received by December 3, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by hard copy or e-mail, but not by both methods. Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following E-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–18–03; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Penelope W. Saltzman, Senior Counsel, or C. Hunter Jones, Assistant Director, Office of Regulatory Policy, (202) 942–0690, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the ''Commission'') today is proposing for public comment new rules 12d1–1 [17 CFR 270.12d1–1], 12d1–2 [17 CFR 270.12d1–2], and 12d1–3 [17 CFR 270.12d1–3] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Investment Company Act'' or the ''Act'') that address the ability of an investment company (''fund'' or ''acquiring fund'') registered under the Act to invest in shares of another investment company (''fund'' or ''acquired fund''). We also are proposing amendments to Forms N–1A [17 CFR 239.15A; 17 CFR 274.11A], N–2 [17 CFR 239.14; 17 CFR 274.11a–1], N–3 [17 CFR 239.17a; 17 CFR 274.11b], N–4 [17 CFR 239.17b; 17 CFR 274.11c], and N–6 [17 CFR 239.17c; 17 CFR 274.11d] to require that prospectuses of funds of funds disclose all of the expenses investors in the fund will bear, including those of any acquired funds. Forms N–1A and N–2 are the registration forms used by open-end management funds and closed-end management funds, respectively, to register under the Act and to offer their shares under the Securities Act of 1933 [15 U.S.C. 77a] (''Securities Act''). Form N–3 is the registration form used by separate accounts that are organized as management investment companies and offer variable annuity contracts to register under the Act and to offer their shares under the Securities Act. Forms N–4 and N–6 are the forms used by separate accounts organized as unit investment trusts (''UITs'') that offer variable annuity and variable life insurance contracts, respectively, to register under the Act and to offer their shares under the Securities Act.

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I. Background

Today, the federal securities laws restrict substantially the ability of a fund to invest in shares of other funds. Before the enactment of the Investment Company Act in 1940, however, a fund was free to purchase an unlimited number of shares of another fund. These ''fund of funds'' arrangements yielded numerous abuses, which were catalogued in the Commission's study of funds that preceded the Act (''Investment Trust Study'').[2]

Using a relatively small amount of money, individuals could acquire control of a fund and use its assets to acquire control of the assets of another fund, which, in turn, could use its assets to control a third fund.[3] As a result, a few individuals effectively could control millions of dollars in shareholder assets invested in various acquired funds. These ''pyramiding'' schemes were used to enrich the individuals at the expense of fund shareholders in a number of ways. In some cases, controlling individuals caused the acquired funds to purchase securities in companies in which the

[1] We do not edit personal, identifying information, such as names or E-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

[2] Investment Trusts and Investment Companies, Report of the Securities and Exchange Commission, pt. 3, ch. 7, H.R. Doc. No. 136, 77th Cong., 1st Sess. 2721–95 (1941).

[3] *See* Investment Trust Study, *supra* note 2, pt. 3, ch. 4, at 1031–39 and 1040–41, nn. 58–59 (discussing how individuals and other investors were able to make relatively small investments and gain control of funds); ch. 7, at 2742–50.

individuals had an interest. In other cases, these individuals caused funds to direct underwriting and brokerage business to broker-dealers they controlled—often on terms favorable to the broker-dealer. Controlling persons also profited when fund shareholders paid excessive charges due to duplicative fees at the acquiring and acquired fund levels.[4]

The complex structures that resulted from pyramiding created additional problems for shareholders. These structures permitted acquiring funds to circumvent investment restrictions and limitations, and made it impossible for shareholders to understand who really controlled the fund or the true value of their investments.[5] A fund shareholder might know that he owned shares in a fund that invested in equity securities of large companies without understanding that the large companies were large funds that exposed him to substantial risks associated with smaller issuers, foreign currencies, or interest rates.[6]

In response to these findings in the Investment Trust Study, Congress included in the Act a provision designed to restrict fund of funds arrangements. As originally enacted, section 12(d)(1) prohibited a registered investment company (and any companies it controlled) from purchasing more than five percent of the outstanding shares of any fund that concentrated its investments in a particular industry, or more than three percent of the shares of any other type of fund.[7]

Section 12(d)(1) proved flawed, however, because it did not prevent *unregistered* investment companies from acquiring the securities of *registered* funds. In the 1960s, Fund of Funds, Ltd., an unregistered fund operated in Geneva, Switzerland, began to exploit that flaw by marketing to members of the U.S. military stationed overseas shares of foreign investment companies that had controlling interests in several registered U.S. funds.[8] Fund of Funds, Ltd. engaged in many of the abusive activities identified in the Investment Trust Study. These included charging duplicative advisory fees at the acquiring and acquired fund levels, providing sales loads to an affiliated broker for each investment the acquiring fund made in an acquired fund, and directing brokerage business to an affiliate of the fund of funds (which then rebated half the commission).[9] In addition, Fund of Funds, Ltd. could exert undue influence on the management of acquired funds by threatening advisers to those funds with large redemptions.[10]

In 1970, Congress revisited section 12(d)(1) of the Act. Among other things, it tightened the restrictions on funds of funds and extended them to unregistered funds that invest in registered funds.[11] Today, funds are subject to two sets of prohibitions. First, section 12(d)(1)(A) prohibits a registered fund (and companies or funds it controls) from—

- Acquiring more than three percent of a fund's voting securities;
- Investing more than five percent of its total assets in any one acquired fund; or
- Investing more than ten percent of its total assets in all acquired funds.[12]

Second, section 12(d)(1)(B) prohibits a registered open-end fund from selling securities to any fund (including unregistered funds) if, after the sale, the acquiring fund would—

- Together with companies and funds it controls, own more than three percent of the acquired fund's voting securities; or
- Together with other funds (and companies they control) own more than ten percent of the acquired fund's voting securities.[13]

By limiting the *sale* of registered fund shares to other funds, section 12(d)(1)(B) prevents the creation of a fund of registered funds regardless of the limitations of U.S. law to regulate the activities of foreign funds, such as Fund of Funds, Ltd. Together, these two provisions of section 12(d)(1) have proven quite effective in putting a stop to the abusive practices that characterized previous fund of funds arrangements.

Congress recognized that these restrictions would have the effect of preventing legitimate fund of funds arrangements and has, over the years, created three exceptions under which different types of fund of funds arrangements are permitted today:

Conduit Arrangements. The Act permits arrangements under which a registered fund invests *all* of its assets in shares of one other fund so that the acquiring fund is, in effect, a conduit through which investors may access the acquired fund.[14] The exception currently provided in section 12(d)(1)(E) was originally designed to preserve the arrangements under which periodic payment plan certificates were issued.[15] Today, this section is relied upon by most insurance company separate accounts, which are organized as UITs,[16] and invest the proceeds from the sale of interests in variable annuity and variable life insurance contracts in shares of a mutual fund.[17] This exemption also is used by ''master-feeder funds''—arrangements in which two or more funds with identical investment objectives pool their assets by investing in a single fund with the same investment objective. Investors purchase securities in the ''feeder''

[4] *See* Investment Trust Study, *supra* note 2, pt. 3, ch. 7, at 2725–39, 2760–75.

[5] *See id.* at 2776–77 (discussing examples of fund investment policy changes that conformed to management interests), 2781–82 (discussing examples of management policies that resulted in confusing or misleading asset valuations).

[6] *See id.* at 2721–95.

[7] *See* Pub. L. No. 76–768, 54 Stat. 789, 809–10 § 12(d)(1) (1940) (codified at 15 U.S.C. 80a–12(d)(1) (1940)).

[8] *See* H.R. Rep. No. 1382, 91st Cong., 2d Sess., 23 (1970) (''H.R. Rep. No. 1382''); Charles Raw, *et al.,* Do You Sincerely Want to be Rich? 61–66 (1971). Fund of Funds, Ltd. was incorporated in Ontario, Canada. *See* Public Policy Implications of Investment Company Growth, H.R. Rep. No. 2337, 89th Cong., 2d Sess., 312–24 (1966) (''1966 Study'').

[9] *See Arthur Lipper Corp. et al.* v. *SEC,* Securities Exchange Act Release No. 11773, 46 S.E.C. 78 (Oct. 24, 1975), *sanction modified*, 547 F.2d 171 (2d Cir. 1976).

[10] *See* 1966 Study, *supra* note 8, at 315–16.

[11] *See* Pub. L. No. 91–547, 84 Stat. 1413, 1417 § 7 (1970) (''1970 Amendments'') (codified at 15 U.S.C. 80a–12(d)(1)(A)). *See also* Sen. Rep. No. 184, 91st Cong., 1st Sess., at 31 (1969) (''Sen. Rep. No. 184'').

[12] *See* 15 U.S.C. 80a–12(d)(1)(A). If the acquiring fund is not registered under the Act, the prohibitions apply only with respect to its acquisition of securities in funds that are registered under the Act.

[13] *See* 15 U.S.C. 80a–12(d)(1)(B).

[14] *See* 15 U.S.C. 80a–12(d)(1)(E).

[15] The exception for periodic payment plan arrangements originally was set forth in section 12(d)(1)(B). Section 12(d)(1)(E) was added by the 1970 Amendments. *See* S. Rep. No. 184, *supra* note 11, at 31; 1970 Amendments, *supra* note 11, § 7 (codified at 15 U.S.C. 80a–12(d)(1)(E)). Section 12(d)(1)(E) permits a fund's acquisition of securities issued by another fund provided that (i) the acquiring fund's depositor or principal underwriter is a broker or dealer registered under the Securities Exchange Act of 1934, (or a person the broker-dealer controls), (ii) the security is the only investment security the acquiring fund holds (or the securities are the only investment securities the acquiring fund holds if it is a registered UIT that issues two or more classes or series of securities, each of which provides for the accumulation of shares of a different fund), and (iii) the acquiring fund is obligated (a) to seek instructions from its shareholders with regard to voting the acquired fund's securities or to vote the acquired fund's shares in the same proportion as the vote of all other acquired fund shareholders, and (b) if unregistered, to obtain Commission approval before substituting the investment security.

[16] The Act defines a ''unit investment trust'' as a fund that (i) is organized under a trust indenture, contract of custodianship or agency, or similar instrument, (ii) does not have a board of directors, and (iii) issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities, but does not include a voting trust. 15 U.S.C. 80a–4(2).

[17] *See* Securities and Exchange Commission, Protecting Investors: A Half Century of Investment Company Regulation 373–74 (1992) (''1992 Study''); Request for Comments on Issues Arising Under the Investment Company Act of 1940 Relating to Flexible Premium Variable Life Insurance, Investment Company Act Release No. 13632 (Nov. 23, 1983) [48 FR 54043 (Nov. 30, 1983)].

fund, which is an open-end fund and a conduit to the ''master'' fund.[18]

Unaffiliated Fund of Funds Arrangements. The Act also permits a registered fund to take small positions in an unlimited number of other funds (an ''unaffiliated fund of funds'').[19] A fund taking advantage of the exception provided in section 12(d)(1)(F) of the Act (and its affiliated persons) may acquire no more than three percent of another fund's securities;[20] cannot charge a sales load greater than 1½ percent;[21] is restricted in its ability to redeem shares of the acquired fund;[22] and is unable to use its voting power to influence the outcome of shareholder votes held by the acquired fund.[23] The exception was designed to give limited relief to fund of funds arrangements in existence in 1970 when section 12(d)(1) was amended, subject to restrictions designed to prevent abuses.[24]

Affiliated Fund of Funds Arrangements. The Act also permits a fund to invest in one or more funds in the same fund complex. Enacted as part of the National Securities Markets Improvement Act of 1996 (''NSMIA''),[25] section 12(d)(1)(G) permits a registered open-end fund or UIT to acquire an unlimited amount of shares of other registered open-end funds and UITs that are part of the same ''group of investment companies.''[26] A fund taking advantage of this exception (an ''affiliated fund of funds'') is restricted in the types of other securities it can hold in addition to shares of registered funds in the same group of investment companies.[27] The acquired funds must have a policy against investing in shares of other funds in reliance on section 12(d)(1)(F) or 12(d)(1)(G) (to prevent multi-tiered structures),[28] and overall distribution expenses are limited (to prevent excessive sales loads).[29] Under this provision, which codified Commission exemptive orders,[30] several large fund complexes offer a fund of funds, which allocates and periodically reallocates its assets among funds in the complex.[31]

II. Discussion

Since 1940 we have provided limited relief for funds to acquire shares of other funds when the proposed arrangements did not present the risk of abuses that section 12(d)(1) was designed to prevent. We issued those orders under our general exemptive authority in section 6(c) of the Act.[32] In 1996, when Congress added section 12(d)(1)(G), it gave us specific authority to exempt any person, security, or transaction, or any class or classes of transactions, from section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.[33] The House Report accompanying NSMIA urged the Commission to use the additional exemptive authority under section 12(d)(1)(J) ''in a progressive way as the fund of funds concept continues to evolve over time.''[34]

Today we are proposing three new rules. Two of these provide exemptions

[18] *See* H.R. Rep. No. 622, 104th Cong., 2d Sess., at 41 (1996) (''H.R. Rep. No. 622''); Exemption for Open-End Management Investment Companies Issuing Multiple Classes of Shares; Disclosure by Multiple Class and Master Feeder Funds; Voting on Distribution Plans; Final Rules and Proposed Rule, Investment Company Act Release No. 20915 (Feb. 23, 1995) [60 FR 11876, 11876–77 (Mar. 2, 1995)]; Division of Investment Management, Securities and Exchange Commission, Hub and Spoke Funds: A Report Prepared by the Division of Investment Management, submitted with letter to the Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives from Richard C. Breeden, Chairman, Securities and Exchange Commission (Apr. 15, 1992), *available in* LEXIS, Fedsec library, Noact File.

[19] *See* 15 U.S.C. 80a–12(d)(1)(F).

[20] A registered fund relying on section 12(d)(1)(F) may acquire securities issued by another fund if, immediately after acquiring the securities, not more than three percent of the total outstanding stock of the acquired fund is owned by the acquiring fund and all its affiliates. *See* 15 U.S.C. 80a–12(d)(1)(F)(i). Section 12(d)(1)(F) does not limit acquiring fund investments in securities other than those issued by other funds.

[21] A fund relying on section 12(d)(1)(F) may not offer or sell (or propose to offer or sell through a principal underwriter) a security it issues at a public offering price that includes a sales load of more than 1½ percent. *See* 15 U.S.C. 80a–12(d)(1)(F)(ii).

[22] A fund whose shares are acquired pursuant to section 12(d)(1)(F) is not obligated to redeem more than 1 percent of those securities during any period of less than 30 days. 15 U.S.C. 80a–12(d)(1)(F).

[23] Section 12(d)(1)(F), by reference to section 12(d)(1)(E), requires the acquiring fund to vote shares of an acquired fund either by seeking instructions from the acquiring fund's shareholders, or to vote the shares in the same proportion as the vote of all other shareholders of the acquired fund. *Id.*

[24] *See* H.R. Rep. No. 1382, *supra* note 8, at 11.

[25] Pub. L. No. 104–290, 110 Stat. 3416 (1996).

[26] *See* 15 U.S.C. 12(d)(1)(G). For purposes of the exception, the term ''group of investment companies'' means ''any 2 or more registered investment companies that hold themselves out to investors as related companies for purposes of investment and investor services.'' 15 U.S.C. 80a–12(d)(1)(G)(ii).

[27] In addition to investing in securities of registered funds in the same group of investment companies, the Act permits these funds to invest only in government securities and short-term paper. *See* 15 U.S.C. 80a–12(d)(1)(G)(i)(II).

[28] *See* 15 U.S.C. 80a–12(d)(1)(G)(i)(IV).

[29] *See* 15 U.S.C. 80a–12(d)(1)(G)(i)(III). The provision permits a fund to invest in shares of another fund only if either (i) the acquiring fund does not charge a sales load or distribution-related fee or does not pay (and is not assessed) sales loads or distribution-related fees on securities of the acquired fund, or (ii) the aggregate distribution-related fees (or loads) charged by the acquiring fund on its securities and paid by the acquiring fund on acquired fund securities are not excessive under rules adopted under section 22(b) [15 U.S.C. 80a–22(b)] or 22(c) [15 U.S.C. 80a–22(c)] by a securities association registered under section 15A of the Securities Exchange Act of 1934 (the ''Exchange Act'') [15 U.S.C. 78*o*–3] or the Commission. The NASD has adopted limits on sales loads and distribution-related fees applicable to funds as well as to funds of funds. *See* NASD Rule 2830(d)(2), (3) (''NASD Sales Charge Rule'').

Under the NASD Sales Charge Rule for funds of funds, if neither the acquiring nor acquired fund has an asset-based sales charge (12b–1 fee), the maximum front-end and deferred sales charge that can be charged by the acquiring fund, the acquired fund, and both in combination cannot exceed 8.5 percent of the offering price of the shares. *See* NASD Sales Charge Rule 2830(d)(3)(A). Any acquiring or acquired fund that has an asset-based sales charge must individually comply with the sales charge limitations on funds with an asset-based sales charge, provided, among other conditions, that if both funds have an asset-based sales charge, the maximum aggregate asset-based sales charge cannot exceed .75 of 1 percent per year of the average annual net assets of the fund; and the maximum aggregate sales load may not exceed 7.25 percent of the amount invested, or 6.25 percent if either fund pays a service fee. *See* NASD Sales Charge Rule 2830(d)(2)(A), (B).

[30] *See* Vanguard STAR Fund, Investment Company Act Release No. 21372 (Sept. 22, 1995) [60 FR 50656 (Sept. 29, 1995)] (notice), Investment Company Act Release No. 21426 (Oct. 18, 1995) (order) (revising conditions on the 1985 Vanguard Order); T. Rowe Price Spectrum Fund, Investment Company Act Release No. 21371 (Sept. 22, 1995) [60 FR 50654 (Sept. 29, 1995)] (notice), Investment Company Act Release No. 21425 (Oct. 18, 1995) (order) (revising conditions on the 1989 T. Rowe Price Order); T. Rowe Price Spectrum Fund, Investment Company Act Release No. 17198 (Oct. 31, 1989) [54 FR 47010 (Nov. 8, 1989)] (notice), Investment Company Act Release No. 17242 (Nov. 29, 1989) (order) (''1989 T. Rowe Price Order''); Vanguard Special Tax-Advanced Retirement Fund, Investment Company Act Release No. 14153 (Sept. 12, 1984) [49 FR 36582 (Sept. 18, 1984)] (notice), Investment Company Act Release No. 14361 (Feb. 7, 1985) (order) (''1985 Vanguard Order'').

[31] *See, e.g.,* T. Rowe Price, Retirement Funds, Prospectus 1–4 (Mar. 14, 2003).

[32] 15 U.S.C. 80a–6(c). Section 6(c) provides that ''[t]he Commission, by rules and regulations upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.''

[33] *See* NSMIA, *supra* note 25, § 202 (codified at 15 U.S.C. 80a–12(d)(1)(J)). Congress added section 12(d)(1)(J) to resolve questions regarding the scope of our authority under section 6(c). *See* 1985 Vanguard Order, *supra* note 30, dissenting opinion of Commissioners Treadway and Peters (concluding that applicants failed to establish an adequate record on which Commission could find exemption from section 12(d)(1)(A) to meet the standards of section 6(c) of the Act).

[34] H.R. Rep. No. 622, *supra* note 18, at 44–45. The House Report explained that, in exercising its exemptive authority, the Commission should consider factors that relate to the protection of investors, including the extent to which a proposed arrangement is subject to conditions that are designed to address conflicts of interest and overreaching by a participant in the arrangement, so as to avoid the abuses that gave rise to the initial adoption of the Act's restrictions against funds investing in other funds. *See id.* at 45.

in addition to the statutory exceptions to the fund of funds limits. The third provides an exemption from a statutory condition for a fund of funds arrangement. These rules would codify and expand upon a number of exemptive orders we have issued that permit funds to invest in other funds. We also are proposing amendments to Forms N–1A, N–2, N–3, N–4, and N–6 that will require funds of funds to disclose in their prospectuses the expenses of acquired funds, which investors in a fund of funds will bear indirectly.

A. Rule 12d1–1: Investments in Money Market Funds

We are proposing a new rule that would permit funds to invest in shares of money market funds. Rule 12d1–1 would permit ''cash sweep'' arrangements in which a fund invests all or a portion of its available cash in a money market fund rather than directly in short-term instruments.[35] Since 1982, we have issued more than 80 exemptive orders permitting these types of arrangements.[36] Funds have represented that use of a money market fund may be expected to achieve greater efficiencies, reduce fund management expenses, and increase returns.[37] Moreover, use of a money market fund may permit fund portfolio managers to focus on the management of the principal investments of the fund.

Fund investments in money market funds, which did not exist in 1940, do not appear to raise the concerns that underlie section 12(d)(1). Money market funds are designed to accommodate significant daily inflows and outflows of cash and therefore their management seems unlikely to be influenced by investors who could threaten large redemptions.[38] There is little value to obtaining a control position in a money market fund, and money market funds do not control valuable brokerage commissions that can be directed to affiliates.[39] A fund's investment in shares of a money market fund does, however, present the opportunity for layering of advisory fees and distribution expenses, which we propose to address as discussed in section II.D below.

1. Scope of Exemption

(a) *Affiliated Money Market Funds.* Funds that intend to invest in money market funds in the same fund complex (''affiliated money market funds'') also need exemptions from sections 17(a)[40] and 17(d) of the Act, and rule 17d–1 thereunder,[41] which restrict transactions and joint arrangements with affiliated persons. In addition, a fund that acquires more than five percent of the securities of a money market fund in another fund complex would become an affiliated person of the money market fund, and would need relief from these section 17 prohibitions before making any additional investments in the money market fund.[42] Proposed rule 12d1–1 would provide this relief. An acquiring fund's purchase and redemption of

[35] A fund may have uninvested cash from new purchases of shares by investors, receipt of dividends and interest from portfolio investments, and matured investments, as well as cash collateral from securities lending activities. The proposed rule would permit a fund to invest in one or more money market funds.

[36] *See, e.g.,* Diamond Hill Funds, Investment Company Act Release No. 26058 (May 28, 2003) [68 FR 33213 (June 3, 2003)] (notice), Investment Company Act Release No. 26079 (June 24, 2003) (order); SEI Index Funds, Investment Company Act Release No. 26008 (Apr. 22, 2003) [68 FR 22423 (Apr. 28, 2003)] (notice), Investment Company Act Release No. 26048 (May 19, 2003) (order). These orders contain a number of conditions, including: (i) Shares of the acquired money market fund will not be subject to sales loads, distribution-related fees, or service fees, or if they are, the acquiring fund's adviser will waive its advisory fee in an amount to offset the amount of fees incurred by the acquiring fund; (ii) before approving any advisory contract for the acquiring fund, its board of directors, including a majority of directors who are not interested persons under section 2(a)(19) of the Act [15 U.S.C. 80a–2(a)(19)] (''independent directors''), will consider the extent to which (if any) the advisory fees charged by the adviser should be reduced to account for reduced services as a result of investing cash in the money market fund; (iii) the acquiring fund's investment in money market funds will be limited to 25 percent of the acquiring fund's total assets; (iv) the acquiring fund's investment in the money market fund is consistent with the acquiring fund's policies as set forth in its registration statement; (v) the acquiring fund and money market fund are advised by the same adviser (or are part of the same group of investment companies); and (vi) the acquired money market fund will not acquire securities in another fund in excess of the limits of section 12(d)(1)(A) of the Act.

[37] *See, e.g.,* Pioneer America Income Trust, First Amended and Restated Application pursuant to Section 12(d)(1)(J) of the Investment Company Act of 1940, section IV (filed June 4, 2002) (''Pioneer Application''); Bear Stearns Funds, *et al.,* Amended Application for an Order under Section 12(d)(1)(J) of the Investment Company Act of 1940, section III.C (filed Jan. 8, 1999).

[38] *See* Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 21837 (Mar. 21, 1996) [61 FR 13956, 13957 (Mar. 28, 1996)] (among money market fund objectives is preservation of capital and liquidity); Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 17589 at text preceding n.7 (July 17, 1990) [55 FR 30239 (July 25, 1990)] (many investors use money market accounts as alternatives to checking accounts).

[39] We note that in the context of rule 2a–7, the Commission has permitted an exception that allows money market funds to invest in other money market funds in excess of the diversification requirements for other issuers provided the board of directors of the acquiring fund reasonably believes that the acquired fund is in compliance with rule 2a–7. *See* 17 CFR 270.2a–7(c)(4)(ii)(E). Under rule 2a–7, shares of money market funds are considered first-tier securities that without the exception would be subject to the rule's issuer diversification standards for first-tier securities. *See* 17 CFR 270.2a–7(a)(12).

[40] Section 17(a)(1) prohibits an affiliated person of a registered fund, a promoter or principal underwriter for a registered fund, or an affiliated person of the foregoing, acting as principal, from selling securities or other property to the fund, unless (A) the buyer is the issuer of the securities, (B) the seller is the issuer of the securities and the securities are part of a general offering to the holders of a class of the seller's securities, or (C) a depositor has deposited the securities with the trust of a UIT or periodic payment plan. 15 U.S.C. 80a–17(a)(1). Section 17(a)(2) prohibits an affiliated person from knowingly buying from a registered fund (or companies it controls) any security or other property unless the seller is the issuer of the securities. 15 U.S.C. 80a–17(a)(2). Affiliated persons of a fund include any person directly or indirectly controlling, controlled by, or under common control with the fund. *See* 15 U.S.C. 80a–2(a)(3)(C) (definition of ''affiliated person''). Most funds today are organized by an investment adviser that advises or provides administrative services to a number of other funds in the same fund complex. Funds in a fund complex are under the common control of an investment adviser or other person when the adviser or other person exercises a controlling influence over the management or policies of the funds. *See* 15 U.S.C. 80a–2(a)(9). Not all advisers control funds they advise. The determination of whether a fund is under the control of its adviser, officers, or directors depends on all the relevant facts and circumstances. *See* Investment Company Mergers, Investment Company Act Release No. 25259, n.14 (Nov. 8, 2001) [66 FR 57602 (Nov. 15, 2001)]. For purposes of this release, we presume that funds in a fund complex are under common control because funds that are not affiliated persons would not require, and thus not rely on, the proposed exemptions from section 17(a) and rule 17d–1.

[41] Section 17(d) of the Act makes it unlawful for an affiliated person of a registered fund (''first-tier affiliate''), an affiliated person of an affiliated person of a registered fund (''second-tier affiliate''), the fund's principal underwriters, or affiliated persons of the fund's principal underwriters, acting as principal, to effect any transaction in which the fund, or a company it controls, is a joint or a joint and several participant ''in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such registered or controlled company on a basis different from or less advantageous than that of such other participant.'' 15 U.S.C. 80a–17(d). Rule 17d–1(a) prohibits first- and second-tier affiliates of a registered fund, the fund's principal underwriter, and affiliated persons of the fund's principal underwriter, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan in which the fund (or company it controls) is a participant ''unless an application regarding such joint enterprise, arrangement or profit-sharing plan has been filed with the Commission and has been granted by an order * * *.'' 17 CFR 270.17d–1. When an acquiring fund purchases securities from an affiliated money market fund on the advice of an adviser who also manages the money market fund, the arrangement and transactions could be deemed to be a joint enterprise in which the two funds and the adviser are joint participants.

[42] An affiliated person of a fund includes: (i) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting securities of the fund; and (ii) any person five percent or more of whose assets or securities are directly or indirectly owned, controlled, or held with power to vote by the fund. *See* 15 U.S.C. 80a–2(a)(3)(A), (B) (definition of ''affiliated person'').

money market fund shares at the net asset value would seem to provide little opportunity for insider self-dealing or overreaching, and thus an exemption from these provisions appears to be appropriate. We seek comment on this proposal. Does an acquiring fund's investment in an affiliated money market fund create other opportunities for self-dealing or overreaching?

(b) Unaffiliated Money Market Funds. Although our exemptive orders have permitted funds to invest their cash only in money market funds advised by the same adviser, we are proposing to expand that relief to funds that do not share the same adviser.[43] As a result, funds would be able to invest cash in money market funds that are members of other fund complexes. The exemption would permit funds in smaller complexes that do not have a money market fund to engage in a cash sweep arrangement.[44] Because of the nature of money market funds, which we discussed above, we do not believe that investments in money market funds that do not share the same adviser would create any greater risks than investments in money market funds with a common adviser.

If a fund acquires more than five percent of a money market fund's securities, the two funds would become affiliated persons of each other.[45] As a result, principal transactions other than purchases and redemptions of fund shares would not be exempt under the proposed rule, and thus the two funds would be precluded from entering into certain types of transactions with each other.[46] Moreover, the acquiring fund would be restricted with respect to the purchase or sale of securities through a broker-dealer affiliated with the money market fund.[47] We seek comment on whether funds would be likely to invest cash in money market funds in other fund complexes? If so, would additional exemptive relief under the proposed rule be appropriate?[48]

(c) Unregistered Money Market Funds. Proposed rule 12d1–1 also would codify our exemptive orders that permit funds to invest in money market funds that are not registered investment companies (''unregistered money market funds'').[49] Unregistered money market funds are typically organized by a fund adviser for the purposes of managing the cash of other funds in a fund complex and operate in almost all respects as a registered money market fund, except that their securities are privately offered and thus not registered under the Securities Act of 1933.[50] Although a fund's investments in unregistered money market funds is no longer restricted by section 12(d)(1),[51] these investments are subject to the affiliate transaction restrictions in the Act and rules thereunder and thus require exemptions from sections 17(a) and 17(d), and rule 17d–1.[52]

Under the proposed rule, the exemption would be available only for investments in an unregistered money market fund that operates like a money market fund registered under the Act.[53] To be eligible, an unregistered money market fund would be required to (i) limit its investments to those in which a money market fund may invest under

[43] Some applicants have sought, and we have granted, broader exemptive relief permitting funds to invest in funds that are not part of the same group of investment companies in excess of the limitations of section 12(d)(1). *See infra* notes 73, 75. Under those orders, funds in which the applicants could invest include money market funds.

[44] *See* H.R. Rep. No. 622, *supra* note 18, at 43 (''The Committee intends the rulemaking and exemptive authority in new Section 12(d)(1)(J) to be used by the Commission so that the benefits of funds [of funds] are not limited only to investors in the largest fund complexes, but, in appropriate circumstances, are available to investors through a variety of different types and sizes of investment company complexes.'').

[45] *See* 15 U.S.C. 80a–2(a)(3)(A), (B).

[46] *See* discussion above in section II.A.1(a). We note that rule 17a–7 provides an exemption for purchase and sale transactions between registered funds (or series of registered funds) that are affiliated and that meet certain conditions regardless of the nature of the funds' affiliation. 17 CFR 270.17a–7.

[47] Section 17(e) of the Act prohibits a first or second-tier affiliate of a registered fund that acts as broker, in connection with the sale of securities to or by the fund, from receiving from any source a commission, fee, or other remuneration for effecting the transaction that exceeds specified limits. *See* 15 U.S.C. 80a–17(e)(2).

[48] We have provided relief for transactions between a fund and another entity that are affiliated as a result of the fund's investments in a money market fund that is affiliated with the other entity. *See, e.g.,* Credit Suisse Asset Management, LLC, Investment Company Act Release No. 25789 (Oct. 29, 2002) [67 FR 67220 (Nov. 4, 2002)] (notice), Investment Company Act Release No. 25832 (Nov. 22, 2002) (order) (''Credit Suisse Notice and Order''). This relief generally has been provided in connection with applications regarding securities lending programs. We are considering separate rulemaking in this area that would address those issues.

[49] *See, e.g.,* Pioneer America Income Trust, Investment Company Act Release No. 25607 (June 7, 2002) [67 FR 40757 (June 13, 2002)] (notice), Investment Company Act Release No. 25647 (July 3, 2002) (order) (''Pioneer Notice and Order''); Bear Stearns Funds et al., Investment Company Act Release No. 25467 (Mar. 20, 2002) [67 FR 13809 (Mar. 26, 2002)] (notice), Investment Company Act Release No. 25527 (Apr. 16, 2002) (order); GE Funds, et al., Investment Company Act Release No. 22187 (Aug. 29, 1996) [61 FR 46876 (Sept. 5, 1996)] (notice), Investment Company Act Release No. 22247 (Sept. 25, 1996) (order). The exemptive relief provided in these orders includes conditions requiring that: (i) The unregistered money market fund comply with rule 2a–7; (ii) the investment adviser to the unregistered money market fund (or the fund with approval of its board of directors) adopt and monitor the procedures described in rule 2a–7 and take any other actions required to be taken under the procedures; (iii) an acquiring fund purchase shares of an unregistered money market fund only if the unregistered money market fund's adviser determines on an ongoing basis that the unregistered money market fund is in compliance with rule 2a–7 and preserves for a period not less than six years from the date of determination, the first two years in an easily accessible place, a record of the determination and the basis on which it was made, and the record is subject to examination by Commission staff; (iv) the unregistered money market fund comply with the requirements of sections 17(a), (d), and (e), 18, and 22(e) of the Act as if it were a registered open-end fund; (v) the investment adviser to the unregistered money market fund adopt procedures designed to ensure that the fund complies with those provisions of the Act, periodically reviews and updates as appropriate the procedures, and maintains books and records describing the procedures; (vi) the investment adviser to the unregistered money market fund maintains the records required by rules 31(a)–1(b)(1), 31a–1(b)(ii)(2), and 31a–1(b)(9) under the Act for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place and subject to examination by Commission staff; (vii) the net asset value per share with respect to unregistered money market fund shares is determined by dividing the value of the assets belonging to the fund, less the liabilities of the fund, by the number of outstanding shares of the fund; (viii) the acquiring fund purchase and redeem shares of the unregistered money market fund as of the same time and at the same price, and receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders of the unregistered money market fund; and (ix) a separate account is established in the shareholder records of the unregistered money market fund for the account of the acquiring fund. These orders provide exemptions for funds with the same adviser as the unregistered money market funds. The proposed rule would permit funds to invest in unregistered money market funds with the same or a different adviser.

[50] *See, e.g.,* Pioneer Application, *supra* note 37, conditions 7 [8]. *See also* 15 U.S.C. 80a–3(c)(1) (excepting from the definition of ''investment company'' issuers whose securities are owned by no more than 100 persons and which is not making and does not presently propose to make a public offering of its securities); 15 U.S.C. 80a–3(c)(7) (excepting from the definition of ''investment company'' issuers whose securities are owned exclusively by ''qualified purchasers'' and which is not making and does not presently propose to make a public offering of its securities).

[51] Before 1996, a fund that was excepted from the definition of ''investment company'' by section 3(c)(1) of the Act (because its shares were held by fewer than 100 beneficial owners and was not making and did not propose to make a public offering of its securities) was nonetheless deemed to be an ''investment company'' for purposes of section 12(d)(1). In 1996, Congress narrowed this provision of section 3(c)(1) to make section 12(d)(1) limitations inapplicable to an investment by a registered fund in shares of a fund that is not registered with us in reliance on section 3(c)(1). *See* NSMIA, *supra* note 25 § 209(a). A parallel provision was incorporated into section 3(c)(7), which excepts from the definition of ''investment company'' funds whose outstanding securities are owned exclusively by ''qualified purchasers'' and that is not making and does not propose to make a public offering of its securities. *See* section 3(c)(7)(D) [15 U.S.C 80a–3(c)(7)(D)]. *See also* 1992 Study, *supra* note 17, at 105–110.

[52] *See* discussion above in section II.A.1(a) of this Release.

[53] Proposed rule 12d1–1(c)(3)(ii).

rule 2a–7 under the Act,[54] and (ii) undertake to comply with all the other provisions of rule 2a–7.[55] In addition, the acquiring fund would have to reasonably believe that the unregistered money market fund operates like a registered money market fund and that it complies with certain provisions of the Act.[56] Finally, the unregistered money market fund's adviser would be required to register as an investment adviser with the Commission.[57] This final requirement would allow the Commission to examine the activities of the unregistered money market fund to ensure that it is meeting the requirements of the rule.

(d) Closed-End Funds of Funds. The restrictions of section 12(d)(1) on a fund of funds also apply to closed-end funds and business development companies,[58] which are closed-end funds that are exempted from registration under the Act.[59] We have issued several exemptive orders to closed-end funds, subject to similar conditions as open-end funds.[60] Today, we propose to make the new rule available to both types of funds so that either can invest available cash in a money market fund.[61] Would business development companies benefit from this exemption? Are there reasons not to extend the exemption to business development companies?

(e) Unregistered Funds of Funds. Unregistered funds also are subject to the section 12(d)(1) restrictions on the acquisition of shares of registered funds.[62] The proposed rule would permit unregistered funds to invest their cash in shares of a registered money market fund.[63] Thus, a hedge fund could sweep its cash into a registered money market fund pending investment or distribution of the cash to investors. We request comment on whether any special concerns arise with respect to unregistered funds' use of registered money market funds in cash sweep arrangements.

2. Conditions

We propose to eliminate most of the conditions included in the exemptive orders provided to cash sweep arrangements.[64] We would not, for example, preclude a fund from investing more than 25 percent of its assets in shares of money market funds and would, instead, rely on a fund's own investment restrictions to provide appropriate limitations. We also would not require directors to make any special findings that investors are not paying multiple advisory fees for the same services. A fund could pay duplicative fees if an adviser invests a fund's cash in a money market fund (which itself pays an advisory fee) without reducing its advisory fee by an amount it was compensated to manage the cash.[65] Fund directors have fiduciary duties,[66] which obligate them to protect funds from being overcharged for services provided to the fund, regardless of any special findings we might require.[67] Moreover, and as we describe in more detail below, we would require a registered fund of funds to disclose to shareholders expenses paid by both the acquiring and acquired funds so that shareholders may better evaluate the costs of investing in a fund with a cash sweep arrangement.[68]

[54] Proposed rule 12d1–1(c)(3)(ii)(A).

[55] Proposed rule 12d1–1(c)(3)(ii)(B).

[56] Proposed rule 12d1–1(b)(2)(i)(A), (B). The acquiring fund would be required to reasonably believe that the unregistered money market fund (i) operates in compliance with rule 2a–7, (ii) complies, as if it were a registered open-end fund, with provisions of the Act that limit affiliate transactions (sections 17(a), (d), and (e)), issuance of senior securities (section 18), and suspension of redemption rights (section 22(e)), (iii) has adopted, and periodically reviews, procedures designed to ensure compliance with these requirements, and maintains books and records describing the procedures, and (iv) maintains and preserves the books and records required under rules 31a–1(b)(1) [17 CFR 31a–1(b)(1)], 31a–1(b)(2)(ii) [17 CFR 31a–1(b)(2)(ii)], 31a–1(b)(2)(iv) [17 CFR 31a–1(b)(2)(iv)], and 31a–1(b)(9) [17 CFR 31a–1(b)(9)]. Proposed rule 12d1–1(b)(2)(i). The proposed rule would require that the acquiring fund ''reasonably believe'' that, among other things, the acquired money market fund complies with rule 2a–7 in order to avoid the acquiring fund's loss of the exemption as the result of a minor or inadvertent violation of rule 2a–7 by the acquired money market fund.

[57] Proposed rule 12d1–1(b)(2)(ii). If an unregistered money market fund does not have a board of directors (because, for example, it is organized as a limited partnership), the proposed rule also would require the fund's investment adviser to perform the duties required of a money market fund's board of directors under rule 2a–7. Proposed rule 12d1–1(c)(3)(ii)(B).

[58] A business development company is any closed-end company that: (i) Is organized under the laws of, and has its principal place in, any state or states; (ii) is operated for the purpose of investing in securities described in section 55(a)(1)–(3) of the Act [15 U.S.C. 80a–54(a)(1)–(3)] and makes available ''significant managerial assistance'' to the issuers of those securities, subject to certain conditions; and (iii) has elected under section 54(a) of the Act to be subject to the sections addressing activities of business development companies under the Act. *See* 15 U.S.C. 80a–2(a)(48). Section 60 of the Act [15 U.S.C. 80a–59] extends the limits of section 12(d) to a business development company to the same extent as if it were a registered closed-end fund.

[59] Section 6(f) of the Act [15 U.S.C. 80a–6(f)] exempts business development companies that have made the election under section 54 [15 U.S.C. 80a–53] from registration and other provisions of the Act.

[60] *See, e.g.,* Pioneer Notice and Order, *supra* note 49; Credit Suisse Notice and Order, *supra* note 48.

[61] The amount of assets a business development company could invest in a money market fund may be limited by Section 55 of the Act [15 U.S.C. 80a–54].

[62] *See* 15 U.S.C. 12(d)(1)(A); 15 U.S.C. 12(d)(1)(B). In the case of unregistered investment companies (such as a foreign fund or business development company) the full restrictions of sections 12(d)(1)(A) and (B) apply. Companies that are unregistered because they are excepted from the definition of investment company under sections 3(c)(1) and 3(c)(7) of the Act are prohibited from acquiring more than three percent of a registered fund. Both section 3(c)(1) and section 3(c)(7) deem issuers that rely on these sections to be investment companies for the purposes of sections 12(d)(1)(A)(i) and 12(d)(1)(B)(i) with respect to their acquisition of registered funds. As a result, these companies cannot acquire more than three percent of the shares of a registered fund. *See* 15 U.S.C. 80a–3(c)(1); 15 U.S.C. 80a–3(c)(7)(D).

[63] Proposed rule 12d1–1(a).

[64] *See supra* note 36.

[65] Our earlier orders required the acquiring fund's adviser to waive that portion of the advisory fee attributable to the management service that would be performed by the adviser to the acquired fund. *See, e.g.,* The Brinson Funds, Investment Company Act Release No. 21814 (Feb. 12, 1996) [61 FR 6398, 6399 (Feb. 20, 1996)] (notice), Investment Company Act. Release No. 21741 (Mar. 11, 1996) (order); Janus Investment Fund, Investment Company Act Release No. 21042 (May 4, 1995) [60 F.R. 24955, (May 10, 1995)] (notice), Investment Company Act Release No. 21103 (May 31, 1995) (order).

[66] *See* 15 U.S.C. 80a–35(a). *See generally,* 2 Tamar Frankel, The Regulation of Money Managers, § 9.05 (2001). Section 15(c) of the Act requires the board of directors to evaluate the terms (which would include fees, or the elimination of fees, for services provided by an acquired fund's adviser) of any advisory contract. *See* 15 U.S.C. 80a–15(c). Moreover, we believe that, section 36(b) [15 U.S.C. 80a–35(b)], which imposes on fund advisers a fiduciary duty with respect to their compensation, would require an adviser to waive that portion of its fee that represents compensation for services being performed by another person, such as the adviser to an acquired money market fund. *See SEC* v. *American Birthright Trust Management Company, Inc.,* Litigation Release No. 9266 (Dec. 30, 1980), available in LEXIS, Fedsec Library, Litrel File (settlement of civil injunctive action in which defendant investment adviser was permanently enjoined from engaging in acts and practices that would constitute violations of sections 36(a) and (b) of the Act, and in which the Commission alleged that the compensation paid to fund's adviser was excessive in light of the services performed, and that most of the advisory services had been provided by a ''sub-adviser'' retained by the adviser).

[67] We also would eliminate the prohibition on an acquired money market fund investing in other funds in excess of the limits in section 12(d)(1)(A). This would permit the money market fund itself to have a cash sweep arrangement. As discussed above, we do not believe that investments in money market funds create the concerns that led to the limitations in section 12(d)(1). *See supra* notes 38–39 and accompanying text. We also would omit a condition that the acquiring fund's investment in the acquired money market fund must be consistent with the policies set forth in the acquiring fund's registration statement. We believe that the fund already is required to make investments consistent with those policies without an additional requirement in the rule. For a discussion of the other conditions, *see supra* notes 43–44 and accompanying text.

[68] Although not contained in the text of proposed rule 12d1–1, the proposed disclosure requirements are a critical element of the relief we are proposing today and of our decision that the proposal omit required directors' findings from the rule. We note that when it enacted section 12(d)(1)(G) in 1996, Congress did not include any provision addressing the duplication of advisory fees, although it understood that our previous exemptive orders to permit these arrangements included a requirement

Continued

We would, however, retain one of the conditions of our orders relating to fees. Under proposed rule 12d1–1, the acquiring fund either would not pay any sales load, distribution fees, or service fees on acquiring fund shares, or if it did, the acquiring fund's investment adviser would have to waive a sufficient amount of its advisory fee to offset the cost of the loads or distribution fees.[69] Rarely do institutional investors (such as an acquiring fund) pay sales loads or bear distribution expenses on an investment in a money market fund. Thus, a money market fund that charges a sales load or distribution fees to the acquiring fund may not be an appropriate investment for that fund.

Comment is requested on the proposed rule. Should we retain any of the other conditions of the exemptive orders? Should a fund be limited in the amount of assets it can invest in one or more money market funds? If so, what is the appropriate limit? Should the proposed rule require fund directors to make findings regarding duplicative fees? Do the sponsors, advisers, or directors of money market funds have any concerns about other funds making large investments in their money market funds? Should we include any restrictions on the ability of an acquiring fund to redeem shares of a money market fund that is not part of the same group of investment companies?[70] Should we restrict the ability of an acquiring fund to vote shares of a money market fund that is not part of the same group of investment companies?[71] Are there reasons to restrict the ability of an acquired money market fund itself to have a cash sweep arrangement?

Some funds considering a cash sweep arrangement may not have an investment policy that specifically addresses such an arrangement. Should we require funds to adopt a policy before investing in shares of a money market fund? Alternatively, should we interpret fund investment policies and restrictions that apply to investments in money market instruments as applying to investments in money market funds?

B. Rule 12d1–2: Affiliated Funds of Funds

As discussed above, section 12(d)(1)(G) permits a registered fund to acquire an unlimited amount of shares of registered open-end funds and UITs that are part of the same ''group of investment companies'' as the acquiring fund. Since 1996, when the section was added to the Act, we have issued exemptive orders for a variety of fund of funds arrangements that we concluded were consistent with the public interest and the protection of investors, but that did not conform to section 12(d)(1)(G) limits.[72]

Proposed rule 12d1–2 would codify, and in some cases expand, three types of relief provided to affiliated funds of funds.[73] In each case, the proposed rule provides relief from section 12(d)(1)(G) limitations on investments an affiliated fund of funds can make in addition to shares of funds in the same group of investment companies. The other limitations in section 12(d)(1)(G) would continue to apply to a fund of funds relying on that provision.[74]

1. Investments in Unaffiliated Funds

Section 12(d)(1)(G) permits a fund to acquire only funds that are part of the same group of investment companies. We propose to permit an affiliated fund of funds also to acquire up to three percent of the securities of funds that are not part of the same group of investment companies, subject to the limits in section 12(d)(1)(A) or 12(d)(1)(F).[75] This exemption would, in effect, permit funds to combine the relief provided by the statutory exceptions.[76] There do not appear to be any greater risks to an acquired fund or its shareholders if three percent of its shares are acquired by an affiliated fund of funds as opposed to being acquired by other types of mutual funds specifically permitted to purchase the shares by section 12(d)(1)(A) or 12(d)(1)(F). We seek comment on the proposed exemption. Are there greater risks to an acquired fund if the investor in these circumstances is an affiliated fund of funds?

2. Investments in Other Types of Issuers

To restrict the use of the exemption provided by section 12(d)(1)(G) to a ''bona fide'' fund of funds, Congress

that acquiring fund directors determine that fees for advisory services provided to the acquiring fund are in addition to and not duplicative of fees paid for advisory services provided to the acquired funds. In his testimony before the House Subcommittee considering amendments to section 12(d)(1), the Director of our Division of Investment Management explained that such a condition was unnecessary because ''[t]he Commission would be able to use its authority under the Securities Act [of 1933] to * * * address the potential for excessive layering of advisory fees by requiring an acquiring fund to disclose in the prospectus fee table the cumulative advisory fees paid by the acquiring and acquired funds.'' *Hearing on H.R. 1495 Before the Subcomm. On Telecommunications and Finance of the House Comm. on Commerce,* 104th Cong., 1st Sess. 19 (1995) (statement of Barry P. Barbash, Director, Division of Investment Management, Securities & Exchange Commission). *See also Hearing on S. 1815 Before the Senate Comm. on Banking, Housing and Urban Affairs,* 104th Cong., 2d Sess. 38 (1996) (statement of Arthur Levitt, Jr. Chairman, Securities and Exchange Commission).

[69] Proposed rule 12d1–1(b)(1). The proposed rule refers to ''administrative fees,'' which it would define as ''any sales charge, as defined in rule 2830(b)(8) of the Conduct Rules of the NASD or service fee, as defined in rule 2830(b)(9) of the Conduct Rules of the NASD, charged in connection with the purchase, sale, or redemption of securities issued by a Money Market Fund.''

[70] A fund relying on section 12(d)(1)(F) may not redeem more than 1 percent of an acquired fund's shares during any period of less than 30 days. 15 U.S.C. 80a–12(d)(1)(F).

[71] A fund relying on section 12(d)(1)(F) must vote shares of an acquired fund either by seeking instructions from its shareholders, or in the same proportion as the vote of all other shareholders of the acquired fund. 15 U.S.C. 80a–12(d)(1)(F) (referencing 15 U.S.C. 80a–12(d)(1)(E)).

[72] *See, e.g.,* Scudder Kemper Investments, Inc., Investment Company Act Release No. 23691 (Feb. 11, 1999) [64 FR 8153 (Feb. 18, 1999)] (notice), Investment Company Act Release No. 23731 (Mar. 8, 1999) (order) (permitting a fund to invest in funds in the same group of investment companies and in limited amounts of funds in different fund companies); Nations Fund Trust, Investment Company Act Release No. 24781 (Dec. 1, 2000) [65 FR 77050 (Dec. 8, 2000)] (notice), Investment Company Act Release No. 24804 (Dec. 27, 2000) (order) (permitting a fund to invest in funds in the same group of investment companies and in other securities (not issued by another fund)).

[73] We are not at this time proposing to codify the broader relief we have granted to permit an affiliated fund of funds to acquire shares of funds in different groups of investment companies in excess of the limits of section 12(d)(1)(F). *See* Nationwide Life Insurance Co., Investment Company Act Release No. 25492 (Mar. 21, 2002) [67 FR 14735 (Mar. 27, 2002)] (notice), Investment Company Act Release No. 25528 (Apr. 16, 2002) (order); Schwab Capital Trust, Investment Company Act Release No. 24067 (Oct. 1, 1999) [64 FR 54939 (Oct. 8, 1999)] (notice), Investment Company Act Release No. 24113 (Oct. 27, 1999) (order).

[74] *See supra* notes 28–29, and accompanying text.

[75] Proposed rule 12d1–2(a)(1). A fund relying on section 12(d)(1)(A) (together with any companies or funds it controls) could not acquire more than 3 percent of the securities of any other fund in a different fund group. In addition, the acquiring fund would be limited to investing no more than 5 percent of its own assets (together with assets of any companies it controls) in the securities of any one fund in a different fund group, and no more than 10 percent of its assets (together with assets of any companies it controls) in securities of other funds in one or more different fund groups, in the aggregate. *See* 15 U.S.C. 80a–12(d)(1)(A)(i)–(iii). A fund relying on section 12(d)(1)(F) (together with its affiliates), could not acquire more than 3 percent of the securities of any other fund in a different fund group. The acquiring fund also would be required either to seek instructions from its shareholders as to how to vote shares of those acquired funds, or to vote the shares in the same proportion as the vote of all other shareholders of the acquired fund. See 15 U.S.C. 80a–12(d)(1)(F) (referencing 15 U.S.C. 80a–12(d)(1)(E)). In addition, the acquiring fund would be limited to charging a sales load of 1½ percent on its shares and would be prevented from redeeming more than 1 percent of the shares of any acquired fund during any period of less than 30 days. *Id.*

[76] We have issued a number of exemptive orders granting similar relief. *See, e.g.,* Sage Life Assurance of America, Inc., Investment Company Act Release No. 25098 (Aug. 1, 2001) [66 FR 41272 (Aug. 7, 2001)] (notice), Investment Company Act Release No. 25142 (Aug. 28, 2001) (order); Scudder Kemper Investments, Inc., Investment Company Act Release No. 23691 (Feb. 11, 1999) [64 FR 8153 (Feb. 18, 1999)] (notice), Investment Company Act Release No. 23731 (Mar. 8, 1999) (order).

required a fund relying on the exemption to invest all of its assets in shares of funds in the same group of investment companies, and permitted other investments to include only government securities and short-term paper, which would provide the fund with a source of liquidity to redeem shares.[77] Congress encouraged us, however, to provide exemptions from these limitations ''in a progressive way,'' taking into account factors that related to the protection of investors.[78]

We propose to permit an affiliated fund of funds to invest in any other securities (*i.e.*, securities not issued by a fund).[79] This exemption would permit an affiliated fund of funds to invest directly in stocks, bonds, and other types of securities if such investments are consistent with the fund's investment policies. These investments would allow an acquiring fund greater flexibility to meet investment objectives that may not be met as well by investments in other funds in the same fund group, while the investments would not seem to present any additional concerns that section 12(d)(1)(G) was intended to address.[80]

A potentially significant consequence of the proposed rule would be that an equity fund or bond fund could invest any portion of its assets in an affiliated fund if such an acquisition is consistent with the investment policies of the fund and the restrictions of the rule. Our exemptive orders have permitted arrangements under which fund complexes have, for example, established a fund investing in foreign securities and made that fund available exclusively to other funds in the fund complex. The other funds used an investment in the international fund to obtain exposure to foreign securities consistent with their investment objectives.[81] Investments in an affiliated fund by a fund investing in other types of securities would not seem to raise any greater concerns than would an investment by a fund investing entirely in shares of affiliated funds. We note that section 12(d)(1)(G) already addresses concerns regarding excessive distribution-related fees in its fee limitations.[82] In addition, as noted above, we would address the concerns regarding excessive advisory fees through the proposed amendments to Forms N–1A and N–2 requiring disclosure of acquired fund expenses.[83] We seek comment on this proposal. Would any concerns arise if an affiliated fund of funds could invest directly in stocks, bonds, or other types of securities?

3. Investments in Money Market Funds

Proposed rule 12d1–2 would permit an affiliated fund of funds to invest in affiliated or unaffiliated money market funds in reliance on proposed rule 12d1–1, which, as discussed above, is designed to permit cash sweep arrangements involving money market funds.[84] An affiliated fund of funds currently is permitted to invest in money market funds in the same fund complex. The proposed rule would permit an affiliated fund of funds to invest in money market funds in a different fund complex. This will allow affiliated funds of funds the same opportunities as any other fund to invest in a cash sweep arrangement that will provide the greatest benefit to the acquiring fund. We are conditioning the investment on compliance with proposed rule 12d1–1 in order to ensure that the same limitations on sales loads and distribution expenses apply to any fund's investment in a money market fund.

We request comment on proposed rule 12d1–2. Are there reasons not to permit an affiliated fund of funds to invest its assets in any securities other than affiliated funds, government securities, or short-term paper? If so, are there conditions we should include in the proposed rule to protect against the risks that underlie the section 12(d)(1)(G)(i)(III) limitations?

C. Rule 12d1–3: Unaffiliated Funds of Funds

Section 12(d)(1)(F) of the Act provides an exemption from section 12(d)(1)(A) that allows a registered fund to invest all its assets in other registered funds if: (i) the acquiring fund (together with its affiliates) acquires no more than 3 percent of any acquired fund; and (ii) the sales load charged on the acquiring fund's shares is no greater than 1½ percent.[85]

Proposed rule 12d1–3 would permit funds relying on section 12(d)(1)(F) to charge sales loads greater than 1½ percent provided that the aggregate sales load any investor pays (*i.e.*, the combined distribution expenses of both the acquiring and acquired funds) does not exceed the limits on sales loads established by NASD for funds of funds.[86] The rule would codify a number of our exemptive orders.[87] Moreover, the limitations on distribution expenses reflect Congress's intent under NSMIA that the NASD regulate duplicative and excessive sales charges, as provided in section 12(d)(1)(G).[88] Our proposal would

[77] *See* H.R. Rep. No. 622, *supra* note 18, at 42.

[78] *Id.* at 43–44.

[79] Proposed rule 12d1–2(a)(2).

[80] Unlike section 12(d)(1)(G), section 12(d)(1)(F) does not restrict the other types of securities in which an unaffiliated fund of funds may invest.

[81] *See* Van Kampen American Capital Comstock Fund, Inc., Investment Company Act Release No. 21977 (May 23, 1996) [61 FR 27118 (May 30, 1996)] (notice), Investment Company Act Release No. 22025 (June 18, 1996) (order). *See also* Smith Breeden Trust, Investment Company Act Release No. 23918 (July 21, 1999) [64 FR 40923 (July 28, 1999)] (notice), Investment Company Act Release No. 23947 (Aug. 17, 1999) (order) (permitting funds to acquire shares of another fund in the same group of investment companies that invests primarily in mortgage-backed securities issued by the U.S. government, its agencies, and instrumentalities).

[82] *See* 15 U.S.C. 80a–12(d)(1)(G)(i)(III). *See also supra* note 29.

[83] As noted above, we would expect directors to address the issue of duplicative fees in the exercise of their fiduciary duties. *See supra* notes 66–68, and accompanying text.

[84] Proposed rule 12d1–2(a)(3). *See supra* notes 35–57, 64–71 and accompanying text. A collateral effect of our rule proposals would be to permit an affiliated fund of funds to invest in an acquired fund that itself had a cash sweep arrangement. As discussed above, section 12(d)(1)(G) prohibits a fund from acquiring shares of another fund that does not have an investment policy prohibiting it from investing in shares of funds in reliance on section 12(d)(1)(F) or (G). An acquired fund investing in a money market fund under a cash sweep arrangement permitted under proposed rule 12d1–1 would not be relying on either of those sections. The fees and expenses of acquired funds would be aggregated and shown in the fee table in the acquiring fund's prospectus. *See* discussion below at section II.D of this Release.

[85] *See* 15 U.S.C. 80a–12(d)(1)(F)(i)–(ii). Section 12(d)(1)(F) also provides that the acquired fund is not obligated to redeem more than 1 percent of its outstanding securities held by the acquiring fund in any period of less than 30 days, and requires the acquiring fund to vote shares of an acquired fund either by seeking instructions from the acquired fund's shareholders or by voting in the same proportion as the other shareholders of the acquired fund. 15 U.S.C. 80a–12(d)(1)(F).

[86] *See* NASD Sales Charge Rule 2830(d)(3), *supra* note 29.

[87] The conditions in these orders limit aggregate sales charges to the limits imposed under the NASD Sales Charge Rule. *See, e.g.*, Investec Ernst Company, Investment Company Act Release No. 25507 (Apr. 3, 2002) [67 FR 16775 (Apr. 8, 2002)] (notice), Investment Company Act Release No. 25552 (Apr. 24, 2002) (order); Lifetime Achievement Fund, Inc., Investment Company Act Release No. 24453 (May 12, 2000) [65 FR 31948 (May 19, 2000)] (notice), Investment Company Act Release No. 24489 (June 7, 2000) (order).

[88] *See* 15 U.S.C. 80a–12(d)(1)(G)(i)(III)(bb) (a fund relying on section 12(d)(1)(G) is limited from imposing sales loads and other distribution-related fees that, when aggregated with sales loads and distribution fees paid on acquired fund shares, are excessive under rules adopted under section 22(b) or 22(c) of the Act by a securities association registered under section 15A of the Securities Exchange Act or the Commission). In 1970, sales loads commonly were 8½ percent of the total payment, *see* Sen. Rep. No. 184, *supra* note 11, at 7, which would have resulted in an aggregate load of 10 percent of the total payment under the sales load limitation in section 12(d)(1)(F). The NASD Sales Charge Rule limits the aggregate sales loads on a fund of funds to 8½ percent if neither the acquiring fund nor the acquired fund in a fund of funds charges an asset-based sales charge, and to less than 8½ percent if they do. In addition, the

Continued

provide funds greater flexibility in structuring sales loads, consistent with the approach Congress took in section 12(d)(1)(G) to prevent excessive sales loads in affiliated funds of funds, while providing shareholders greater protection by requiring that funds relying on the rule limit overall distribution fees (rather than only sales loads). We seek comment on the proposed rule. Are there reasons to retain the 1½ percent sales load limit under an unaffiliated fund of funds arrangement rather than limit sales loads and distribution fees in conformance with section 12(d)(1)(G)(i)(III) limits for affiliated funds of funds?

D. Amendments to Forms N–1A, N–2, N–3, N–4, and N–6

We also are proposing amendments to Forms N–1A, N–2, N–3, N–4, and N–6 that would require that investors in a registered fund of funds receive better disclosure of the costs of investing in these arrangements. The proposed disclosure is designed to help investors understand the full costs of investing in a fund of funds, both to assist them in comparing the costs of investing in alternative funds of funds and in comparing the cost of an investment in a fund of funds with the cost of a more traditional fund.[89]

Our current disclosure rules do not require funds (other than feeder funds) to provide information about the cost associated with investments in acquired funds.[90] Some funds of funds disclose expenses of acquired funds as an item of the acquired fund's annual operating expenses.[91] Other funds list the operating expense ratios of each acquired fund, without relating those costs to the acquiring fund's expenses.[92] Still other funds merely note that the shareholder will indirectly bear a proportionate share of fees and expenses charged by acquired funds. In some cases, funds of funds provide no information regarding acquired funds' expenses. As a result, investors cannot always appreciate the total costs of investing in a fund of funds. Currently they have no direct means to determine whether the indirect costs of acquired funds will result in a higher overall cost of investing in a fund of funds when compared with another fund of funds, or a more traditional fund.

Under the proposed amendments to Form N–1A, any registered open-end fund investing in shares of another fund would be required to include in the fee table in its prospectus an additional line item under the section that discloses annual operating expenses.[93] The line item would set forth the acquiring fund's pro rata portion of the cumulative expenses charged by funds in which the acquiring fund invests. Those costs would be included in the acquiring funds' total annual operating expenses, which would be reflected in the ''Example'' portion of the fee table.[94] We seek comment on the proposed disclosure. Will the additional disclosure provide helpful information to investors? Is there a more informative means of providing investors information about the costs of acquired funds? Should the subcaption be included in Form N–1A with an instruction that it may be omitted for funds that do not invest in other funds?

We also are proposing instructions to the fee table to assist an acquiring fund in determining the amount of fees and expenses associated with acquired funds that must be reflected in the acquiring fund's fee table. The instructions would reflect expenses associated with the historical holdings in each acquired fund. The calculation would require the acquiring fund to aggregate the operating expenses of acquired funds and transaction costs and express them as a percentage of average net assets of the acquiring fund.[95] Under this approach, the acquiring fund would calculate the average invested balance and number of actual days invested in each acquired fund.[96] We ask for comment on these instructions. Are they consistent with the current fee table? Is there another way to determine acquired funds' fees and expenses that would provide better disclosure of these costs? [97] The instructions require the calculation of an average invested balance, which is based on a monthly average.[98] Should the average be calculated on a more frequent basis?

Expenses of the acquiring fund would be based on actual expenses or those reported in the most recent communication from the acquired fund.[99] Expenses of an acquired fund that is part of the same group of investment companies should reflect actual expenses of the fund. Expenses of other funds may be based on annual expenses reported in the most recent report or other communication received by the fund of funds.[100] If the acquiring fund paid any sales load to acquire shares of a fund during the past fiscal year, it must include that amount in its

NASD Sales Charge Rule limits aggregate asset-based sales charges the funds may impose. *See supra* note 29.

[89] A fund of funds may have higher fees and expenses than a fund that invests directly in debt and equity securities. *See* John Shipman, *Diversifying Through Funds of Funds—Small Investors Get Exposure to a Variety of Categories, But Fees, Overlap Are Issues,* Wall St. J., Nov. 7, 2002, at D11 (''[a]t least half of the funds of funds available to investors charge fees—amounting to more than 2% of assets in some cases—on the overlying portfolio, in addition to the costs of the underlying portfolios.''); Yuka Hayashi, *Schwab Abandons ''Fund of Funds''—High Fees Were Obstacle to Drawing Investors; New Managers to Step In,* Wall St. J., June 17, 2002, at C17 (''[t]he biggest problem was the high fees that Schwab had to charge in order to cover its own asset-management costs, as well as those of underlying funds.* * *'').

[90] A feeder fund must disclose in its fee table the aggregate expenses of the feeder fund and master fund. *See* Instruction 1(d)(i) to Item 3, Form N–1A. For a description of feeder funds, *see* text accompanying note 18, *supra.*

[91] *See, e.g.,* GE Lifestyle Funds, Prospectus 10 (January 27, 2003), available at *http://www.sec.gov/Archives/edgar/data/1018218/000091205702002852/0000912057–02–002852-index.htm.*

[92] Some of these funds note that expenses will differ depending on the acquiring fund's asset allocation in the acquired funds.

[93] The item would appear directly above the line item titled ''Total Annual Fund Operating Expenses.''

[94] The fee table example requires the fund to disclose the cumulative amount of fund expenses of 1, 3, 5, and 10 years based on a hypothetical investment of $10,000 and an annual 5% return. *See* Item 3, Form N–1A.

[95] This approach is consistent with the current requirement that a feeder fund disclose the aggregate expenses of the feeder fund and master fund. *See supra* note 90.

[96] *See* proposed instruction 3(f)(ii) to Item 3, Form N–1A (to calculate the pro rata share of total operating expenses for each acquired fund, an acquiring fund would divide the acquired fund's total operating expense ratio by 365 days, and multiply the result by the average daily balance invested in the acquired fund and the number of days invested in the acquired fund).

[97] For example, the instructions could require an acquiring fund to take the amounts invested in each acquired fund as of a current measurement date and multiply those amounts by the corresponding total annual fund operating expense ratio for the acquired fund. This would require a fairly simple calculation based on investments on a single day that would reflect the acquired fund's asset size on the measurement date, rather than the actual results that are indirectly included in the acquiring fund's operations. Because it would be based on the most recent allocation of fund assets, this method may also disclose the expenses an investor is more likely to pay. The proposed instructions, however, are less likely to result in an understatement or overstatement of actual expenses paid by the acquiring fund.

[98] *See* proposed instruction 3(f) to Item 3, Form N–1A.

[99] The operating expenses for acquired funds are likely to be for a different period than that of the acquiring fund's fiscal year. If the acquiring and acquired funds are not part of the same fund complex, the acquiring fund would rely on operating expenses the acquired fund has disclosed in its most recent semi-annual report. Those expenses would be for a period that ended before publication of the report, and thus was before the acquiring fund's most recent fiscal year. If the acquiring and acquired funds are part of the same fund complex, the two funds may still have different fiscal years.

[100] *See* proposed instruction 3(f)(iv) to Item 3, Form N–1A.

fee table (even if it no longer holds shares of that fund).[101]

The proposed disclosure requirements also would apply with respect to investments in any unregistered fund that would be an investment company under section 3(a) of the Act but for the exceptions provided in sections 3(c)(1) and 3(c)(7) of the Act.[102] We do not see any reason to treat fund investments in these unregistered funds differently from investments in registered funds. Thus, a fund with a cash sweep arrangement could not avoid reporting the unregistered money market fund's expenses merely because the fund was not registered under the Act. Is there a basis for treating disclosure of unregistered and registered fund expenses differently?

Because we also are proposing to amend Form N–2, a registered closed-end fund of hedge funds would be required to include a pro rata portion of the hedge funds' expenses in its fee table.[103] In the case of a newly offered fund, including a newly offered fund of hedge funds, the fee table would reflect expenses the fund expects to incur based on its initial investments.[104] This approach is similar to that required of new funds.[105] We seek comment on the proposed amendments to Form N–2. In addition to the proposed instructions, are there additional matters our instructions should cover?

Our proposal also would require separate accounts to include in their registration forms, disclosures regarding the expenses of acquired funds. The proposal includes amendments to Forms N–3, N–4, and N–6.[106] We seek comment on the amendments to these forms. Are the different instructions appropriate to the respective forms?[107]

III. General Request for Comments

We request comment on the proposed rules and form amendments that are the subject of this release, suggestions for additional provisions or changes to the rules and form amendments, and comments on other matters that might have an effect on the proposals contained in this release. We encourage commenters to provide data to support their views.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[108] we also request information regarding the potential effect of the proposals on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views. The Commission strives to draft its rules according to principles outlined in its Plain English Handbook.[109] We invite your comments on how to make the proposed rules and form amendments more consistent with those principles and easier to understand.

IV. Cost-Benefit Analysis

We are sensitive to the costs and benefits imposed by our rules. The proposed rules would provide relief to investment companies by providing additional exemptions from the limitations on fund of fund arrangements without requiring the funds to obtain an exemptive order. The proposed amendments to Forms N–1A, N–2, N–3, N–4, and N–6 would provide additional information to shareholders regarding the costs of acquired funds in a fund of funds arrangement. We have identified costs and benefits that may result from the proposed rules and form amendments, as described below.

A. Background on Proposed Rules 12d1–1, 12d1–2, and 12d1–3

Under current law, a fund is limited in the amount of securities it can acquire from another fund. In general under the Act, a registered fund (and companies it controls) cannot:

- Acquire more than three percent of another fund's securities;
- Invest more than five percent of its own assets in another fund; or
- Invest more than ten percent of its own assets in other funds in the aggregate.[110]

In addition, a registered open-end fund, its principal underwriter, and any registered broker or dealer cannot sell the fund's shares to another fund if, as a result:

- The acquiring fund (and any companies it controls) owns more than three percent of the acquired fund's stock; or
- All acquiring funds (and companies they control) in the aggregate own more than ten percent of the acquired fund's stock.[111]

The Act provides three exceptions from these limitations that permit certain fund of funds arrangements. First, section 12(d)(1)(E) permits a fund to invest all its assets in *one* other fund, provided that (i) the depositor of or principal underwriter for the fund is a registered broker or dealer (or a person it controls), and (ii) the acquiring fund is subject to certain voting restrictions on the shares of acquired funds.[112] Second, under section 12(d)(1)(F), a registered fund may invest any amount of its assets in other funds, provided that the acquiring fund (together with its affiliates) acquires no more than three percent of the securities of any other fund.[113] These unaffiliated funds of funds are limited to charging a 1½ percent sales load on their shares and are subject to voting restrictions

[101] *See* proposed instruction 3(f)(ii) to Item 3 (''transaction fees'' included in the calculation for acquired funds' fees and expenses include the total amount of sales loads, redemption fees, or other transaction fees paid by the acquiring fund in connection with acquiring shares in acquired funds during the year).

[102] *See* proposed instruction 3(f)(1) to Item 3. *See also* 15 U.S.C. 80a–3(c)(1), 80a–3(c)(7), and *supra* note 50. High fees also are a concern with funds of hedge funds. *See* NASD Investor Alert, Funds of Hedge Funds—Higher Costs and Risks for Higher Potential Returns (Aug. 23, 2002) (available at: *http://www.nasd.com/Investor/alerts/alert_hedgefunds.htm*) (''Expenses in funds of hedge funds are significantly higher than most mutual funds.''); Stephen J. Brown, William N. Goetzmann, and Bing Lang, Fees on Fees in Funds of Funds 18 (National Bureau of Econ. Research Working Paper No. 9464, 2003) (''The chief disadvantage of [funds of hedge funds] is the high fees that are typically charged * * *.''). *See also* Daniel Kadlac, *Affordable Hedge Funds,* Time.com, *http://www.time.com/globalbusiness/html* (''The big drawback [of a fund of hedge funds] is that you pay two layers of fees: one to the fund-of-funds manager, who in turn gets charged by each fund in the portfolio.'').

[103] *See* proposed instruction 10 to Item 3, Form N–2.

[104] *See* proposed instruction 3(f)(vi) to Item 3, Form N–1A. *See also* instruction 6 to Item 3, Form N–2.

[105] *See* Instruction 5(a) to Item 3, Form N–1A (new funds are instructed to base percentages to be included in the ''Annual Fund Operating Expense'' portion of the fee table on amounts that will be incurred (without reduction for expense reimbursement or fee waiver arrangements), estimating amounts of ''Other Expenses'').

[106] The proposed instructions to Form N–3 would require the same disclosure and calculation as required in the proposed instructions to Forms N–1A and N–2. The proposed instructions for Forms N–4 and N–6 are different, however, because those forms already require registrants to disclose expenses of funds (''portfolio companies'') in which the separate account invests. *See* Item 3, Form N–4, Item 3, Form N–6. Accordingly, the proposed instructions to Forms N–4 and N–6 require that if a portfolio company invests in other funds, the registrant must include in the item disclosing the portfolio company's ''other expenses,'' the Acquired Fund's fees and expenses calculated according to the proposed instructions to Form N–1A.

[107] *See supra* note 106.

[108] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[109] Office of Investor Education and Assistance, U.S. Securities and Exchange Commission, A Plain English Handbook (1998) (available on the Commission's Web site at <*http://www.sec.gov*>).

[110] *See* 15 U.S.C. 80a–12(d)(1)(A). If an acquiring fund is not registered, these limitations apply only with respect to the acquiring fund's acquisition of registered funds.

[111] *See* 15 U.S.C. 80a–12(d)(1)(B).

[112] *See* 15 U.S.C. 80a–12(d)(1)(E). The acquiring fund must either seek instruction from its shareholders with regard to voting all proxies with respect to the acquired fund's securities or vote the acquired fund shares in the same proportion as the vote of all other shareholders. In addition, in the event the acquiring fund is not registered, it cannot substitute the acquired fund shares without Commission approval.

[113] *See* 15 U.S.C. 80a–12(d)(1)(F)(i).

regarding shares of acquired funds.[114] Finally, section 12(d)(1)(G) allows a registered open-end fund or UIT to invest any amount of its own assets in one or more other registered funds or UITs in the same group of investment companies.[115] These affiliated funds of funds are limited to investing in government securities and short-term paper in addition to funds in the same fund group.[116] The exemption also limits sales loads and distribution charges on fund shares, and requires that the acquired fund have a policy that it cannot acquire other fund shares in reliance on section 12(d)(1)(F) or 12(d)(1)(G) of the Act.[117]

We also have issued a number of exemptive orders that have broadened the ability of funds to invest in other funds. Over the past decade, we have issued over 80 orders that permit registered funds to invest in a money market fund advised by the same adviser.[118] Many of those orders also have permitted funds to invest in an unregistered fund operated as a money market fund.[119] In addition to these orders, we have permitted an affiliated fund of funds relying on section 12(d)(1)(G) to invest in funds outside the same fund group subject to the limitations of section 12(d)(1)(F), as well as in other securities not issued by a fund.[120]

The orders discussed above provide exemptions from statutory limitations. A fund that obtains the benefit of the exemption incurs costs of applying for an exemptive order as well as costs of satisfying any conditions imposed in the order. The application costs are primarily legal and include costs of drafting the application and analyzing the ways in which the conditions fit the fund's business model. By contrast, the costs of satisfying conditions include ongoing compliance costs of meeting those conditions. We assume that a fund only seeks an exemptive order if the benefits of the additional flexibility provided by the exemption outweigh the costs of obtaining and satisfying the conditions of an order.

1. Benefits

Proposed rule 12d1–1 would codify our orders that permit a fund to acquire an unlimited number of shares of a registered money market fund. The proposed rule would retain only one condition included in the orders: no sales load, distribution-related fees, or service fees could be imposed on the acquisition of money market fund shares unless the adviser waived an equivalent amount of its fee. The proposed rule would not limit a fund to investing 25 percent of its assets in a money market fund. We believe that any restrictions on an acquiring fund's investments in money market funds should be governed by the fund's investment policies and limitations. Consequently, the proposed rule may provide some additional flexibility to certain funds. We do not know whether many funds are likely to invest more than 25 percent of their assets in money market funds as a result of this change, and we seek comment on the issue.

Under the proposed rule, funds also would be allowed to invest in money market funds advised by a different adviser. We believe that this would allow all funds, particularly small funds without a money market fund in their fund group, the opportunity currently available to large funds to acquire money market fund shares. This might allow smaller funds to be more competitive with larger funds. We seek comment on whether many funds are likely to invest in money market funds outside their fund group.[121]

Proposed rule 12d1–1 also would codify our orders permitting funds to invest cash in unregistered money market funds that comply with rule 2a–7. The proposed rule would require the acquiring fund to ''reasonably believe'' that the unregistered money market fund operates in compliance with rule 2a–7, complies with certain provisions of the Act,[122] as well as other requirements. This standard is slightly different than the condition in our exemptive orders, which requires the acquired fund's compliance with rule 2a–7 and certain provisions of the Act. An acquiring fund could ''reasonably believe'' that an acquired fund is complying with these provisions even if there is a minor or inadvertent violation of one by the acquired fund. In those circumstances, the violation would not

[114] *See* 15 U.S.C. 80a–12(d)(1)(F). The acquiring fund is subject to the voting restrictions imposed under section 12(d)(1)(E). *See supra* note 112. In addition, no issuer of securities held by the acquiring fund is obligated to redeem more than 1 percent of its securities during any period of less than 30 days.

[115] *See* 15 U.S.C. 80a–12(d)(1)(G).

[116] *See* 15 U.S.C. 80a–12(d)(1)(G)(II).

[117] *See* 15 U.S.C. 80a–12(d)(1)(G)(III), (IV). Section 12(d)(1)(G)(III) provides that either (i) the acquiring company does not pay any distribution-related charges with respect to the acquired shares or the acquiring fund does not charge sales loads or distribution-related fees itself, or (ii) sales loads and distribution-related charges with respect to acquiring fund shares and acquired fund shares, when aggregated, are not excessive under rules adopted under section 22(b) or 22(c) of the Act by a securities association registered under section 15A of the Securities Exchange Act or the Commission.

[118] *See supra* note 36. These orders have included the following conditions: (i) Shares of the acquired money market fund are not subject to sales loads, distribution-related fees, or service fees, or if they are, the acquiring fund's adviser will waive its advisory fee in an amount to offset the amount of fees incurred by the acquiring fund; (ii) before approving any advisory contract for the acquiring fund, its board of directors, including a majority of independent directors, considers the extent to which (if any) the advisory fees charged by the adviser should be reduced to account for reduced services as a result of investing cash in the money market fund; (iii) the acquiring fund's investment in money market funds is limited to 25 percent of the acquiring fund's total assets; (iv) the acquiring fund's investment in the money market fund is consistent with the acquiring fund's policies as set forth in its registration statement; (v) the acquiring fund and money market fund are advised by the same adviser; and (vi) the acquired money market fund cannot acquire securities in another fund in excess of the limits of section 12(d)(1)(A) of the Act.

[119] Investments in unregistered funds have been subject to the following conditions: (i) The unregistered money market fund complies with rule 2a–7; (ii) the investment adviser to the unregistered money market fund (or the fund with approval of its board of directors) adopts and monitors the procedures described in rule 2a–7 and takes the other actions required to be taken under the procedures; (iii) an acquiring fund purchases shares of an unregistered money market fund only if the unregistered fund's adviser determines on an ongoing basis that the unregistered money market fund is in compliance with rule 2a–7 and preserves for a period of not less than six years from the date of determination, the first two years in an easily accessible place, a record of the determination and the basis on which it was made, and the record is subject to examination by Commission staff; (iv) the unregistered money market fund complies with the requirements of sections 17(a), (d), and (e), 18, and 22(e) of the Act as if it were a registered open-end fund; (v) the investment adviser to the unregistered money market fund adopts procedures designed to ensure that the fund complies with those provisions of the Act, periodically reviews and updates as appropriate the procedures, and maintains books and records describing those procedures; (vi) the investment adviser to the unregistered money market fund maintains the records required by rules 31(a)–1(b)(1), 31a–1(b)(ii)(2), and 31a–1(b)(9) under the Act for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place and subject to examination by Commission staff; (vii) the net asset value per share with respect to unregistered money market fund shares is determined by dividing the value of the assets belonging to the fund, less the liabilities of the fund, by the number of outstanding shares of the fund; (viii) the acquiring fund purchases and redeems shares of the unregistered money market fund as of the same time and at the same price, and receives dividends and bears its proportionate share of expenses on the same basis, as other shareholders of the unregistered money market fund; and (ix) a separate account is established in the shareholder records of the unregistered money market fund for the account of the acquiring fund.

[120] The orders permitting affiliated funds of funds to invest in funds outside the fund group have required that the acquiring fund's board of directors, including the independent directors, must find that the fees charged under the acquiring fund's advisory contract are based on services that are not duplicative of services provided under any acquired fund's advisory contract.

[121] The other conditions included in our exemptive orders are addressed by requirements under the Act and rules thereunder. Thus, we do not believe that any benefits or costs are associated with eliminating those conditions in the proposed rule.

[122] *See supra* note 119.

cause the acquiring fund to lose its exemption, while a strict standard of compliance could result in the acquiring fund's loss of the exemption. The proposed rule does not include certain conditions imposed in the orders that we believe are addressed by other provisions of the Act or rules thereunder, and with which the unregistered fund would have to comply.

Proposed rule 12d1–2 would codify our exemptive orders that permit an affiliated fund of funds to acquire securities issued by a fund in a different fund group under section 12(d)(1)(F) or 12(d)(1)(A). The proposed rule also would permit an affiliated fund of funds to acquire securities not issued by a fund. An affiliated fund of funds that invests in another fund under section 12(d)(1)(A) or (F) could acquire no more than 3 percent of the shares of any acquired fund in a different fund group. An acquiring fund that invests in securities issued by a fund in a different group under section 12(d)(1)(A) could invest no more than 5 percent of its assets in any one fund in a different group, or 10 percent of its assets in funds in a different group (or groups) in the aggregate. A fund that acquires securities under section 12(d)(1)(F) would not be limited in the amount of assets it could invest in funds in a different fund group. The acquiring fund would, however, be limited to charging a 1½ percent sales load on its shares, subject to voting restrictions with respect to acquired fund securities, and limited in the amount of an acquired fund's securities it could redeem in any period of less than 30 days.[123] The proposed rule would allow funds to choose from one of two sets of conditions under which they may invest in funds outside the fund group. We believe that there may be benefits to permitting funds the ability to invest under either section, whichever may be more beneficial to the fund, and we seek comment on this issue.

Proposed rule 12d1–3 codifies the exemptive orders we have issued permitting funds relying on section 12(d)(1)(F) to charge a sales load in excess of 1½ percent, provided the aggregate sales load and distribution fees on acquiring and acquired fund shares are not excessive under the NASD Sales Charge Rule. This exemption also would be available to an affiliated fund of funds relying on proposed rule 12d1–2 to invest in funds in a different fund group.[124] We seek comment on the benefits and costs of this proposal.

We anticipate that funds and their shareholders would benefit from the proposed rules. As discussed above, funds increasingly have sought exemptive orders (which the Commission has granted) to engage in most of the activities the proposed rules would permit. The application process involved in obtaining exemptive orders imposes direct costs on funds, including preparation and revision of an application, as well as consultations with the staff. The proposed rules would benefit funds and their shareholders by eliminating the direct costs of applying to engage in activities permitted under the rule.[125] The proposed rules would further benefit funds by eliminating the uncertainty that a particular applicant might not obtain relief to engage in the activities permitted under the proposed rules.

The exemptive application process also involves other indirect costs. Funds that apply for an order to permit additional investments forego beneficial investments until they receive the order, while other funds forego the investment entirely rather than seek an exemptive order because the cost would exceed the anticipated benefit of the investment. Eliminating direct and indirect costs of the proposed activities also eliminates factors that discriminate against smaller funds, for which the cost of an exemptive application consistently exceeds the potential benefit.

2. Costs

We do not believe that the proposed rules would impose mandatory costs on any fund. As discussed above, the rules are exemptive, and we believe that no fund would rely on any of them if the benefits did not outweigh the costs of relying on the rule.

We believe the costs of relying on the proposed rules would be the same as or less than the costs to a fund that relies on an existing exemptive order because each of the proposed rules includes the same or fewer conditions than existing orders that provide equivalent exemptive relief.[126] As noted earlier, we assume a fund would only bear the costs of obtaining and complying with an order if the benefits of the order outweighed those costs.

The rule will affect different types of funds in different ways. For a fund that has not sought and would not seek exemptive relief from the statute, the proposed rules would have no effect. For a fund that currently relies on an exemptive order there may be one-time ''learning costs'' in determining the difference between the order and the rule. After making this determination, the costs of relying on any of the rules would be the same as or less than the costs of relying on an order providing similar exemptive relief. In addition, a fund that currently relies on an exemptive order could satisfy all the conditions of any of the proposed rules that provide similar exemptive relief without changing its operation. In the case of rule 12d1–1, the fund would simply be satisfying conditions that are no longer required.

A fund that has not relied on an exemptive order and that intends to rely on one of the proposed rules in the future would have to determine how that rule fits into the fund's business model and the potential costs associated with complying with the rule. Nevertheless, if the Commission never promulgated the rule, those funds would bear the same costs if they considered applying for an exemptive order. Moreover, in the absence of the proposed rules, if these funds applied for exemptive orders and obtained them, their total costs would be the same as or greater than the costs associated with the proposed rules.

B. Proposed Amendments to Forms N–1A, N–2, N–3, N–4, and N–6

Forms N–1A, N–2, and N–3 currently do not require registered funds to disclose information regarding the expenses associated with acquired funds. The proposed amendments to Form N–1A would require a registered

[123] *See supra* note 114.

[124] *See supra* note 123 and accompanying text.

[125] For example, in calendar years 2001 and 2002, 24 funds sought exemptive relief to invest uninvested cash and/or cash collateral from securities lending activities in money market funds, and 8 of those funds also sought exemptive relief to invest cash collateral in unregistered money market funds. In the past 5 years, 13 funds investing in other funds in the same fund group in reliance on section 12(d)(1)(G) have sought exemptive relief to invest in securities other than government securities or short-term paper. During that time, 11 funds investing in other funds in reliance on section 12(d)(1)(F) have sought exemptive relief to charge a sales load greater than 1½ percent, subject to the NASD Sales Charge Rule. The cost to a fund for submitting one of these applications ranges from approximately $7,000 to $67,000. These figures are based on conversations with attorneys and fund employees who have been involved in submitting applications to the Commission.

[126] Under the current system, a fund could obtain the proposed relief by obtaining an exemptive order and complying with the conditions in the order, and a fund incurs costs in obtaining exemptive relief under this system. Our analysis compares the costs a fund would bear to comply with the proposed rules with the costs a fund would bear under the current system to obtain equivalent exemptive relief. Because the conditions in the proposed rules are the same or less onerous than the conditions in the exemptive orders, the costs discussed in this section primarily are costs that a fund would bear to obtain an exemptive order and comply with its conditions.

open-end fund that invests in other funds to include a line item in its fee table, under the fund's annual operating expenses, that lists the aggregate fees and costs of acquired funds. The proposed amendment to Form N–2 would require registered closed-end funds that invest in other funds to provide the same disclosure. The proposed amendment to Form N–3 would require the same disclosure for separate accounts organized as management investment companies that offer variable annuity contracts. The proposal includes instructions on calculating the fees and operating costs of acquired funds. The calculation would aggregate indirect operating expenses of acquired funds and transaction costs and express them as a percentage of average net assets of the acquiring fund.

Forms N–4 and N–6 currently require separate accounts organized as UITs that offer variable annuity and variable life contracts, respectively, to disclose the range of minimum and maximum operating expenses of the portfolio companies in which they invest. The proposed amendment to each of these forms would require a separate account organized as a UIT that invests in a portfolio company that itself invests in other funds, to include the portfolio company's costs of investing in other funds in the portfolio company's operating expenses disclosed in the N–4 or N–6 fee table.

1. Benefits

Under current disclosure requirements, a fund's shareholders may not understand the fees and operating costs of a fund's investment in acquired funds, costs that investors bear indirectly. We believe that the proposed amendments to Forms N–1A, N–2, N–3, N–4, and N–6 would enable shareholders to better understand the expenses that relate to acquired funds, and provide investors the means to compare directly the costs of investing in alternative funds of funds, or the costs of investing in a fund of funds to a more traditional fund. The increased transparency may provide further benefits by allowing investors to choose funds that more closely reflect their preferences for fees and performance. We have no means by which to quantify these benefits, however. We seek comment on the benefits of the proposed amendments (and any alternatives suggested by commenters) as well as any data quantifying those benefits.

2. Costs

The proposed amendments to Forms N–1A, N–2, N–3, N–4, and N–6 would result in costs to registered open-end and closed-end funds, and to separate accounts that offer variable annuity and variable life contracts, which may be passed on to those funds' shareholders. The proposal would require a new disclosure to the annual operating expense item in the fee table for funds that invest in other funds. It also would require separate accounts organized as UITs that offer variable annuity and variable life contracts to include an additional expense in its calculation of annual portfolio company operating expenses. The costs of the proposed disclosures would include both internal costs (for attorneys and accountants) to prepare and review the disclosure, and external costs (for printing and typesetting the disclosure).

First, with respect to Forms N–1A, N–2, and N–3, the proposed disclosures would add a single line item to the fee table for funds that invest in other funds. In the context of the prospectus, we believe that the external costs of including this additional line of disclosure per registered fund would be minimal. With respect to Forms N–4 and N–6, the proposal would require registrants to include in the item for annual portfolio company operating expenses, any fees and expenses of acquired companies, as disclosed in the portfolio company's most recent prospectus.

Second, for purposes of the Paperwork Reduction Act, Commission staff has estimated that the disclosure requirement for calculating the line item according to the proposed instructions would add up to 7 hours to the burden of completing Forms N–1A, N–2, and N–3. Thus, we estimate that the additional annual cost of including the line item per portfolio would equal $410.[127] Commission staff also has estimated that including the additional item in the disclosure of portfolio company expenses on Forms N–4 and N–6 would add approximately 0.5 hours per portfolio, for an annual cost per portfolio of $15.[128] Commission staff estimates that there are 224 fund of funds portfolios.[129] Accordingly, we estimate that, at a minimum, the total annual internal costs of complying with the proposed form amendments would equal $92,000.[130] In addition, Commission staff estimates that half the funds registered under Forms N–1A and N–2 invest in other funds, and 5 separate accounts (with 7 portfolios) registered under Form N–3 invest in other funds and would be required to make the proposed disclosure on an annual basis.[131] For purposes of the Paperwork Reduction Act analysis, Commission staff has estimated that on an annual basis, registrants file (i) initial registration statements covering 483 portfolios and post effective amendments covering 6,542 portfolios on Form N–1A, (ii) 234 initial registration statements and 38 post-effective amendments on Form N–2, and (iii) initial registration statements covering 12 portfolios and post-effective amendments covering 152 portfolios on Form N–3. In addition, Commission staff also estimates that each year, 157 separate accounts file initial registrations and 1,242 separate accounts file post-effective amendments on Form N–4, and 50 separate accounts file initial registrations and 500 separate accounts file post-effective amendments on Form N–6.[132] Of the filings on Forms N–4 and N–6, Commission staff estimates that half the separate accounts invest in portfolio companies that themselves invest in other funds. Thus, Commission staff estimates that the cost of the proposed amendments to Forms N–1A, N–2, N–3, N–4, and N–6 using the calculation in the proposed instructions would be $1.5 million.[133]

We do not know the number of funds that would be likely to begin investing in other funds under the proposed rules.

[127] Commission staff estimated the cost to equal six hours for an intermediate-level accountant at $30 per hour to perform the calculation and one hour for a deputy general counsel at $230 per hour to review the calculation ((6 × $30) + (1 × $230) = $410).

[128] Commission staff estimated the cost to equal one-half hour for an intermediate level accountant to include the expense item in the calculation. The estimated cost is based on the following calculation: 0.5 × $30 = $15.

[129] The estimate of fund of funds portfolios is based on information gathered from Morningstar, Inc.

[130] The estimate is based on the following calculation: 224 portfolios × $410 = $91,840.

[131] *See infra* notes 139, 145, 151, and accompanying text.

[132] Of these post-effective amendments, 150 are updates and 350 are additional post-effective amendments. Separate accounts file initial post-effective amendments to update their financial statements and provide any other material updates. The additional post-effective amendments generally are filed pursuant to Securities Act rule 485(b) to make non-material changes to the registration statement and are generally more limited and much simpler to prepare than post-effective amendments filed as annual updates. We assume that registered funds would include the proposed disclosure only in a post-effective amendment for the annual update.

[133] The estimate is based on the following calculation: ((483 + 6,542/2) × $410) + ((234 + 38/2 × $410) + (7 separate account portfolios × $410) + ((157 + 1,242/2) × $15) + (200 separate accounts/2 × $15) = $1,510,747.5.

Accordingly, we seek comment as to how many funds that do not now invest in other funds, would invest in funds under the proposed rules and be required to report the expenses of acquired funds under the proposed form amendments.

C. Request for Comments

The Commission requests comment on the potential costs and benefits identified in the proposal and any other costs or benefits that may result from the proposal. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[134] we also request comment regarding the potential impact of the proposed rule on the economy on an annual basis. Commenters are requested to provide data to support their views.

V. Paperwork Reduction Act

Proposed rule 12d1–1 would impose a new ''collection of information'' requirement within the meaning of the Paperwork Reduction Act of 1995.[135] If adopted, this collection of information would not be mandatory. In addition, the Commission is proposing amendments to certain forms that currently contain ''collection of information'' requirements. The title of the new collection is ''Rule 12d1–1.'' The titles for the existing collections are: (i) ''Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Companies;'' (ii) ''Form N–2—Registration Statement of Closed-End Management Investment Companies;'' (iii) ''Form N–3—Registration Statement of Separate Accounts Organized as Management Investment Companies;'' (iv) ''Form N–4—Registration Statement of Separate Accounts Organized as Unit Investment Trusts;'' and (v) ''Form N–6—Registration Statement of Separate Accounts Organized as Unit Investment Trusts that Offer Variable Life Insurance Policies.'' 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.

The Commission has submitted these proposals to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. OMB has not yet assigned a control number to the new collection for proposed rule 12d1–1.

A. Proposed Rule 12d1–1

Proposed rule 12d1–1 would permit a fund to invest in registered money market funds and in unregistered money market funds that meet certain conditions in excess of the limits of section 12(d)(1). A registered fund may invest in an unregistered money market fund as long as the unregistered money market fund (i) is limited to investing in the types of securities and other investments in which a money market fund may invest under rule 2a–7; and (ii) undertakes to comply with all other requirements of rule 2a–7. In addition, the acquiring fund must reasonably believe that the unregistered money market fund (i) operates in compliance with rule 2a–7; (ii) complies with sections 17(a), (d), (e), 18, and 22(c) of the Act; (iii) has adopted procedures to ensure that it complies with these statutory provisions; and maintains records to describe those procedures; (iv) maintains the records required under rules 31a–1(b)(1), 31a–1–1(b)(2)(ii), 31a–1(b)(2)(iv), and 31a–1(b)(9) under the Act; and (v) preserves those records permanently, the first two years in an easily accessible place. Rule 2a–7 contains certain collection of information requirements. In addition, the recordkeeping requirements under rule 31 are collections of information. We believe that this exemptive rule will provide funds greater options for cash management. We believe that unregistered money market funds must comply with certain collection of information requirements for registered money market funds to ensure that unregistered money market funds have established procedures for collecting the information necessary to make adequate credit reviews of securities in their portfolios, as well as other recordkeeping requirements that will assist the acquiring fund (and Commission staff in its examination of the unregistered money market fund's adviser) in overseeing the unregistered money market fund.

Based on exemptive orders issued by the Commission, Commission staff estimates that registered funds currently invest in 35 unregistered money market funds in excess of the limits imposed by section 12(d)(1).[136] Under the terms of the exemptive orders, those unregistered money market funds must comply with the requirements of rule 2a–7. Commission staff also estimates that 4 new unregistered money market funds would be established each year that would have to meet the requirements of the proposed rule. We seek comments on these estimates. For purposes of the Paperwork Reduction Act requirements, Commission staff has estimated that a registered money market fund each year spends an average of approximately 539 hours of professional time to record credit risk analyses and determinations regarding adjustable rate securities, asset-backed securities and securities subject to a demand feature or guarantee. Commission staff also estimated that in the first year of operation the board of directors, counsel, and staff of a new registered money market fund spend 38.5 hours to formulate and establish written procedures for stabilizing the fund's NAV and guidelines for delegating certain of the board's responsibilities to the fund's adviser.[137] Based on this estimate, Commission staff estimates the annual hour burden of the proposed rule's paperwork requirements for unregistered money market fund compliance with rule 2a–7 would be 21,175 hours.[138]

Rules 31a–1(b)(1), 31a–1(b)(2)(ii), 31a–1(b)(2)(iv), and 31a–1(b)(9) require registered funds to keep certain records, which include journals and general and auxiliary ledgers, including ledgers for each portfolio security and each shareholder of record of the fund. Most of the records required to be maintained by the rule are the type that generally would be maintained as a matter of good business practice and to prepare the unregistered money market fund's

[134] Pub. L. No. 104–113, Title II, 109 Stat. 163 (1995).

[135] 44 U.S.C. 3501 to 3520.

[136] This estimate may be understated because applicants generally do not identify the unregistered money market funds in which registered funds will invest, and exemptive orders provide relief for unregistered money market funds that may be organized in the future.

[137] These estimates were included in the Commission's most recent Paperwork Reduction Act submission for approval of the collection of information burden for rule 2a–7. The estimates are based on discussions with individuals at money market funds and their advisers who responded to a random survey of 9 money market funds. The actual number of burden hours for credit risk analyses and determinations regarding adjustable rate securities, asset backed securities, and securities subject to a demand feature or guarantee may vary significantly depending on the type and number of portfolio securities held by the individual fund.

In addition, in its Paperwork Reduction Act submission, Commission staff estimated that in a year, only 0.3% of registered money market funds spends 0.5 hours to record board determinations and actions in response to certain events of default or insolvency, and to notify the Commission of the event. We have not included this burden estimate in our estimate for unregistered funds because 0.3 percent of 35 unregistered money market funds is less than 1.

[138] This estimate is based on the following calculation: (35 unregistered money market funds × 539 hours) + (4 new unregistered money market funds × (539 + 38.5 hours) = 21,175. To the extent that unregistered money market funds would keep these records in any case as a matter of good business practice, this estimate may be greater than the actual annual burden.

financial statements. Accordingly, Commission staff estimates that the requirements under rules 31a–1(b)(1), 31a–1(b)(2)(ii), 31a–1(b)(2)(iv), and 31a–1(b)(9) would not impose any additional burden because the costs of maintaining these records would be incurred by unregistered money market funds in any case to keep books and records that are necessary to prepare financial statements for shareholders, to prepare the fund's annual income tax returns, and as a normal business custom.

B. Forms for Registration Statements

We are proposing amendments to require registered open-end and closed-end funds, and separate accounts organized as management investment companies that invest in other funds to disclose aggregate fees of acquired funds. The disclosure would be a line item appearing under the item for annual operating expenses of the fund. We also are proposing that separate accounts organized as UITs that invest in portfolio companies that themselves invest in other funds, include the costs of investing in those other funds in the disclosure on portfolio companies' operating expenses. We believe that the proposed amendments will enable shareholders to understand better the expenses of acquired funds and to compare overall costs of investing in a fund of funds with the costs of an alternative fund of funds, and with the costs of a more traditional fund.

1. Form N–1A

Form N–1A (OMB Control No. 3235–0307), including the proposed amendment, contains collection of information requirements. The likely respondents to this information collection are open-end funds registering with the Commission on Form N–1A. Compliance with the disclosure requirements of Form N–1A is mandatory. Responses to the disclosure requirements are not confidential.

The current burden for preparing an initial Form N–1A filing is 809 hours per portfolio. The current annual hour burden for preparing post-effective amendments on Form N–1A is 101 hours per portfolio. The Commission estimates that, on an annual basis, registrants file initial registration statements covering 483 portfolios, and post-effective amendments covering 6,542 portfolios on Form N–1A.[139] Thus, the Commission estimates that the current total annual hour burden for the preparation and filing of Form N–1A is 1,051,489.[140]

We estimate that a line item prepared according to the proposed instructions would increase the hour burden per portfolio per filing of an initial registration or a post-effective amendment to a registration statement by 7 hours.[141] Commission staff estimates that ½ of funds registered under Form N–1A invest in another fund, and would be required to make the proposed disclosure.[142] We seek comment on these estimates. Thus, if the proposed amendments to Form N–1A instructions were adopted, the total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments to Form N–1A would be 1,076,080.[143]

2. Form N–2

Form N–2 (OMB Control No. 3235–0026), including the proposed amendment, contains collection of information requirements. The likely respondents to this information collection are closed-end funds registering with the Commission on Form N–2. Compliance with the disclosure requirements of Form N–2 is mandatory. Responses to the disclosure requirements are not confidential.

The current burden for preparing an initial Form N–2 filing is 544.7 hours per fund.[144] The current burden for preparing a post-effective amendment on Form N–2 is 103.7 hours. Commission staff estimates that an average of 234 closed-end funds file an initial registration statement and 38 file a post-effective amendment on Form N–2 each year.[145] Thus, the Commission estimates that the current annual hour burden for preparing an N–2 is 131,400.[146]

Commission staff estimates that it would take the same amount of time to prepare the line item disclosure in Form N–2 as it would to prepare the disclosure in Form N–1A (see previous discussion). As with funds registered under Form N–1A, we are assuming that ½ of funds registered under Form N–2 invest in another fund, and would be required to make the proposed disclosure. We seek comment on those numbers. Accordingly, if the proposed amendments to Form N–2 were adopted, we estimate the total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments to Form N–2 would be 132,352.[147]

3. Form N–3

Form N–3 (OMB Control No. 3235–0316), including the proposed amendment, contains collection of information requirements. The likely respondents to this information collection are separate accounts organized as management investment companies registering with the Commission on Form N–3. Compliance with the disclosure requirements of Form N–3 is mandatory. Responses to the disclosure requirements are not confidential.

The current burden for preparing an initial Form N–3 filing is 915.2 hours per portfolio. The current burden for preparing a post-effective amendment on Form N–3 is 150.4 hours per portfolio. Commission staff estimates that 3 initial registrations and 38 post effective amendments are filed annually with an average of 4 portfolios per filing, for a total of 12 portfolios covered by initial registrations and 152 portfolios covered by post-effective amendments annually.[148] Thus, the Commission estimates that the current annual hour burden for preparing an N–3 is 33,843.[149]

We estimate that it would take the same amount of time to prepare a line item according to the proposed instructions in Form N–3, as in Forms N–1A and N–2. Thus we estimate the

[139] These estimates are based on information in the Commission's filing database and from Morningstar databases. They assume that of the 3,075 registered open-end funds, 179 registrants will file an initial registration statement and 2,423 registrants will file one post-effective amendment with material differences each year with an average of 2.7 portfolios per registrant.

[140] This estimate is based on the following calculation: ((483 × 809) + (6,542 × 101) = 1,051,489). The total annual hour burden approved for N–1A is 916,162. The increase over the approved annual burden is due to an increase in the number of registrants filing initial registration statements on Form N–1A.

[141] *See supra* note 119.

[142] This is based on information in the Commission's database of Form N–SAR filings.

[143] This estimate is based on the following calculation: (1,051,489 + (483/2 × 7) + (6,542/2 × 7)) = 1,076,080).

[144] Initial registration statements and post-effective amendments filed on Form N–2 generally cover only one portfolio.

[145] This estimate is based on information in the Commission's database.

[146] This estimate is based on the following calculation: ((234 × 544.7) + (38 × 103.7) = 131,400.4). The total annual hour burden approved for Form N–2 is 80,198.6. The increase is due to an increase in the number of initial registration statements filed on Form N–2.

[147] This estimate is based on the following calculation: (131,400 + (234/2 × 7) + (38/2 × 7) = 132,352).

[148] This estimate is based on information in the Commission's database.

[149] This estimate is based on the following calculation: (12 portfolios × 915.2) + (152 portfolios × 150.4 hours) = 33,843.2. The total annual hour burden approved for Form N–3 is 36,096. The decrease is due to a decrease in the number of post-effective amendments filed on Form N–3.

proposed line item would increase the hour burden per portfolio per filing of an initial registration or a post-effective amendment to a registration statement by 7 hours.[150] Commission staff estimates that 5 registrants with 7 portfolios registered on Form N–3 invest in another fund, and would be required to make the proposed disclosure.[151] We seek comment on these numbers. Thus, if the proposed amendments to Form N–3 instructions were adopted, the Commission estimates that the total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments to Form N–3 would be 33,934.[152]

4. Form N–4

Form N–4 (OMB Control No. 3235–0318), including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are separate accounts organized as UITs that offer variable annuity contracts registering with the Commission on Form N–4. Compliance with the disclosure requirements of Form N–4 is mandatory. Responses to the disclosure requirements are not confidential.

The current burden for preparing an initial registration on Form N–4 is 273.2 hours per separate account. The current annual burden for preparing a post-effective amendment on Form N–4 is 195 hours per separate account. Commission staff estimates that an average of 157 separate accounts organized as UITs that offer variable annuity contracts file an initial registration statement and 1,242 file a post-effective amendment on Form N–4 each year.[153] Thus, the Commission estimates that the current annual hour burden for preparing an N–4 is 285,082.[154]

Commission staff estimates that it would take ½ hour to include in the disclosure of total annual portfolio company operating expenses, the line item from the portfolio company's prospectus disclosing acquired fund fees and expenses. We estimate that ½ of separate accounts registering on Form N–4 invest in portfolio companies that invest in other funds, and would be required to make the proposed disclosure.[155] We seek comment on those numbers. Accordingly, if the proposed amendments to Form N–4 were adopted, the total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments to Form N–4 would be 285,432.[156]

5. Form N–6

Form N–6 (OMB Control No. 3235–0503), including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are separate accounts organized as UITs that offer variable life insurance contracts registering with the Commission on Form N–6. Compliance with the disclosure requirements of Form N–6 is mandatory. Responses to the disclosure requirements are not confidential.

The current burden for preparing an initial registration on Form N–6 is 765 hours. The current annual burdens for preparing a post-effective amendment for an annual update and an additional post-effective amendment on Form N–6 are 65 hours and 10 hours, respectively.[157] Commission staff estimates that an average of 50 initial registration statements, 150 post-effective amendments for an annual update, and 350 additional post-effective amendments will be filed by variable life insurance policies issued by separate accounts on Form N–6 each year.[158] Thus, the Commission estimates that the current annual hour burden for preparing Form N–6 is 51,500.[159]

Commission staff estimates that it would take ½ hour to include in the disclosure of total annual portfolio company operating expenses, the line item from the portfolio company's prospectus disclosing acquired fund fees and expenses. We estimate that ½ of separate accounts registering on Form N–6 invest in portfolio companies that invest in other funds, and would be required to make the proposed disclosure.[160] We seek comment on those numbers. Accordingly, if the proposed amendments to Form N–6 were adopted, the total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments to Form N–6 would be 51,550.[161]

C. Request for Comments

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed rules and form amendments should direct them to the Office of Management and Budget, Attention Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–18–03. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this Release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–18–03, and be submitted to the Securities and Exchange Commission, Records

[150] *See supra* note 127.

[151] This estimate is based on information in the Commission's database of Form N–SAR filings.

[152] This estimate is based on the following calculation: 33,843 + (7 × 7) + (12/2 × 7) = 33,934.

[153] This estimate is based on information in the Commission's database.

[154] This estimate is based on the following calculation: (157 × 273.2) + (1242 × 195) = 285,082.4. The total annual hour burden approved for Form N–4 is 300,292. The decrease is due to a decrease in the number of registrants filing post-effective amendments on Form N–4.

[155] Commission staff estimates that each portfolio would be required to include the disclosure either in one initial registration or post-effective amendment each year.

[156] This estimate is based on the following calculation: (285,082.4 + (157/2 × 0.5) + (1,242/2 × 0.5) = 285,432.2).

[157] The hour burden for filing additional post-effective amendments is significantly less than that for the post-effective amendment for the annual update. *See supra* note 132.

[158] This estimate is based on information in the Commission's database.

[159] This estimate is based on the following calculation: (50 × 765) + (150 × 65) + (350 × 10) = 51,500). The total annual hour burden approved for Form N–6 is 61,135. The approved burden was based on estimates of filings at the time Form N–6 was proposed, and was not based on actual form filings.

[160] Commission staff estimates that each portfolio would be required to include the disclosure either in an initial registration or post-effective amendment each year.

[161] This estimate is based on the following calculation: (51,500 + (50/2 × 0.5) + (150/2 × 0.5) = 51,550).

Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

VI. Consideration of Promotion of Efficiency, Competition and Capital Formation

Section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.[162]

A. Proposed Rules 12d1–1, 12d1–2, and 12d1–3

Proposed rules 12d1–1, 12d1–2, and 12d1–3 will expand the circumstances in which funds can invest in other funds without first obtaining an exemptive order from the Commission, which can be costly and time-consuming. We anticipate that the proposed rules will promote efficiency and competition. Proposed rule 12d1–1 would permit funds to acquire shares of money market funds in the same or in a different fund group in excess of the limitations in section 12(d)(1). This exemption should allow funds, particularly small funds without a money market fund in their complex, to allocate their uninvested cash more efficiently and thereby increase competition among funds. Proposed rule 12d1–2 would permit an affiliated fund of funds to acquire limited amounts of securities issued by funds outside the same fund group and securities not issued by a fund, as well as permit a traditional equity or bond fund to invest in funds within the same fund complex. We believe that this expansion of investment opportunities also will permit funds to allocate their investments more efficiently. The effects of the proposed rules on capital formation are unclear.

B. Proposed Amendments to Forms N–1A, N–2, N–3, N–4, and N–6

The proposed form amendments are intended to provide better transparency for fund shareholders with respect to the costs of investing in funds of funds. The enhanced disclosure requirements would provide shareholders with greater access to information regarding the indirect costs they bear when a fund in which they invest purchases shares of other funds. This information should promote more efficient allocation of investments by investors and more efficient allocation of assets among competing funds because investors may compare and choose funds based on their preferences for cost more easily. The proposed amendments may also improve competition, as enhanced disclosure may prompt funds to provide improved products and services that may have a greater appeal to better-informed investors. Enhanced disclosure also may prompt acquiring funds to invest in acquired funds with lower costs. Finally, the effects of the proposed amendments on capital formation are unclear. Although, as noted above, we believe that the proposed amendments would benefit investors, the magnitude of the effect of the proposed amendments on efficiency, competition, and capital formation is difficult to quantify, particularly given that most funds do not currently provide the type of disclosure contemplated by the proposed amendments.

C. Request for Comment

We request comment on whether the proposed rules and form amendments, if adopted, would promote efficiency, competition, and capital formation. We also request comment on whether the proposed rules and form amendments, if adopted, would impose a burden on competition. Commenters are requested to provide empirical data and other factual support for their views, if possible.

VII. Summary of Initial Regulatory Flexibility Analysis

We have prepared an Initial Regulatory Flexibility Analysis (''IRFA'') under 5 U.S.C. 603 regarding proposed rules 12d1–1, 12d1–2, and 12d1–3, and proposed amendments to Forms N–1A, N–2, N–3, N–4, and N–6 under the Investment Company Act. The following summarizes the IRFA. The IRFA summarizes the reasons, objectives, and legal basis for the proposed rules and form amendments. The IRFA also discusses the effect of the proposed rules and form amendments on small entities. The staff estimates, based upon Commission filings, that there are approximately 5,025 active registered funds and 48 business development companies, of which approximately 209 and 28 are small entities, respectively.[163] The staff estimates that few, if any, registered separate accounts are small entities. Funds that are small entities, like other funds, may rely on the proposed rules if they satisfy the conditions. Under the proposed form amendments, a fund that invests in another fund would be required to disclose the aggregate expenses of acquired funds.

We believe that the proposed rules would have little impact on small entities. Like other funds, small entities would be affected by the proposed rules only if they determined to use the exemptions provided under the proposed rules. Few small entities have applied for relief to engage in the activities that would be permitted under the proposed rules.[164] The proposed amendments to Forms N–1A and N–2 would likely have a greater impact on small entities.

As noted above, compliance with the proposed rules is voluntary, and therefore the proposed rules would not impose mandatory reporting or recordkeeping requirements and would not materially increase other compliance requirements. No federal rules duplicate or conflict with the proposed rules. The Commission is seeking comment on the proposed amendments to Forms N–1A, N–2, N–3, N–4, and N–6. Commission staff has estimated that the burden per small fund portfolio would be up to 7 hours, at a cost of $410.[165] Assuming half of small funds invest in other funds and were required to comply with the form amendments, we estimate the annual disclosure cost for small entities would be $93,685.[166]

We have considered significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. We considered: (a) Differing compliance or reporting requirements or

[162] 15 U.S.C. 80a–2(c).

[163] For purposes of the Regulatory Flexibility Act, a fund is a small entity if the fund, together with other funds in the same group of related funds, has net assets of $50 million or less as of the end of its most recent fiscal year. Rule 0–10 [17 CFR 270.0–10]. The number of small entities is derived from analyzing information from databases such as Morningstar, Inc. and Lipper. Some or all of these entities may contain multiple series or portfolios, which are also small entities.

[164] If the rules were adopted more small entities may use the relief provided, but the number of small entities engaging in these activities would probably remain small.

[165] If each portfolio of a registered fund includes the proposed disclosure, staff estimates the disclosure required by the proposed instructions would take up to 6 hours for an intermediate accountant at a rate of $30 per hour plus one hour for a deputy general counsel at a rate of $230 per hour to perform ((6 × $30) + (1 × $230) = $410). *See* Securities Industry Association, *Report on Management and Professional Earnings in the Securities Industry* (2002).

[166] There are 157 small funds registered under Form N–1A, with an average of 2.7 portfolios per registrant. There are 33 small funds registered under Form N–2, with an average of 1 portfolio per registrant. Thus, Commission staff estimates there are a total of 457 portfolios ((157 × 2.7) + 33 = (423.9 + 33) = 456.9) reporting under Forms N–1A and N–2. The estimate of annual disclosure cost is based on the following calculation: 457/2 portfolios × $410 = $93,685.

timetables that take into account the resources available to small entities; (b) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (c) performance rather than design standards; and (d) an exemption from coverage of the rule, or any part thereof, for small entities. The rule requirements, as explained above, are designed to protect the interests of all fund investors, and an exemption from the conditions in the proposed rules for small entities would not be consistent with the protection of investors. Further clarification, consolidation, or simplification of the requirements is not necessary. The conditions of the rules are design rather than performance standards.

We encourage comment on the IRFA, especially with regard to the number of small entities that are likely to rely on the proposed rules and the impact of the proposed form amendments on small entities. A copy of the IRFA is available from Penelope W. Saltzman, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

VIII. Statutory Authority

The Commission is proposing rules 12d1–1, 12d1–2, and 12d1–3 under the authority set forth in sections 6(c), 12(d)(1)(J), and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–12(d)(1)(J), 80a–37(a)]. The Commission is proposing amendments to registration forms under the authority set forth in sections 6, 7(a), 10 and 19(a) of the Securities Act of 1933 [15 U.S.C. 77f, 77g(a), 77j, 77s(a)], and sections 8(b), 24(a), and 30 of the Act [15 U.S.C. 80a–8(b), 80a–24(a), and 80a–29].

List of Subjects

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules and Form Amendments

For the reasons set out in the preamble, the Commission proposes to amend Title 17, Chapter II of the Code of Federal Regulations to read as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 is amended by revising the subauthority for § 270.12d1–1 to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted;

* * * * *

Sections 270.12d1–1, 270.12d1–2, and 270.12d1–3 are also issued under 15 U.S.C. 80a–6(c), 80a–12(d)(1)(J), and 80a–37(a).

* * * * *

2. Sections 270.12d1–1, 270.12d1–2, and 270.12d1–3 are added to read as follows:

§ 270.12d1–1 Exemptions for investments in money market funds.

(a) *Exemptions.* If the conditions of paragraph (b) of this section are satisfied, notwithstanding sections 12(d)(1)(A), 12(d)(1)(B), and 17(a) of the Act (15 U.S.C. 80a–12(d)(1)(A), 80a–12(d)(1)(B), and 80a–17(a)), and § 270.17d–1:

(1) An investment company (''Acquiring Fund'') may purchase and redeem shares issued by a Money Market Fund; and

(2) A Money Market Fund, any principal underwriter therefor, and a broker or a dealer may sell or otherwise dispose of shares issued by the Money Market Fund to an Acquiring Fund.

(b) *Conditions.*

(1) *Administrative fees.* The Acquiring Fund pays no Administrative Fees, or the Acquiring Fund's investment adviser waives its advisory fee in an amount necessary to offset any Administrative Fees.

(2) *Unregistered money market funds.* If the Money Market Fund is not an investment company registered under the Act:

(i) The Acquiring Fund reasonably believes that the Money Market Fund:

(A) Operates in compliance with § 270.2a–7;

(B) Complies with sections 17(a), (d), (e), 18, and 22(e) of the Act (15 U.S.C. 80a–17(a), (d), (e), 80a–18, and 80a–22(e)) as if it were a registered open-end investment company; and

(C) Has adopted procedures designed to ensure that it complies with sections 17(a), (d), (e), 18, and 22(e) of the Act (15 U.S.C. 80a–17(a), (d), (e), 80a–18, and 80a–22(e)) as if it were a registered open-end investment company, periodically reviews and updates those procedures, and maintains books and records describing those procedures;

(D) Maintains the records required by §§ 270.31a–1(b)(1), 270.31a–1(b)(2)(ii), 270.31a–1(b)(2)(iv), and 270.31a–1(b)(9); and

(E) Preserves permanently, the first two years in an easily accessible place, all books and records required to be made under paragraphs (b)(2)(i)(C) and (D) of this section, and makes those records available for examination on request by the Commission or its staff; and

(ii) The adviser to the Money Market Fund is registered with the Commission as an investment adviser under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3).

(c) *Definitions.*

(1) *Administrative Fees* means any sales charge, as defined in rule 2830(b)(8) of the Conduct Rules of the NASD, or service fee, as defined in rule 2830(b)(9) of the Conduct Rules of the NASD, charged in connection with the purchase, sale, or redemption of securities issued by a Money Market Fund.

(2) *Investment company* includes a company that would be an investment company under section 3(a) of the Act (15 U.S.C. 80a–3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the Act (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)).

(3) *Money Market Fund* means:

(i) An open-end management investment company registered under the Act that is regulated as a money market fund under § 270.2a–7; or

(ii) A company that would be an investment company under section 3(a) of the Act (15 U.S.C. 80a–3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the Act (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)) and that:

(A) Is limited to investing in the types of securities and other investments in which a money market fund may invest under § 270.2a–7; and

(B) Undertakes to comply with all the other requirements of § 270.2a–7, except that, if the company has no board of directors, the company's investment adviser performs the duties of the board of directors.

§ 270.12d1–2 Exemptions for investment companies relying on section 12(d)(1)(G) of the Act.

(a) *Exemption to acquire other securities.* Notwithstanding section 12(d)(1)(G)(i)(II) of the Act (15 U.S.C. 80a–12(d)(1)(G)(i)(II)), a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act (15 U.S.C. 80a–12(d)(1)(G)) to acquire securities issued by another registered investment company that is in the same group of

investment companies may acquire, in addition to Government securities and short-term paper:

(1) Securities issued by an investment company, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act (15 U.S.C. 80a–12(d)(1)(A) or 80a–12(d)(1)(F));

(2) Securities (other than securities issued by an investment company); and

(3) Securities issued by a Money Market Fund, when the acquisition is in reliance on § 270.12d1–1.

(b) *Definitions.* For purposes of this section, *Money Market Fund* has the same meaning as in § 270.12d1–1(c)(3).

§ 270.12d1–3 Exemptions for investment companies relying on section 12(d)(1)(F) of the Act.

(a) *Exemption from sales charge limits.* A registered investment company (''Acquiring Company'') that relies on section 12(d)(1)(F) of the Act (15 U.S.C. 80a–12(d)(1)(F)) to acquire securities issued by an investment company (''Acquired Company'') may offer or sell any security it issues through a principal underwriter or otherwise at a public offering price that includes a sales load of more than 1½ percent if any sales charges and service fees charged with respect to the Acquiring Company's securities, when aggregated with the sales charges and service fees charged with respect to the Acquired Company's securities, do not exceed the limits set forth in rule 2830 of the Conduct Rules of the National Association of Securities Dealers, Inc. applicable to a fund of funds.

(b) *Definitions.* For purposes of this section, the terms *fund of funds*, *sales charge*, and *service fee* have the same meanings as is attributed to those terms in rule 2830(b) of the National Association of Securities Dealers, Inc. Rules.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

3. The authority citation for Part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

4. 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.

* * * * *

5. Item 3 of Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by adding paragraph (f) to Instruction 3 to read as follows:

Note: The text of Form N–1A does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–1A

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Item 3. Risk/Return Summary: Fee Table

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Instructions.

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3. Annual Fund Operating Expenses.

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(f)(i) If the Fund (unless it is a Feeder Fund) invests in shares of one or more ''Acquired Funds,'' add a subcaption to the ''Annual Fund Operating Expenses'' portion of the table directly above the subcaption titled ''Total Annual Fund Operating Expenses.'' Title the additional subcaption: ''[Acquired Fund] Fees and Expenses.'' Disclose in the subcaption fees and expenses incurred indirectly by the Fund as a result of investment in shares of one or more ''Acquired Funds.'' For purposes of this item, an ''Acquired Fund'' means any company in which the Fund invests that (A) is an investment company or (B) would be an investment company under section 3(a) of the Investment Company Act (15 U.S.C. 80a–3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the Investment Company Act (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)).

(ii) Determine the ''[Acquired Fund] Fees and Expenses'' according to the following formula:

$$\text{AFFE} = \frac{\left[\left(F_1/365\right)*AI_1*D_1\right]+\left[\left(F_2/365\right)*AI_2*D_2\right]+\left[\left(F_3/365\right)*AI_3*D_3\right]+\text{Transaction Fees}}{\text{Average Net Assets of the Fund}}$$

Where:

AFFE = Acquired Fund fee expense;

F_1, F_2, F_3, . . . = Total annual fund operating expense ratio (gross) for each Acquired Fund;

AI_1, AI_2, AI_3, . . . = Average invested balance in each Acquired Fund;

D_1, D_2, D_3, . . . = Number of days invested in each Acquired Fund; and

''Transaction Fees'' = The total amount of sales loads, redemption fees, or other transaction fees paid by the Fund in connection with acquiring shares in any Acquired Funds during the most recent fiscal year.

(iii) Calculate the average net assets of the Fund for the most recent fiscal year, as provided in Item 9(a) (*see* Instruction 4 to Item 9(a)).

(iv) If the Acquired Fund and the Fund are part of the same ''group of investment companies'' (as defined in section 12(d)(1)(G)(ii) of the Investment Company Act (15 U.S.C. 80a–12(d)(1)(G)(ii))), the total annual expense ratio used for purposes of this calculation (F_1) is the actual total annual expense ratio of the Acquired Fund for the Acquiring Fund's most recent fiscal year. If the Acquired Fund and the Fund are not part of the same ''group of investment companies,'' the total annual expense ratio used for purposes of this calculation (F_1) is: (A) the gross total annual fund operating expense ratio for the Acquired Fund's most recent fiscal year disclosed in the financial highlights table of the Acquired Fund's most recent semi-annual report filed with the Commission; or (B) in the case of an Acquired Fund that does not provide a gross total annual expense ratio in its semi-annual report or does not file semi-annual reports with the Commission, the ratio of total annual operating expenses of the Acquired Fund to average total annual net assets of the Acquired Fund for its most recent fiscal year, as disclosed in the most recent communication from the Acquired Fund to the Fund. In each case, the total annual expense ratio used should not include the effect of waivers or reimbursements by the Acquired Funds' investment advisers or sponsors. The Fund may disclose the AFFE determined based on the net expenses of the Acquired Funds in a footnote to the fee table.

(v) To determine the average invested balance (AI_1), the numerator is the sum of the amount initially invested in an Acquired Fund during the most recent fiscal year (if the investment was held at the end of the previous fiscal year,

use the amount invested as of the end of the previous fiscal year) and the amounts invested in the Acquired Fund as of each month end during the period the investment is held by the Fund (if the investment was held through the end of the fiscal year, use each month-end through and including the fiscal year-end). Divide the numerator by the number of measurement points included in the calculation of the numerator (*i.e.*, if an investment is made during the fiscal year and held for 3 succeeding months, the denominator would be 4).

(vi) A New Fund should base the ''[Acquired Fund] Fees and Expenses'' on assumptions as to the specific Acquired Funds in which the New Fund expects to invest. Disclose in a footnote to the table that [Acquired Fund] Fees and Expenses are based on estimated amounts for the current fiscal year.

(vii) The Fund may substitute the term used in the prospectus to refer to the Acquired Funds for the bracketed portion of the caption provided.

* * * * *

6. Item 3 of Form N–2 [referenced in §§ 239.14 and 274.11a–1] is amended by:

a. Redesignating paragraph 10 under the Instructions titled ''Example'' as paragraph 11; and

b. Adding new paragraph 10 before the heading ''Example'' to read as follows:

Note: The text of Form N–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–2

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Item 3. Fee Table and Synopsis

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Instructions

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Annual Expenses

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10. a. If the Registrant invests in shares of one or more ''Acquired Funds,'' add a subcaption to the ''Annual Expenses'' portion of the table directly above the subcaption titled ''Total Annual Expenses.'' Title the additional subcaption: ''[Acquired Fund] Fees and Expenses.'' Disclose in the subcaption fees and expenses incurred indirectly by the Registrant as a result of investment in shares of one or more ''Acquired Funds.'' For purposes of this item, an ''Acquired Fund'' means any company in which the Registrant invests (A) that is an investment company or (B) that would be an investment company under section 3(a) of the 1940 Act (15 U.S.C. 80a–3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)).

b. Determine the ''[Acquired Fund] Fee and Expenses'' according to the following formula:

$$\text{AFFE} = \frac{\left[\left(F_1/365\right)*AI_1*D_1\right]+\left[\left(F_2/365\right)*AI_2*D_2\right]+\left[\left(F_3/365\right)*AI_3*D_3\right]+\text{Transaction Fees}}{\text{Average Net Assets of the Registrant}}$$

Where:

AFFE = Acquired Fund fee expense;

F_1, F_2, F_3, . . . = Total annual fund operating expense ratio for each Acquired Fund;

AI_1, AI_2, AI_3, . . . = Average invested balance in each Acquired Fund;

D_1, D_2, D_3, . . . = Number of days invested in each Acquired Fund; and

''Transaction Fees'' = The total amount of sales loads, redemption fees, or other transaction fees paid by the Registrant in connection with acquiring shares in any Acquired Funds during the most recent fiscal year.

c. Calculate the average net assets of the Registrant for the most recent fiscal year, as provided in Item 4.1 (*see* Instruction 15 to Item 4).

d. If the Acquired Fund and the Registrant are part of the same ''group of investment companies'' (as defined in section 12(d)(1)(G)(ii) of the 1940 Act (15 U.S.C. 80a–12(d)(1)(G)(ii))), the total annual expense ratio used for purposes of this calculation (F_1) is the actual total annual expense ratio of the Acquired Fund for the Acquiring Fund's most recent fiscal year. If the Acquired Fund and the Registrant are not part of the same ''group of investment companies,'' the total annual expense ratio used for purposes of this calculation (F_1) is: (A) the total annual fund operating expense ratio for the Acquired Fund's most recent fiscal year disclosed in the financial highlights table of the Acquired Fund's most semi-annual report filed with the Commission; or (B) in the case of an Acquired Fund that does not provide a total annual expense ratio in its semi-annual report or does not file semi-annual reports with the Commission, the ratio of total annual operating expenses of the Acquired Fund to average total annual net assets of the Acquired Fund for its most recent fiscal year, as disclosed in the most recent communication from the Acquired Fund to the Registrant.

e. To determine the average invested balance (AI_1), the numerator is the sum of the amount initially invested in an Acquired Fund during the most recent fiscal year (if the investment was held at the end of the previous fiscal year, use the amount invested as of the end of the previous fiscal year) and the amounts invested in the Acquired Fund as of each month end during the period the investment is held by the Registrant (if the investment was held through the end of the fiscal year, use each month-end through and including the fiscal year-end). Divide the numerator by the number of measurement points included in the calculation of the numerator (*i.e.*, if an investment is made during the fiscal year and held for 3 succeeding months, the denominator would be 4).

f. Base the ''[Acquired Fund] Fees and Expenses'' on (i) assumptions about specific funds in which the Registrant expects to invest, and (ii) estimates of the amount of assets the Registrant expects to invest in each of those Acquired Funds with the proceeds of the offering.

g. The Registrant may substitute the term used in the prospectus to refer to the Acquired Funds for the bracketed portion of the caption provided.

* * * * *

7. Item 3 of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by:

a. Redesignating paragraph 19 under the Instructions titled ''Example'' as paragraph 20; and

b. Adding new paragraph 19 before the heading ''Example'' to read as follows:

Note: The text of Form N–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–3

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Item 3. Synopsis

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Instructions

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Annual Expenses

* * * * *

19. (a) If the Registrant invests in shares of one or more ''Acquired Funds,'' add a subcaption to the ''Annual Expenses'' portion of the table directly above the subcaption titled ''Total Annual Expenses.'' Title the additional subcaption: ''[Acquired Fund] Fees and Expenses.'' Disclose in the subcaption fees and expenses incurred indirectly by the Registrant as a result of investment in shares of one or more ''Acquired Funds.'' For purposes of this Item, an ''Acquired Fund'' means any company in which the Fund invests that (i) is an investment company or (ii) would be an investment company under section 3(a) of the 1940 Act (15 U.S.C. 80a–3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)).

(b) Determine the ''[Acquired Fund] Fees and Expenses'' according to the following formula:

$$\text{AFFE} = \frac{\left[\left(F_1/365\right)*AI_1*D_1\right]+\left[\left(F_2/365\right)*AI_2*D_2\right]+\left[\left(F_3/365\right)*AI_3*D_3\right]+\text{Transaction Fees}}{\text{Average Net Assets of the Fund}}$$

Where:

AFFE = Acquired Fund fee expense;

F_1, F_2, F_3, . . . = Total annual fund operating expense ratio for each Acquired Fund;

AI_1, AI_2, AI_3, . . . = Average invested balance in each Acquired Fund;

D_1, D_2, D_3, . . . = Number of days invested in each Acquired Fund; and

''Transaction Fees'' = The total amount of sales loads, redemption fees, or other transaction fees paid by the Registrant in connection with acquiring shares in any Acquired Funds during the most recent fiscal year.

(c) Calculate the average net assets of the Registrant for the most recent fiscal year, as provided in Item 4(a) (*see* Instruction 10 to Item 4(a)).

(d) If the Acquired Fund and the Registrant are part of the same ''group of investment companies'' (as defined in section 12(d)(1)(G)(ii) of the 1940 Act (15 U.S.C. 80a–12(d)(1)(G)(ii))), the total annual expense ratio used for purposes of this calculation (F1) is the actual total annual expense ratio of the Acquired Fund for the Acquiring Fund's most recent fiscal year. If the Acquired Fund and the Registrant are not part of the same ''group of investment companies,'' the total annual expense ratio used for purposes of this calculation (F1) is: (i) the total annual fund operating expense ratio for the Acquired Fund's most recent fiscal year disclosed in the financial highlights table of the Acquired Fund's most recent semi-annual report filed with the Commission; or (ii) in the case of an Acquired Fund that does not provide a total annual expense ratio in its semi-annual report or does not file a semi-annual report with the Commission, the ratio of total annual operating expenses of the Acquired Fund to average total annual net assets of the Acquired Fund for its most recent fiscal year, as disclosed in the most recent communication from the Acquired Fund to the Registrant.

(e) To determine the average invested balance (AI_1), the numerator is the sum of the amount initially invested in an Acquired Fund during the most recent fiscal year (if the investment was held at the end of the previous fiscal year, use the amount invested as of the end of the previous fiscal year) and the amounts invested in the Acquired Fund as of each month end during the period the investment is held by the Registrant (if the investment was held through the end of the fiscal year, use each month-end through and including the fiscal year-end). Divide the numerator by the number of measurement points included in the calculation of the numerator (*i.e.*, if an investment is made during the fiscal year and held for 3 succeeding months, the denominator would be 4).

(f) A New Registrant should base the ''[Acquired Fund] Fees and Expenses'' on assumptions as to the specific funds in which the New Registrant assumes it will invest. Disclose in a footnote to the table that ''[Acquired Fund] Fees and Expenses'' are based on estimated amounts for the current fiscal year.

(g) The Registrant may substitute the term used in the prospectus to refer to the Acquired Funds for the bracketed portion of the caption provided.

* * * * *

8. Item 3 of Form N–4 (referenced in §§ 239.17b and 274.11c) is amended by adding a sentence at the end of paragraph 17(a) under the Instructions to read as follows:

Note: The text of Form N–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–4

* * * * *

Item 3. Synopsis

* * * * *

Instructions

* * * * *

Total Annual [Portfolio Company] Operating Expenses

* * * * *

17. (a) * * * If any portfolio company invests in shares of one or more ''Acquired Funds,'' ''Total Annual [Portfolio Company] Operating Expenses'' for the portfolio company must also include fees and expenses of the Acquiring Funds, calculated in accordance with instruction 3(f) of Item 3 of Form N–1A (17 CFR 239.15A; 17 CFR 274.11A). For purposes of this paragraph, an ''Acquired Fund'' means any company in which the portfolio company invests that (i) is an investment company or (ii) would be an investment company under section 3(a) of the 1940 Act (15 U.S.C. 80a–3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)).

9. Item 3 of Form N–6 (referenced in §§ 239.17c and 274.11d) is amended by adding a sentence at the end of paragraph 4(b) under the Instructions to read as follows:

Note: The text of Form N–6 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–6

* * * * *

Item 3. Risk/Benefit Summary: Fee Table

* * * * *

Instructions

* * * * *

4. Total Annual [Portfolio Company] Operating Expenses

* * * * *

(b) * * * If any Portfolio Company invests in shares of one or more ''Acquired Funds,'' ''Total Annual

[Portfolio Company] Operating Expenses'' for the Portfolio Company must also include fees and expenses of the Acquiring Funds, calculated in accordance with instruction 3(f) of Item 3 of Form N–1A (17 CFR 239.15A; 17 CFR 274.11A). For purposes of this section, an ''Acquired Fund'' means any company in which the Portfolio Company invests that (i) is an investment company or (ii) would be an investment company under section 3(a) of the Investment Company Act (15 U.S.C. 80a–3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the Investment Company Act (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)).

* * * * *

Dated: October 1, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–25336 Filed 10–7–03; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Wednesday,
October 8, 2003

Part IV

The President

Proclamation 7711—National Breast Cancer Awareness Month, 2003
Proclamation 7712—National Disability Employment Awareness Month, 2003
Proclamation 7713—Fire Prevention Week, 2003
Proclamation 7714—Marriage Protection Week, 2003
Proclamation 7715—German-American Day, 2003

Federal Register
Vol. 68, No. 195
Wednesday, October 8, 2003

Presidential Documents

Title 3—

The President

Proclamation 7711 of October 3, 2003

National Breast Cancer Awareness Month, 2003

By the President of the United States of America

A Proclamation

Breast cancer touches the lives of many Americans, either directly or through the diagnosis of a family member or friend. We have made considerable progress in diagnosing this disease and improving treatments, but we have not ended it. While overall death rates are declining, breast cancer remains the second leading cause of cancer deaths among women. During this 19th annual National Breast Cancer Awareness Month, we recognize the efforts being made to fight breast cancer through prevention, early detection, and aggressive research into new treatments and therapies.

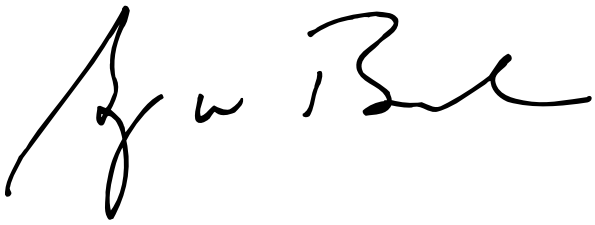
Monthly self exams and mammograms are still the best ways to detect breast cancer at an early, treatable stage. The National Cancer Institute (NCI) and the United States Preventive Services Task Force agree that for women who are 40 or over, a mammogram every 1 to 2 years can greatly reduce the risk of dying from breast cancer. I encourage all women to consult with their physicians to obtain appropriate screenings to help with early detection.

This year in the United States, an estimated 212,000 individuals will be diagnosed with breast cancer and an estimated 40,000 will die of the disease. My Administration is committed to building on the research that has already advanced our knowledge of the causes of and possible cures for breast cancer. The NCI invested an estimated $564.6 million this year in breast cancer research and will spend approximately $584 million next year. Continued research provides the opportunity to better understand the causes of breast cancer and how we can better prevent, detect, and treat it. The United States Postal Service is also helping with the fight. Proceeds from the Postal Service's Breast Cancer Awareness stamp go to breast cancer research. Since the launch of this special stamp, more than $33 million has been raised to help search for a cure.

I urge all Americans to raise awareness of breast cancer by talking with family members and friends about the importance of screening and early detection. By educating ourselves and working together, we will improve our ability to prevent, detect, treat, and ultimately cure breast cancer.

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 the month of October 2003 as National Breast Cancer Awareness Month. I call upon Government officials, businesses, communities, healthcare professionals, educators, volunteers, and all the people of the United States to continue our Nation's strong commitment to controlling and curing breast cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of October, 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. 03–25649
Filed 10–7–03; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7712 of October 3, 2003

National Disability Employment Awareness Month, 2003

By the President of the United States of America

A Proclamation

For Americans with disabilities, employment is vital to independence, empowerment, and quality of life. During National Disability Employment Awareness Month, we recognize the many contributions citizens with disabilities make to our society, and we reaffirm our commitment to helping them achieve their full inclusion in our workforce.

Today, Americans with disabilities enjoy improved access to education, government services, public accommodations, transportation, telecommunications, and employment opportunities. The landmark Americans with Disabilities Act of 1990 (ADA) removed barriers and enabled many individuals with disabilities to find more opportunities to use their gifts and talents in the workplace. This progress has made our Nation stronger, more productive, and more just. People with disabilities still encounter challenges, however, to their full participation in American society.

In February 2001, I launched the New Freedom Initiative to address these challenges, to fulfill the promises of the ADA, and to move toward an America where all our citizens live and work with dignity and freedom. This comprehensive plan is helping Americans with disabilities learn and develop skills, engage in productive work, make choices about their daily lives, and participate fully in their communities.

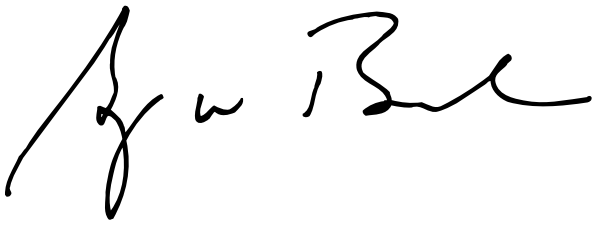
A key component of the New Freedom Initiative is our commitment to integrate individuals with disabilities into the workforce. We have made substantial progress toward this goal. The Department of Justice has established an ADA Business Connection, a series of meetings between representatives of the business and disability communities to open dialogue that will promote greater understanding and increased voluntary compliance with the ADA. Also, the Department of Health and Human Services and the Social Security Administration are implementing the landmark ''Ticket to Work'' program that makes it possible for millions of Americans with disabilities to no longer have to choose between having a job and receiving health care. And the Department of Labor has established two national technical assistance centers on workforce and disability that offer training, technical assistance, and information to improve access for all in the workforce development system.

By working together to open doors of opportunity for citizens with disabilities, we can help fulfill the promise of our great Nation.

To recognize the contributions of Americans with disabilities and to encourage all citizens to help ensure their full inclusion in the workforce, the Congress, by joint resolution approved August 11, 1945, as amended (36 U.S.C. 121), has designated October of each year as ''National Disability Employment Awareness Month.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 2003 as National Disability Employment Awareness Month. I call upon government officials, labor leaders, employers, and all the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of October, 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. 03–25650
Filed 10–7–03; 8:45 am]
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Presidential Documents

Proclamation 7713 of October 3, 2003

Fire Prevention Week, 2003

By the President of the United States of America

A Proclamation

More than 1.7 million fires strike American homes, parks, and businesses each year. This devastation costs lives, causes injuries, ruins property, and disrupts businesses. While fires are powerful and destructive, many fires are preventable. During Fire Prevention Week, we join with our Nation's first responders to help prevent fires and ensure the safety of our homes and communities.

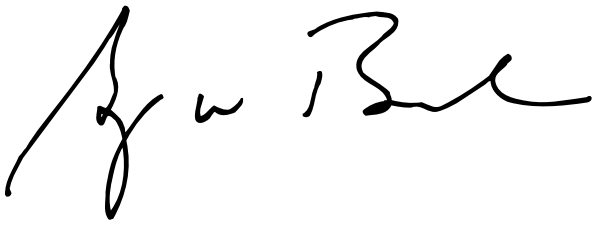
As the official sponsor of Fire Prevention Week, the National Fire Protection Association is joining forces with the Department of Homeland Security's Federal Emergency Management Agency and the United States Fire Administration to emphasize the importance of being prepared to protect ourselves, our families, and our communities. This year's Fire Prevention Week theme is ''When Fire Strikes: Get Out! Stay Out!''

Across our country, most fire-related deaths occur where people feel safest—in their own homes. National surveys reveal that most Americans underestimate the risk of fire in their homes and lack an emergency response plan. Fires can grow quickly, and individuals may have as few as 2 minutes to evacuate. Working smoke detectors give people more time to escape fires. At least 94 percent of American homes are equipped with smoke alarms, yet most home fire deaths happen in homes where smoke alarms are not working. By installing and maintaining working smoke alarms on every level of the home, having a fire emergency response plan, and evacuating if the alarm sounds, families and individuals can be ready to respond to a fire.

This week also reminds us of the dangers that brave first responders face as they risk their lives to fight fires and protect our communities, our people, and our natural resources. Our fire services respond to more than 20 million emergency calls a year. Americans are grateful for their courage, skill, and commitment to public safety, and we honor the sacrifice of those who have been injured or killed in their efforts to protect us. Through fire safety and prevention, we can save lives, including those of our firefighters and other first responders.

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 October 5 through October 11, 2003, as Fire Prevention Week. On Sunday, October 5, 2003, in accordance with Public Law 107–51, flags will be flown at half staff on all Federal office buildings in honor of the National Fallen Firefighters Memorial Service. I urge all Americans to protect their homes by installing smoke detectors where needed and regularly checking their existing smoke detectors. These small efforts will help make our communities safer for all.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of October, 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. 03–25651
Filed 10–7–03; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7714 of October 3, 2003

Marriage Protection Week, 2003

By the President of the United States of America

A Proclamation

Marriage is a sacred institution, and its protection is essential to the continued strength of our society. Marriage Protection Week provides an opportunity to focus our efforts on preserving the sanctity of marriage and on building strong and healthy marriages in America.

Marriage is a union between a man and a woman, and my Administration is working to support the institution of marriage by helping couples build successful marriages and be good parents.

To encourage marriage and promote the well-being of children, I have proposed a healthy marriage initiative to help couples develop the skills and knowledge to form and sustain healthy marriages. Research has shown that, on average, children raised in households headed by married parents fare better than children who grow up in other family structures. Through education and counseling programs, faith-based, community, and government organizations promote healthy marriages and a better quality of life for children. By supporting responsible child-rearing and strong families, my Administration is seeking to ensure that every child can grow up in a safe and loving home.

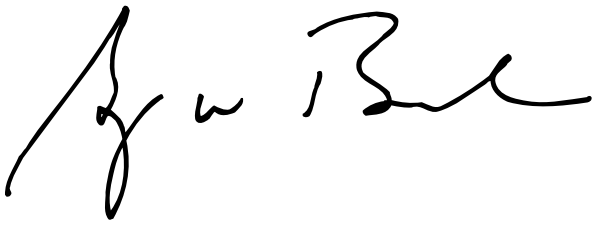
We are also working to make sure that the Federal Government does not penalize marriage. My tax relief package eliminated the marriage penalty. And as part of the welfare reform package I have proposed, we will do away with the rules that have made it more difficult for married couples to move out of poverty.

We must support the institution of marriage and help parents build stronger families. And we must continue our work to create a compassionate, welcoming society, where all people are treated with dignity and respect.

During Marriage Protection Week, I call on all Americans to join me in expressing support for the institution of marriage with all its benefits to our people, our culture, and our society.

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 the week of October 12 through October 18, 2003, as Marriage Protection Week. I call upon the people of the United States to observe this week with appropriate programs, activities, and ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of October, 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. 03–25652
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Presidential Documents

Proclamation 7715 of October 3, 2003

German-American Day, 2003

By the President of the United States of America

A Proclamation

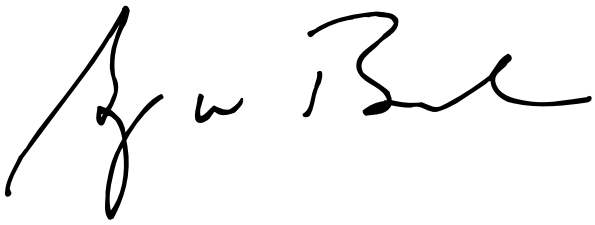
German-American Day celebrates more than 300 years of German immigration to our shores, beginning with the arrival of 13 Mennonite families from Krefeld on October 6, 1683. Seeking a new life of freedom and opportunity, these immigrants settled in Pennsylvania and founded Germantown near the city of Philadelphia. On this day, we recognize the contributions of those German pioneers, and millions of other German-American immigrants and their descendants, to the life and culture of our great Nation.

As one of the largest ethnic groups in the United States, German Americans have greatly influenced our country in the fields of business, government, law, science, athletics, the arts, and many others. Henry Engelhard Steinway and his sons founded Steinway & Sons in 1853. The 300,000th Steinway piano, the ''golden grand,'' was presented to President Franklin Roosevelt in 1938, and is still on display at the White House. John Augustus Roebling and his son pioneered the development of suspension bridges and wire cable. Their construction of the Brooklyn Bridge is a lasting landmark to their skill, determination, and innovation. And entrepreneurs such as John Davison Rockefeller, John Wanamaker, and Milton Snavely Hershey helped to strengthen the American economy and inspire others to reach for the American Dream.

In addition to their many professional achievements, German Americans have influenced American culture. From Christmas trees to kindergartens, the United States has adopted many German traditions and institutions. By celebrating and sharing their customs and traditions, German Americans help to preserve their rich heritage and enhance the cultural diversity of our Nation.

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 October 6, 2003, as German-American Day. I encourage all Americans to recognize the contributions to the liberty and prosperity of the United States of our citizens of German descent.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of October, 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.



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- Boeing; published 9-23-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Milk marketing orders:
- Pacific Northwest et al.; comments due by 10-17-03; published 8-18-03 [FR 03-20689]

Nectarines and peaches grown in—
- California; comments due by 10-14-03; published 8-15-03 [FR 03-20875]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Pacific cod; comments due by 10-16-03; published 10-6-03 [FR 03-25265]
- Caribbean, Gulf, and South Atlantic fisheries—
  - Gulf of Mexico shrimp; comments due by 10-14-03; published 8-14-03 [FR 03-20681]
- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; comments due by 10-17-03; published 8-18-03 [FR 03-21069]

Meetings:
- New England Fishery Management Council; comments due by 10-15-03; published 8-19-03 [FR 03-21206]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:
- Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:
- State operating permit programs—
  - Iowa; comments due by 10-16-03; published 9-16-03 [FR 03-23585]
- State operating permits programs—
  - Iowa; comments due by 10-16-03; published 9-16-03 [FR 03-23584]
  - North Dakota; comments due by 10-17-03; published 9-17-03 [FR 03-23751]
  - North Dakota; comments due by 10-17-03; published 9-17-03 [FR 03-23752]

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Various States; comments due by 10-17-03; published 9-17-03 [FR 03-23749]

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Various States; comments due by 10-17-03; published 9-17-03 [FR 03-23750]

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 10-16-03; published 9-16-03 [FR 03-23593]
- Illinois; comments due by 10-15-03; published 9-15-03 [FR 03-23268]
- Indiana; comments due by 10-16-03; published 9-16-03 [FR 03-23592]
- Kansas; comments due by 10-16-03; published 9-16-03 [FR 03-23590]
- Missouri; comments due by 10-16-03; published 9-16-03 [FR 03-23591]
- North Carolina; comments due by 10-15-03; published 9-15-03 [FR 03-23266]
- Wisconsin; comments due by 10-16-03; published 9-16-03 [FR 03-23426]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Hydramethylnon; comments due by 10-14-03; published 8-13-03 [FR 03-20432]
- Tralkoxydim; comments due by 10-14-03; published 8-13-03 [FR 03-20433]

Water pollution; effluent guidelines for point source categories:
- Meat and poultry products processing facilities; comments due by 10-14-03; published 9-29-03 [FR 03-24770]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Satellite communications—
  - Satellite and earth station license procedures; electronic filings requirements; comments due by 10-14-03; published 9-12-03 [FR 03-23315]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:
- Claims; electronic submission; comments due by 10-14-03; published 8-15-03 [FR 03-20955]
- Part B drugs; payment reform; comments due by 10-14-03; published 8-20-03 [FR 03-21308]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs and biological products:
- Pre- and postmarketing safety reporting requirements; comments due by 10-14-03; published 6-18-03 [FR 03-15341]

Human drugs:
- External analgesic products (OTC); administrative record and tentative final monograph; comments due by 10-15-03; published 7-17-03 [FR 03-17934]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:
- Louisiana; comments due by 10-17-03; published 8-18-03 [FR 03-21088]

Ports and waterways safety:
- Cape Fear River Bridge, NC; security zone; comments due by 10-14-03; published 7-15-03 [FR 03-17836]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
- Critical habitat designations—
  - Mussels in Mobile River Basin, AL; comments due by 10-14-03; published 8-14-03 [FR 03-20729]

INTERIOR DEPARTMENT

National Park Service

Special regulations:
- Yellowstone and Grant Teton National Parks and John D. Rockefeller, Jr. Memorial Parkway, WY; winter visitation and recreational use management; comments due by 10-14-03; published 8-27-03 [FR 03-21332]

JUSTICE DEPARTMENT

Alcohol, Tobacco, Firearms, and Explosives Bureau

Safe Explosives Act; implementation:
- Delivery of explosive materials by common or contract carrier; comments due by 10-14-03; published 9-11-03 [FR 03-23093]

LABOR DEPARTMENT

Acquisition regulations; revision; comments due by 10-14-03; published 8-15-03 [FR 03-20095]

LABOR DEPARTMENT

Mine Safety and Health Administration

Metal and nonmetal mine safety and health:

Underground mines—

Diesel particulate matter exposure of miners; comments due by 10-14-03; published 8-14-03 [FR 03-20190]

Diesel particulate matter exposure of miners; comments due by 10-14-03; published 8-26-03 [FR 03-21886]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Grant and Cooperative Agreement Handbook:

NASA Center, facility, computer system, or technical information access; investigative requirements; comments due by 10-14-03; published 8-15-03 [FR 03-20921]

Photographs and illustrations in reports or publications; public acknowledgements; comments due by 10-14-03; published 8-15-03 [FR 03-20920]

NUCLEAR REGULATORY COMMISSION

Byproduct material; domestic licensing:

Portable gauges; security requirements; comments due by 10-15-03; published 8-1-03 [FR 03-19588]

PERSONNEL MANAGEMENT OFFICE

Acquisition regulations:

Federal Employees Health Benefits Program—

Large provider agreements, subcontracts, and miscellaneous changes; comments due by 10-14-03; published 8-15-03 [FR 03-20857]

SECURITIES AND EXCHANGE COMMISSION

Securities:

Depository shares evidenced by American depositary receipts; Form F-6 use; eligibility requirements; comments due by 10-17-03; published 9-17-03 [FR 03-23737]

Insider lending prohibition; foreign bank exemption; comments due by 10-17-03; published 9-17-03 [FR 03-23655]

SOCIAL SECURITY ADMINISTRATION

Social security benefits:

Federal old-age, survivors, and disability insurance—

Stepchildren; entitlement and termination requirements; comments due by 10-14-03; published 8-12-03 [FR 03-20490]

STATE DEPARTMENT

Visas; immigrant documentation:

Diversity Visa Program; diversity Immigrant status; electronic petition; comments due by 10-17-03; published 8-18-03 [FR 03-21071]

TENNESSEE VALLEY AUTHORITY

Agency information collection activities; proposals, submissions, and approvals; comments due by 10-14-03; published 8-27-03 [FR 03-21868]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; comments due by 10-14-03; published 8-27-03 [FR 03-21873]

Dassault; comments due by 10-14-03; published 9-19-03 [FR 03-23937]

Learjet; comments due by 10-14-03; published 8-12-03 [FR 03-20238]

McDonnell Douglas; comments due by 10-14-03; published 8-27-03 [FR 03-21874]

Pratt & Whitney Canada; comments due by 10-14-03; published 8-14-03 [FR 03-20484]

Rolls-Royce Corp.; comments due by 10-14-03; published 8-13-03 [FR 03-20573]

VOR Federal airways; comments due by 10-14-03; published 8-28-03 [FR 03-22042]

TRANSPORTATION DEPARTMENT

Federal Motor Carrier Safety Administration

Motor carrier safety standards:

Longer combination vehicle operators; minimum training requirements and driver-instructor requirements; comments due by 10-14-03; published 8-12-03 [FR 03-20368]

Special training requirements—

Entry-level comercial motor vehicle operators; minimum training requirements; comments due by 10-14-03; published 8-15-03 [FR 03-20888]

TREASURY DEPARTMENT

Foreign Assets Control Office

Trading with the Enemy Act; implementation:

Civil penalties hearing regulations; comments due by 10-14-03; published 9-11-03 [FR 03-22969]

TREASURY DEPARTMENT

Internal Revenue Service

Employment taxes and collection of income tax at source:

Federal unemployment tax deposits; de minimis threshold; comments due by 10-15-03; published 7-17-03 [FR 03-18042]

Income taxes:

Tax-exempt bonds; remedial actions; comments due by 10-14-03; published 7-21-03 [FR 03-18327]

Tax attributes reduction due to discharge of indebtedness; cross-reference; comments due by 10-16-03; published 7-18-03 [FR 03-18146]

TREASURY DEPARTMENT

Alcohol and Tobacco Tax and Trade Bureau

Alcohol; viticultural area designations:

Dundee Hills, OR; comments due by 10-14-03; published 8-15-03 [FR 03-20914]

VETERANS AFFAIRS DEPARTMENT

Board of Veterans' Appeals:

Appeals regulations and rules of practice—

Grounds of clear and unmistakable error decisions; comments due by 10-14-03; published 9-12-03 [FR 03-23260]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 659/P.L. 108–91

Hospital Mortgage Insurance Act of 2003 (Oct. 3, 2003; 117 Stat. 1158)

H.R. 978/P.L. 108–92

To amend chapter 84 of title 5, United States Code, to provide that certain Federal annuity computations are adjusted by 1 percentage point relating to periods of receiving disability payments, and for other purposes. (Oct. 3, 2003; 117 Stat. 1160)

S. 111/P.L. 108–93

To direct the Secretary of the Interior to conduct a special resource study to determine the national significance of the Miami Circle site in the State of Florida as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park, and for other purposes. (Oct. 3, 2003; 117 Stat. 1161)

S. 233/P.L. 108–94

Coltsville Study Act of 2003 (Oct. 3, 2003; 117 Stat. 1163)

S. 278/P.L. 108–95

Mount Naomi Wilderness Boundary Adjustment Act (Oct. 3, 2003; 117 Stat. 1165)

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