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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 56 and 70

[Docket No. PY–03–001]

Increase in Fees and Charges for Egg, Poultry, and Rabbit Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is increasing the fees and charges for Federal voluntary egg, poultry, and rabbit grading. These fees and charges are increased to cover the increase in salaries of Federal employees, salary increases of State employees cooperatively utilized in administering the programs, and other increased Agency costs.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: David Bowden, Jr., Chief, Standardization Branch, (202) 720–3506.

SUPPLEMENTARY INFORMATION:

Background and Proposed Changes

The Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621 *et seq.*) authorizes official voluntary grading and certification on a user-fee basis of eggs, poultry, and rabbits. The AMA provides that reasonable fees be collected from users of the program services to cover, as nearly as practicable, the costs of services rendered. The AMS regularly reviews these programs to determine if fees are adequate and if costs are reasonable.

The AMS regularly reviews these programs to determine if fees are adequate and if costs are reasonable. This rule will amend the schedule for fees and charges for grading services rendered to the egg, poultry, and rabbit industries to reflect the costs currently associated with them.

A recent review of the current fee schedule, effective January 1, 2003, revealed that anticipated revenue would not adequately cover increasing program costs. Costs in FY 2004 are projected at $29.8 million. Without a fee increase, FY 2004 revenues are projected at $29.0 million and trust fund balances would be $14.6 million. With a fee increase, FY 2004 revenues are projected at $29.8 million and trust fund balances would remain at $15.2 million.

Employee salaries and benefits account for approximately 82 percent of the total operating budget. The last general and locality salary increase for Federal employees became effective on January 1, 2003, and it materially affected program costs. Projected cost estimates for that increase were based on a salary increase of 2.6 percent, however, the increase was actually 4.02 to 4.87 percent, depending on locality. Another general and locality salary increase estimated at 2 percent is expected in January 2004. Also, from October 2002 through September 2004, salaries and fringe benefits of federally-licensed State employees will have increased by about 3 percent.

The impact of these cost increases was determined for resident, nonresident, and fee services. To offset projected cost increases, the hourly resident and nonresident rate will be increased by approximately 3 percent and the fee rate will be increased by approximately 4 percent. The hourly rate for resident and nonresident service covers graders' salaries and benefits. The hourly rate for fee service covers graders' salaries and benefits, plus the cost of travel and supervision.

As shown in the table below, only the maximum monthly administrative charge that covers overhead costs for resident poultry and shell egg grading would be increased, while other administrative charges would not be changed.

The following table compares current fees and charges with proposed fees and charges for egg, poultry, and rabbit grading as found in 7 CFR parts 56 and 70:

Service	Current	Proposed
Resident Service (egg, poultry, and rabbit grading)		
Inauguration of service	310	310
Hourly charges:		
Regular hours	33.36	34.36
Administrative charges—Poultry grading:		
Per pound of poultry	.00037	.00037
Minimum per month	260	260
Maximum per month	2,675	2,755
Administrative charges—Shell egg grading:		
Per 30-dozen case of shell eggs	.048	.048
Minimum per month	260	260
Maximum per month	2,675	2,755
Administrative charges—Rabbit grading:		
Based on 25% of grader's salary, minimum per month	260	260
Nonresident Service (egg and poultry grading)		
Hourly charges:		
Regular hours	33.36	34.36

Service	Current	Proposed
Administrative charges:		
Based on 25% of grader's salary, minimum per month	260	260
Fee and Appeal Service (egg, poultry, and rabbit grading)		
Hourly charges:		
Regular hours:	57.68	60.00
Weekend and holiday hours	66.64	69.32

Comments

Based on the analysis of costs to provide these services, a proposed rule to increase the fees for these services was published in the **Federal Register** (68 FR 37984) on June 26, 2003. Comments on the proposed rule were solicited from interested parties until July 28. No comments were received. The Agency will implement these increases, as proposed, to ensure the financial stability of its grading programs.

Executive Order 12866

This action has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the AMS has considered the economic impact of this action on small entities. It is determined that its provisions would not have a significant economic impact on a substantial number of small entities.

There are about 400 users of Poultry Programs' grading services. These official plants can pack eggs, poultry, and rabbits in packages bearing the USDA grade shield when AMS graders are present to certify that the products meet the grade requirements as labeled. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). These entities are under no obligation to use grading services as authorized under the Agricultural Marketing Act of 1946.

The AMS regularly reviews its user fee financed programs to determine if fees are adequate and if costs are reasonable. A recent review determined that the existing fee schedule, effective January 1, 2003, will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance in FY 2004. Costs in FY 2004 are projected at $29.8 million. Without a fee increase, FY 2004 revenues are projected at $29.0 million and trust fund balances would be $14.6 million. With a fee increase, FY 2004 revenues are projected at $29.8 million and trust fund balances would remain at $15.2 million.

This action will raise the fees charged to users of grading services. The AMS estimates that overall, this rule will yield an additional $800,000 during FY 2004. The hourly rate for resident and nonresident service will increase by approximately 3 percent and the fee rate will increase by approximately 4 percent. The impact of these rate changes in a poultry plant will range from less than 0.0001 to 0.025 cents per pound of poultry handled. In a shell egg plant, the range will be less than 0.00002 to 0.11 cents per dozen eggs handled.

Civil Justice Reform

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction

The information collection requirements that appear in the sections to be amended by this action have been previously approved by OMB and assigned OMB Control Numbers under the Paperwork Reduction Act (44 U.S.C. Chapter 35) as follows: § 56.52(a)(4)—No. 0581–0128; and § 70.77(a)(4)—No. 0581–0127.

Pursuant to 5 U.S.C. 533, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. The revised fees need to be implemented on an expedited basis in order to avoid further financial losses in the grading program. The effective date of the fee increase will coincide with the billing cycle that begins on the first day of the first month after the date of publication in the **Federal Register**.

List of Subjects

7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

■ For reasons set forth in the preamble, title 7, Code of Federal Regulations, parts 56 and 70 are amended as follows:

PART 56—GRADING OF SHELL EGGS

■ 1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 2. Section 56.46 is revised to read as follows:

§ 56.46 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable rates specified in this section.

(b) Fees for grading services will be based on the time required to perform the services. The hourly charge shall be $60.00 and shall include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $69.32 per hour. Information on legal holidays is available from the Supervisor.

■ 3. In § 56.52, paragraph (a)(4) is revised to read as follows:

§ 56.52 Continuous grading performed on resident basis.

* * * * *

(a) * * *

(4) An administrative service charge based upon the aggregate number of 30-dozen cases of all shell eggs handled in the plant per billing period multiplied by $0.048, except that the minimum charge per billing period shall be $260

and the maximum charge shall be $2,755. The minimum charge also applies where an approved application is in effect and no product is handled.

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

■ 4. The authority citation for part 70 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 5. Section 70.71 is revised to read as follows:

§ 70.71 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable rates specified in this section.

(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether ready-to-cook poultry, ready-to-cook rabbits, or specified poultry food products are involved. The hourly charge shall be $60.00 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $69.32 per hour. Information on legal holidays is available from the Supervisor.

6. In § 70.77, paragraph (a)(4) is revised to read as follows:

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

* * * * *

(a) * * *

(4) For poultry grading: An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by $0.00037, except that the minimum charge per billing period shall be $260 and the maximum charge shall be $2,755. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Dated: December 4, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–30596 Filed 12–8–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 11 and 16

[Docket No. 03–25]

RIN 1557–AC12

Reporting and Disclosure Requirements for National Banks With Securities Registered Under the Securities Exchange Act of 1934; Securities Offering Disclosure Rules

AGENCY: Office of the Comptroller of the Currency.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is revising its regulations to reflect amendments to the Securities Exchange Act of 1934 (Exchange Act) made by the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act). These amendments to the Exchange Act give the OCC the authority to administer and enforce a number of the Sarbanes-Oxley Act's new reporting, disclosure, and corporate governance requirements with respect to national banks that have a class of securities registered under the Exchange Act. We are also revising our securities offering disclosure rules for national banks that issue securities that are not subject to the registration requirements of Securities Act of 1933.

EFFECTIVE DATE: This rule is effective on January 8, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Ann Nash, Counsel, 202–874–5090; or Martha Clarke, Counsel, Legislative & Regulatory Activities Division, 202–874–5090.

SUPPLEMENTARY INFORMATION:

Background

Section 12(i) of the Exchange Act vests the OCC with the powers, functions, and duties otherwise vested with the Securities and Exchange Commission (SEC) to administer and enforce certain provisions of the Exchange Act as they apply to national banks that have a class of securities registered under the Exchange Act (registered national banks).[1]

Prior to the enactment of the Sarbanes-Oxley Act,[2] section 12(i) gave the OCC the authority to administer and enforce sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act. The Sarbanes-Oxley Act amended some of those sections of the Exchange Act to impose additional requirements and, as a result, the OCC will administer and enforce these new requirements as they apply to registered national banks. In addition, the Sarbanes-Oxley Act amended section 12(i) to add new sections of the securities laws to the list of provisions that are enforced and administered by the OCC.

Titles III and IV of the Sarbanes-Oxley Act include a number of provisions that are designed to improve the corporate governance and financial disclosures of issuers that have a class of securities registered under sections 12(b) or 12(g) of the Exchange Act or that are required to file periodic reports with the SEC under section 15(d) of the Exchange Act (public issuers). All registered national banks are public issuers for purposes of the law.

Pursuant to the amendments to section 12(i) made by the Sarbanes-Oxley Act, the OCC administers and enforces the following new provisions of the Act with respect to registered national banks in addition to any new requirements that were added through amendments to sections of the Exchange Act that were enforced by the OCC prior to the enactment of the Sarbanes-Oxley Act.

- Section 301[3] establishes certain oversight, independence, funding, and other requirements for the audit committees of certain public issuers. It requires the SEC to issue implementing rules that prohibit any national securities exchange or national securities association from listing the securities of an issuer that fails to comply with these audit committee requirements. The SEC issued final rules to implement section 301 on April 9, 2003.[4] The rules took effect on April 25, 2003. In the rules, the SEC applies section 301 only to public issuers listed on a national securities exchange or listed in an automated inter-dealer quotation system of a national securities association.[5] Thus, section 301 applies only to registered national banks that are so listed.
- Section 302 requires the SEC to adopt rules that require the principal executive officers and principal financial officers of public issuers to

[1] Under section 12(i), the OCC and the other Federal banking agencies have the power to issue rules that are necessary to carry out their functions under the Exchange Act. These rules are required to be substantially similar to the SEC's rules unless a Federal banking agency determines that substantially similar regulations with respect to the insured depository institutions that it supervises are not necessary or appropriate in the public interest or for the protection of investors and the agency publishes its findings in the **Federal Register** within 60 days after the SEC issues regulations.

[2] Pub. L. 107–204, 116 Stat. 745 (July 30, 2002).

[3] 15 U.S.C. 78j–1(m).

[4] 68 FR 18788 (April 16, 2003).

[5] *Id.* at 18790; 17 CFR 240.10A–3(e)(9).

include certain certifications in the issuer's annual and quarterly reports filed under the Exchange Act. The SEC issued final rules implementing this section on August 29, 2002.[6] The rules took effect on the same day.

• Section 303 requires the SEC to issue rules prohibiting the officers and directors of public issuers, and persons acting under their direction, from fraudulently influencing, coercing, manipulating, or misleading the issuer's independent auditor for purposes of rendering the issuer's financial statements materially misleading. The SEC published a final rule implementing this section on May 28, 2003.[7] The rule took effect on June 27, 2003.

• Section 304 requires the chief executive officer and chief financial officer of public issuers to reimburse the issuer for certain compensation and profits received if the issuer is required to restate its financial reports due to material noncompliance, as a result of misconduct, with any financial reporting requirements under the Federal securities laws. The requirements of section 304 took effect on July 30, 2002. No implementing regulations are required.

• Section 306(a) prohibits the directors and executive officers of any public issuer of equity securities from purchasing, selling, or transferring any equity security acquired by the director or executive officer in connection with his or her service as a director or executive officer during any ''blackout period'' with respect to the security. A ''blackout period'' generally is a period of three consecutive business days during which trading in the issuer's securities is suspended for 50% or more of the beneficiaries of the issuer's individual account plans. The SEC adopted final regulations pursuant to section 306(a) on January 26, 2003.[8] The rules took effect on the same day.

• Section 401(b) requires the SEC to issue rules that prohibit issuers from including misleading *pro forma* financial information in their reports under the securities laws or in any public release. Issuers also must reconcile any *pro forma* financial information included in such filings or public releases with the issuer's financial statements prepared in accordance with generally accepted accounting principles (GAAP). The SEC has issued final implementing regulations,[9] which apply to releases and disclosures made after March 28, 2003, and to annual and quarterly reports filed with respect to fiscal periods ending after March 28, 2003.

• Section 404 mandates that the SEC issue rules that require all annual reports filed under section 13(a) or 15(d) of the Exchange Act to include certain statements and assessments related to the issuer's internal control structures and procedures for financial reporting.[10] There is no statutory deadline for adoption of final rules implementing the requirements of section 404. The SEC adopted final regulations on June 5, 2003.[11]

• Section 406 mandates that the SEC adopt rules that require public issuers to (1) disclose in their periodic reports filed under the Exchange Act whether the issuer has adopted a code of ethics for its senior financial officers and, if not, the reasons why such a code has not been adopted; and (2) promptly disclose on Form 8-K any change to, or waiver of, the issuer's code of ethics. The SEC published a final rule implementing this section on January 31, 2003.[12] The requirements of that rule took effect on March 3, 2003.

• Section 407 mandates that the SEC adopt rules that require public issuers to disclose in their periodic reports filed under the Exchange Act whether the audit committee of the issuer includes at least one financial expert and, if not, the reasons why the audit committee does not include such an expert. The SEC published a final rule implementing this section on January 31, 2003.[13] The requirements of that rule took effect on March 3, 2003.

Description of the Final Rule

On May 21, 2003, the OCC published in the **Federal Register** a notice of proposed rulemaking (NPRM) requesting comment on a proposed regulation implementing the provisions of the Sarbanes-Oxley Act. 68 FR 27753. The OCC did not receive any comments in response to the proposed rule. The OCC, therefore, is adopting the final rule as proposed with only technical changes.

Part 11 of the OCC's regulations, entitled ''Securities Exchange Act Disclosure Rules,'' currently implements the requirements of section 12(i) by applying to registered national banks, by means of cross-reference, the SEC's regulations implementing the reporting and disclosure provisions of sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act. Part 11 requires national banks to file with the OCC any reports or forms required by the SEC's regulations.

We are amending part 11 to reflect the new provisions of the Sarbanes-Oxley Act that the OCC is required to administer and enforce with respect to registered national banks. Accordingly, the final rule revises § 11.2 to cross-reference new subsection 10A(m) of the Exchange Act and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act. The effect of the final rule is to require registered national banks to comply with the rules issued by the SEC pursuant to those statutory provisions.

Part 16 of the OCC's regulations, entitled ''Securities Offering Disclosure Rules,'' sets forth rules governing the offer and sale of securities by national bank issuers that are not subject to the registration and reporting requirements of the Securities Act of 1933.[14] Section 16.20 of the regulation mirrors the requirements of section 15(d) of the Exchange Act.[15] It requires each national bank that files a registration statement that has been declared effective by the OCC pursuant to part 16 to file the current and periodic reports required by section 13 of the Exchange Act[16] in accordance with the SEC's

[6] 67 FR 57275 (Sept. 9, 2002). Section 906 of the Sarbanes-Oxley Act is a criminal statute and includes another certification requirement that is separate from the certification requirements of section 302. Section 906 provides that all periodic reports that contain financial statements and that are filed by public issuers under sections 13(a) or 15(d) of the Exchange Act must include a written certification by the chief executive officer and chief financial officer (or equivalent) that (1) the report complies with the requirements of section 13(a) or 15(d) of the Exchange Act, and (2) the information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer. Section 906 became effective on July 30, 2002, and persons who knowingly or willfully make false certifications are subject to specified criminal penalties. *See* 18 U.S.C. 1350. The plain language of section 906 specifically refers to periodic reports filed by a public issuer with the SEC although Section 12(i) of the Exchange Act requires bank issuers to file periodic reports with their banking regulator. Because section 906 is a criminal statute, the Department of Justice has jurisdiction to determine whether the requirements of the statute apply to issuers that file their periodic reports with the Federal banking agencies rather than the SEC. Until the Department of Justice clarifies this issue, national bank issuers should continue to file their section 906 certifications as part of the periodic reports that they file with the OCC.

[7] 68 FR 31820 (May 28, 2003).

[8] 68 FR 4338 (Jan. 28, 2003).

[9] 68 FR 4820 (Jan. 30, 2003).

[10] Section 404 also requires the registered public accounting firm that prepares or issues the audit report for the issuer's annual report to attest to, and report on, the issuer's assessment of its internal control structures and procedures for financial reporting.

[11] 68 FR 36636 (June 18, 2003). The effective dates vary depending upon the type of filer and the particular requirement.

[12] 68 FR 5110 (Jan. 31, 2003).

[13] 68 FR 5110 (Jan. 31, 2003).

[14] As of December 31, 2002, there were approximately 20 national banks subject to the requirements of § 16.20.

[15] 15 U.S.C. 78o(d).

[16] 15 U.S.C. 78m.

regulation 15D, as if the securities covered by the registration statement were securities registered pursuant to section 12 of the Exchange Act.

The final rule revises § 16.20 to continue to reference section 13 of the Exchange Act[17] and to add a cross-reference to the requirements of the revised § 11.2(a)(1)(ii). The effect of the final rule is to require banks filing registration statements pursuant to part 16 to continue to comply with section 13 of the Exchange Act and those sections of the Sarbanes-Oxley Act that are directly applicable to section 15(d) filers and that are administered and enforced by the OCC with respect to registered national banks. The final rule is thus consistent with the objectives of part 16, which we adopted in order to promote generally comparable treatment between national bank issuers of securities and other issuers that are directly subject to section 15(d).[18]

Sections 11.2 and 16.20 currently cross-reference both the statutory provisions that the OCC has the authority to administer and enforce and the SEC's regulations implementing those provisions. The final rule removes cross-references to the specific sections of the SEC's regulations in favor of a more general reference to the rules, regulations, and forms adopted by the SEC pursuant to the listed statutory provisions. The existing statutory cross-references in parts 11 and 16 are adequate, in our judgment, to alert registered national banks and national banks required by part 16 to make filings pursuant to section 15(d) of the Exchange Act of the requirements that apply to them and to prompt them to consult the appropriate SEC regulations.

National banks may also monitor the **Federal Register**, the SEC's Web site,[19] and other appropriate publications to ensure that they are aware of developments that affect them. If the rules or forms issued by the SEC under these sections require issuers to file documents with the SEC, national banks must make such filings with the OCC in accordance with the provisions of part 11 or part 16, as appropriate.

CDRI Act Delayed Effective Date

This final rule takes effect 30 days after the date of its publication in the **Federal Register,** consistent with the delayed effective date requirement of the Administrative Procedure Act. *See* 5 U.S.C. 553(d). Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act), 12 U.S.C. 4802(b), provides that regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions may not take effect before the first day of the quarter following publication unless the agency finds that there is good cause to make the rule effective at an earlier date.[20] The requirements of the Sarbanes-Oxley Act that are applied to national banks by the final rule are already in effect for those entities that are directly subject to the Act. Comparable regulation for national banks and similarly situated non-bank entities is best achieved by minimizing additional delay in applying those requirements to national banks. Accordingly, the OCC has determined that there is good cause to dispense with the requirements of the CDRI Act.

Regulatory Analysis

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule. As of December 31, 2002, there were approximately 25 national banks that had a class of securities registered under sections 12(b) or 12(g) of the Exchange Act and therefore subject to the amendments to part 11. As of the same date, only 15 of these institutions have assets of less than $100 million and are considered small entities for purposes of the RFA. *See* 5 U.S.C. 601; 13 CFR 121.201. As of December 31, 2002, there were approximately 20 national banks subject to part 16 reporting requirements.

Based on the relatively small number of national banks affected by the final rule and the fact that the requirements will not materially change the operating environment for those banks, the OCC hereby certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not needed.

Paperwork Reduction Act of 1995

In accordance with the requirements of the Paperwork Reduction Act of 1995, the OCC 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.

The information collection requirements contained in the notice of proposed rulemaking (68 FR 27753, May 21, 2003) were submitted to OMB for review and approved by OMB under OMB Control Numbers 1557–0106 ((MA)-Securities Exchange Act Disclosure Rules ''12 CFR 11) and 1557–0120 ((MA)-Securities Offering Disclosure Rules ''12 CFR 16).

The OCC solicited comments on the information collection requirements contained notice of proposed rulemaking. The OCC received no comments.

The collections contained in the final rule are unchanged from the proposed rule.

The OCC is amending 12 CFR part 11 to reflect amendments to section 12(i) of the Securities Exchange Act of 1934 (Exchange Act) made by the Sarbanes-Oxley Act of 2002. These amendments to section 12(i) give the OCC the authority to administer and enforce a number of the Sarbanes-Oxley Act's new reporting, disclosure, and corporate governance requirements with respect to national banks that have a class of securities registered under the Exchange Act.

The OCC is also making conforming amendments to 12 CFR part 16, which prescribes securities offering disclosure rules for national banks that issue securities that are not subject to the registration requirements of the Securities Act of 1933.

12 CFR part 11 references the applicable SEC regulations. The OCC does not maintain its own forms for collecting information and instead requires reporting banks to file SEC forms. Part 11 ensures that publicly owned national banks provide adequate information about their operation to current and potential shareholders, depositors, and to the public. The OCC reviews the information to ensure that it complies with Federal law and makes public all information required to be filed under these rules. Investors, depositors, and the public use the information to make informed investment decisions.

Title: (MA)-Securities Exchange Act Disclosure Rules (12 CFR 11).

OMB Number: 1557–0106.

[17] The proposal also referenced section 10A(m) of the Exchange Act. That reference is removed from the final rule because the SEC has not applied the requirements of section 10A(m) to section 15(d) filers in its final rules. *See* 68 FR at 18790.

[18] *See* 59 FR 54789, 54790 (Nov. 2, 1994) (preamble to most recent substantive revisions to part 16).

[19] *See http://www.sec.gov.*

[20] Pub. L. 103–325, 12 U.S.C. 4802.

Form Numbers: SEC Forms 3, 4, 5, 8–K, 10, 10–K, 10–Q, Schedules 13D, 13G, 14A, 14B, and 14C.

Estimated number of respondents: 65.

Estimated number of responses: 331.

Average hours per response: Varies.

Estimated total burden hours: 3,055 hours.

The likely respondents: National banks, individuals.

The information collection requirements in 12 CFR part 16 enable the OCC to perform its responsibilities relating to offerings of securities by national banks by providing the investing public with facts about the condition of a bank, the reasons for raising new capital, and the terms of securities offerings. Part 16 generally requires banks to conform to the Securities and Exchange Commission rules.

Title: (MA)-Securities Offering Disclosure Rules (12 CFR 16).

OMB Number: 1557–0120.

Description: Sections 16.3 and 16.5 require a national bank to file its registration statement with the OCC. Section 16.4 requires a national bank to submit certain communications not deemed an offer to the OCC. Section 16.5 provides an exemption for items that satisfy the requirements of SEC Rule 144, which, in turn, requires certain filings. Section 16.6 requires a national bank to file documents with the OCC and to make certain disclosures to purchasers in sales of nonconvertible debt. Section 16.7 requires a national bank to file a notice with the OCC. Section 16.8 requires a national bank to file offering documents with the OCC. Section 16.15 requires a national bank to file a registration statement and sets forth content requirements for the registration statement. Section 16.17 requires a national bank to file four copies of each document filed under part 16, and requires filers of amendments or revisions to underline or otherwise indicate clearly any changed information. Section 16.18 requires a national bank to file an amended prospectus when the information in the current prospectus becomes stale, or when a change in circumstances makes the current prospectus incorrect. Section 16.19 requires a national bank to submit a request to the OCC if it wishes to withdraw a registration statement, amendment, or exhibit. Section 16.20 requires a national bank to file current and periodic reports as required by sections 12 and 13 of the Exchange Act and SEC Regulation 15D. Section 16.30 requires a national bank to include certain elements and follow certain procedures in any request to the OCC for a no-objection letter.

Estimated number of respondents: 73.

Estimated number of responses: 73.

Average hours per response: Varies.

Estimated total burden hours: 2,333 hours.

Likely respondents: National banks.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, or $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Reform Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this final rule will not result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, or $100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement.

Executive Order 12866

The Comptroller of the Currency has determined that this final rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

List of Subjects

12 CFR Part 11

Confidential business information, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 16

National banks, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

■ For the reasons set forth in the preamble, the OCC amends parts 11 and 16 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES

■ 1. The authority citation for part 11 is revised to read as follows:

Authority: 12 U.S.C. 93a; 15 U.S.C. 78l, 78m, 78n, 78p, 78w, 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265.

■ 2. Section 11.2 is revised to read as follows:

§ 11.2 Reporting requirements for registered national banks.

(a) *Filing, disclosure and other requirements*—(1) *General.* Except as otherwise provided in this section, a national bank whose securities are subject to registration pursuant to section 12(b) or section 12(g) of the 1934 Act (15 U.S.C. 78l(b) and (g)) shall comply with the rules, regulations, and forms adopted by the Securities and Exchange Commission (Commission) pursuant to:

(i) Sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the 1934 Act (15 U.S.C. 78f(m), 78l, 78m, 78n(a), (c), (d) and (f), and 78p); and

(ii) Sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (codified at 15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265).

(2) [Reserved.]

(b) *References to the Commission.* Any references to the ''Securities and Exchange Commission'' or the ''Commission'' in the rules, regulations and forms described in paragraph (a)(1) of this section shall with respect to securities issued by registered national banks be deemed to refer to the OCC unless the context otherwise requires.

PART 16—SECURITIES OFFERING DISCLOSURE RULES

■ 1. The authority citation for part 16 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.* and 93a.

■ 2. Section 16.20 is revised to read as follows:

§ 16.20 Compliance with requirements of the securities laws.

(a) Each bank that files a registration statement that has been declared effective pursuant to this part shall comply with the rules, regulations, and forms adopted by the Commission pursuant to section 13 of the Exchange Act and those provisions of the Sarbanes-Oxley Act of 2002 that are listed in 12 CFR 11.2(a)(1)(ii) of this chapter as if the securities covered by the registration statement were securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78l).

(b) Suspension of the duty to file current and periodic reports under this section will be in accordance with section 15(d) of the Exchange Act (15 U.S.C. 78o(d)).

(c) Paragraph (a) of this section does not apply if the bank is a subsidiary of a one-bank holding company, the financial statements of the bank and the parent bank holding company are substantially the same, and the bank's

parent bank holding company files current and periodic reports pursuant to section 13 of the Exchange Act (15 U.S.C. 78m).

(d) Paragraph (a) of this section does not apply if the bank files the registration statement in connection with a merger, consolidation, or acquisition of assets subject to 12 CFR 5.33(e)(8).

Dated: November 25, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 03–30442 Filed 12–8–03; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1092]

Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation Y to expand the ability of all bank holding companies, including financial holding companies, to process, store and transmit nonfinancial data in connection with their financial data processing, storage and transmission activities. Specifically, the Board is raising the revenue limit that currently applies to the nonfinancial data processing activities of bank holding companies from 30 percent to 49 percent. The Board also announced that it will consider proposals by a financial holding company to engage in, or acquire a company engaged in, other nonfinancial data processing, information portal, and technology-related activities that the financial holding company believes are complementary to financial activities on a case-by-case basis in accordance with the procedures established by section 4(j) of the Bank Holding Company Act.

EFFECTIVE DATE: The final rule is effective January 8, 2004.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202–452–3583), or Kieran J. Fallon, Managing Senior Counsel (202–452–5270), Legal Division; David Reilly, Senior Supervisory Financial Analyst (202–452–5214), Division of Banking Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 For users of Telecommunications for the Deaf (''TDD'') *only,* call 202–263–4869.

SUPPLEMENTARY INFORMATION:

A. Background

The Bank Holding Company Act (12 U.S.C. 1841 *et seq.*) (BHC Act), as amended by the Gramm-Leach-Bliley Act (GLB Act),[1] permits all bank holding companies to engage in any nonbanking activity that the Board had determined, by order or regulation prior to November 12, 1999, to be ''so closely related to banking as to be a proper incident thereto'' under section 4(c)(8) of the BHC Act.[2] The GLB Act requires bank holding companies to conduct these activities subject to the terms and conditions contained in the Board's regulation or order authorizing the activity, unless the Board modifies those terms or conditions.[3]

The GLB Act also permits a bank holding company or foreign bank that has made an effective election to become a financial holding company (FHC) to engage in a broader range of activities that the GLB Act defines as being financial in nature or incidental to a financial activity, including the sale of insurance as principal or agent, full-scope securities underwriting and dealing, and merchant banking.[4] FHCs also may engage in any other activity that the Board, in consultation with the Secretary of the Treasury, determines to be financial in nature or incidental to a financial activity.[5] The text and legislative history of the GLB Act indicate that the ''financial in nature'' test was intended to be broader and more flexible than the ''closely related to banking'' standard that previously governed the scope of permissible nonbanking activities under section 4(c)(8) of the BHC Act.[6] Moreover, the factors that the Board is directed to consider in determining whether an activity is financial in nature or incidental to financial activities indicates that the scope of financial and incidental activities may expand over time in light of, among other things, changes in the marketplace in which FHCs compete.[7]

The GLB Act also permits an FHC to engage in a nonfinancial activity if the Board determines that the activity is ''complementary to a financial activity and does not pose a substantial risk to the safety and soundness of depository institutions or the financial system generally.''[8] This authority was intended to permit the Board to authorize an FHC to engage, to a limited extent, in activities that appear to be commercial if a meaningful connection exists between the proposed commercial activity and the FHC's financial activities and the proposed commercial activity would not pose undue risks to the safety and soundness of the FHC's affiliated depository institutions or the financial system. The GLB Act requires an FHC to obtain the Board's approval under section 4(j) of the BHC Act prior to engaging in an activity that the FHC believes is complementary to financial activities.[9]

B. Board Proposal

Following passage of the GLB Act, several FHCs, represented by their trade associations, requested that the Board authorize FHCs to engage in, or invest in companies engaged in, a wide range of data processing, technology, communication and e:commerce-related activities. In response to these requests, the Board took several steps. In December 2000, the Board adopted a final rule that authorizes FHCs to act as a ''finder'' through electronic or other means and thereby bring together buyers and sellers of financial and nonfinancial products for transactions that the parties themselves negotiate and consummate.[10] The Board's Finder Rule addressed several of the activities requested by the FHCs and permits FHCs, among other things, to—

- Host an electronic marketplace on the FHC's Internet Web site that provides hypertext links to the Web sites of third parties;
- Host the Web site of a merchant that

[1] Pub. L. 106–102, 113 Stat. 1338 (1999).

[2] *See* 12 U.S.C. 1843(c)(8).

[3] *See* id.

[4] *See* 12 U.S.C. 1843(k)(4)(B), (E) and (H).

[5] *See* 12 U.S.C. 1843(k)(1)(A), (2) and (4).

[6] *See* H. Rept. No. 106–434 at 153 (1999) (''Permitting banks to affiliate with firms engaged in financial activities represents a significant expansion from the current requirement that bank affiliates may only be engaged in activities that are closely related to banking.'').

[7] The GLB Act directs the Board to consider a variety of factors in considering whether an activity is financial in nature or incidental thereto, including (1) The purposes of the BHC Act and the GLB Act; (2) changes and reasonably expected changes in the marketplace in which FHCs compete and in the technology for delivering financial services; and (3) whether the activity is necessary or appropriate to allow FHCs to compete effectively with other companies providing financial services, to deliver efficiently information and services that are financial in nature through the use of technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions, and to offer customers any available or emerging technological means for using financial services or for the document imaging of data. *See* 12 U.S.C. 1843(k)(3).

[8] *See id.* at section 1843(k)(1)(B).

[9] *See* 12 U.S.C. 1843(j)(1)(A) and (E).

[10] *See* 65 FR 80735, Dec. 22, 2000 (Finder Rule). The Board, in consultation with the Secretary of the Treasury, determined that acting as finder, as defined in the rule, is an activity that is incidental to financial activities.

provides information concerning the merchant and its products and permits buyers to submit orders for such products or services; and

- Operate an Internet Web site that allows multiple buyers and sellers to exchange information concerning the products and services that they are willing to purchase or sell, locate potential counterparties for transactions and enter into transactions between themselves.

To address other aspects of the FHCs' requests, the Board in December 2000, requested comment on a proposed rule that would modify the limits imposed by the Board on the amount of nonfinancial data processing activities that a bank holding company may conduct in connection with its financial data processing activities.[11] Regulation Y currently permits all bank holding companies to provide data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation, or operating personnel), data bases, advice and access to such services, facilities and data to any customer if the data processed or furnished are financial, banking or economic in nature.[12] Regulation Y also currently permits a bank holding company or nonbank subsidiary engaged in processing financial data to provide data processing services for nonfinancial data so long as the annual revenues derived by the company or subsidiary from its nonfinancial data processing activities does not exceed 30 percent of the total annual revenue derived by the company or subsidiary from providing data processing services under section 225.28(b)(14).[13] The Board proposed increasing this limit on nonfinancial data processing activities from 30 percent to 49 percent.

The proposal also requested comment on whether the Board should authorize an FHC to invest, as a complementary activity, up to 5 percent of its Tier 1 capital in companies that provide (1) Data storage services for any type of data, so long as the company also provided data storage services for financial data; (2) general data processing services for any type of data, so long as the company derived at least 20 percent of its total revenues from financial data processing activities, providing data processing services to depository institutions and their affiliates, and the sale of other financial products and services; and (3) information portal services over electronic networks.[14] The Board indicated that an FHC would be expected to market and provide financial products or services through any information portal owned under the proposed authority. The Board asked for comment on whether the connections described above between the acquired company's nonfinancial and financial activities were sufficient to ensure that the acquired company's nonfinancial activities were complementary to financial activities within the meaning of the GLB Act. Consistent with the GLB Act, the Board also proposed to require that FHCs obtain the Board's prior approval under section 4(j) of the BHC Act for any proposed investment under these complementary authorities.[15]

The Board also solicited the public's views on whether the Board should develop a proposal that would authorize FHCs to invest in companies engaged in developing new technologies that might support the marketing or sale of financial products or services, providing communication links, or selling and distributing financial and nonfinancial products and services through electronic means. The Board asked commenters supporting further Board action with respect to these investments to provide detailed arguments and data that would support a finding that investments in companies engaged in these activities are financial in nature or incidental or complementary to financial activities. The Board also sought comment on a variety of other potential issues associated with these investments, including whether authorizing such investments would be consistent with the intent of the GLB Act to maintain the general separation of banking and commerce, and whether investments in such companies, if permitted, should be limited to non-controlling positions.

C. Overview of Public Comments

The Board received thirteen comments on the proposal from banks, bank holding companies, and trade associations that represent banking organizations, securities firms and other financial service providers. All of the commenters supported Board action in this area and the Board's efforts to expand the range of activities permissible for bank holding companies and FHCs. Several commenters also stated that the proposal was consistent with Congress's desire, as expressed in the GLB Act, to allow FHCs to engage in an expanded range of financially related activities. Commenters also indicated that the proposal would allow bank holding companies to develop additional sources of revenue and would not present significant safety and soundness concerns.

1. Amending Existing Limits on Nonfinancial Data Processing Activities

Commenters strongly supported the Board's proposal to increase, from 30 percent to 49 percent, the amount of data processing revenues that a bank holding company or nonbank subsidiary engaged in financial data processing activities may derive from processing nonfinancial data. Commenters stated that there are no operational or functional differences between processing financial and nonfinancial data and that the proposal would allow bank holding companies to use more efficiently the systems, expertise and resources that they have developed for processing financial data. Commenters also stated that bank holding companies have gained experience in processing nonfinancial data under the more limited authority currently available under Regulation Y, and that the proposal would allow bank holding companies to meet the needs of their customers more effectively.

Also, customers increasingly are seeking data processing services that can satisfy both the financial and nonfinancial data processing needs of the customer. For example, some hospitals that previously sought only billing, payroll and accounting data processing services from bank holding companies now seek a more complete package of data processing services that include medical record organization, storage and retrieval, as well as billing, payroll and accounting services.

2. General Data Processing, Storage and Portal Services by FHCs

Commenters also supported the proposal to allow FHCs to invest in companies engaged in general data storage, general data processing, or electronic information portal activities. Commenters offered several reasons why the Board should find such investments to be financial in nature,

[11] *See* 65 FR 80384, Dec. 21, 2000.

[12] *See* 12 CFR 225.28(b)(14)(i). The phrases ''data processing services'' and ''data processing activities'' used herein refer collectively to the broad array of data processing and data transmission services and functions described above that a bank holding company may perform under section 225.28(b)(14).

[13] *See id.* at section 225.28(b)(14)(ii); Letter from Scott G. Alvarez, Associate General Counsel of the Board, to Bryan G. Handlos, Esq., dated March 8, 1999.

[14] Electronic information portal services involve providing or facilitating the search, exchange, consolidation, screening, filtering or aggregation of any type of information over electronic networks, and may include acting as an Internet service provider and providing on-line search engines, bulletin boards, newsgroup services and ''chat'' rooms.

[15] *See* 12 U.S.C. 1843(j)(1)(A) and (E).

incidental to financial activities or complementary to financial activities. For example, some commenters argued that data processing and data storage activities are, by their nature, financial activities regardless of the type of data involved. Others argued that the proposed activities were similar to, or an appropriate extension of, the existing data processing activities of bank holding companies or the ''finder'' activities permissible for FHCs.[16] Similarly, some commenters contended that general data storage activities are functionally similar to the safe deposit and custody services that banks have traditionally offered to their customers.

Alternatively, commenters asserted that the connections required by the proposed rule between the acquired company's nonfinancial activities and financial activities were sufficient to demonstrate that the investments were complementary to financial activities for purposes of the GLB Act. Some, however, argued that the proposed investments should be deemed incidental to financial activities if the acquired company engaged in *any* financial data processing activities or did so to a substantial extent. Similarly, some commenters argued that investing in a company providing information portal services should be deemed to be incidental to financial activities if the portal was used to sell financial products or services, or if the company operating the portal derived a certain portion of its revenues (*e.g.* 50 percent) from financial activities.

Several commenters opposed the proposed 5 percent Tier 1 capital limit on investments made by FHCs in companies providing general data processing, data storage or information portal services. These commenters argued that the 5 percent investment limit was too low, was unnecessary to address any potential safety and soundness issues, or would force FHCs to sell profitable investments or engage in these activities only through separate subsidiaries.[17]

Some commenters also asserted that the 60-day prior notice requirement for complementary investments would impede the ability of FHCs to respond quickly to investment opportunities and marketplace developments, and asked the Board to consider establishing a streamlined notice procedure for complementary investments. One commenter, however, asserted that the prior approval process was appropriate and would allow the Board to review and address on an individualized basis the issues associated with proposals by FHCs to engage in complementary activities.

3. Broad technology, communication and e:commerce investments by FHCs

Commenters generally favored allowing FHCs to invest in companies engaged in developing new technology, providing communication links, or marketing or selling financial and nonfinancial products or services through electronic means and encouraged the Board to take steps to determine that these types of investments are financial in nature or incidental or complementary to financial activities. Only a few commenters, however, addressed specifically this aspect of the proposal and the Board's questions concerning these types of investments. Commenters generally asserted that the financial industry increasingly relies on technology, communication systems, and electronic sales channels to support the marketing and sale of financial products and services. Commenters also asserted that new technologies, systems and networks often are developed and operated to support a wide range of financial and nonfinancial applications, and that companies providing these services may seek equity (rather than contractual) partners. In light of these developments, commenters argued that FHCs must be able to invest in companies developing or operating new technologies, communication systems and electronic sales channels to ensure that these technologies, systems and networks will meet the needs of the financial industry, and to ensure that FHCs do not become reliant on third parties for the tools and delivery channels that may be used in the marketing and sale of financial products and services. Some commenters also noted that while FHCs may invest in technology-related companies under the GLB Act's merchant banking authority,[18] the cross-marketing restrictions imposed on merchant banking investments by the GLB Act may diminish the ability of FHCs to compete for these investments.

D. Explanation of Final Rule

After carefully considering the comments received on the proposal, the Board has adopted a final rule that amends the limitations previously imposed by the Board to allow all bank holding companies additional flexibility to process, store and transmit nonfinancial data in connection with their financial data processing, storage and transmission activities. The Board believes that the final rule will enhance the ability of bank holding companies to compete in the market for data processing services and respond to the financial and nonfinancial data processing needs of their customers. The Board also believes that amending the limitations in this manner would not negatively affect the safety and soundness of bank holding companies and their depository institution subsidiaries.

As discussed further below, the Board also believes that there are a variety of ways that additional nonfinancial data processing, information portal and other technology-related investments and activities may be complementary to the financial activities of an FHC within the meaning of the GLB Act. However, the factors and relationships that may demonstrate that a proposed activity or investment by an FHC is complementary to the financial activities of the FHC may vary based on the facts and circumstances associated with the proposal. In light of these facts, and the limited record developed during this rulemaking, the Board believes it is appropriate at this time to review proposals by FHCs to engage in, or acquire a company engaged in, a complementary activity on a case-by-case basis in accordance with the prior notice procedures established by section 4(j) of the BHC Act. The Board expects to revisit whether it would be appropriate to propose a rule permitting FHCs generally to engage in, or invest in companies engaged in, additional nonfinancial data processing, information portal or other technology-related activities after the Board has gained experience in reviewing requests by individual FHCs to engage complementary activities.

1. Expanded Nonfinancial Data Processing Authority for All Bank Holding Companies

Section 225.28(b)(14) of Regulation Y currently permits bank holding companies, including FHCs, to provide data processing services (including software, hardware, advice and personnel) to any customer if the data to be processed is financial, banking or economic in nature.[19] The authority to

[16] A few commenters asserted that the Board should reclassify acting as a ''finder'' as an activity that is financial in nature, or should expand the types of services that an FHC may provide when acting as a finder. Such actions are outside the scope of this rulemaking.

[17] A few commenters also stated that no special regulatory capital charge should be imposed on the proposed complementary investments.

[18] See 12 U.S.C. 1843(k)(4)(H).

[19] *See* 12 CFR 225.28(b)(14)(i). Any hardware provided must be offered only in conjunction with

Continued

engage in financial data processing activities permits bank holding companies to provide their customers with a wide range of data processing services, including data processing related to payroll, accounts receivable and accounts payable processing; bill preparation and bill payment; processing credit card, debit card and ATM transactions and other electronic funds transfers; loan processing; credit analysis; tax planning; accounting and bookkeeping services; economic forecasting; and data processing services to support the customer's marketing, sale and delivery of financial products and services over the Internet or other electronic networks, such as home banking or securities brokerage services.[20]

Regulation Y also currently permits a company engaged in financial data processing activities under section 225.28(b)(14) to process nonfinancial data so long as the annual revenue derived by the company from its nonfinancial data processing activities does not exceed 30 percent of the company's total annual data processing revenues. As noted above, the Board proposed to raise this 30 percent limit on the nonfinancial data processing activities of bank holding companies to 49 percent. Commenters strongly supported this change for the reasons outlined above.

The Board has amended its regulatory limitation governing the conduct of data processing activities previously authorized for bank holding companies under section 4(c)(8) of the BHC Act to raise the threshold on nonfinancial data processing services as proposed.[21] In accordance with the GLB Act, all bank holding companies, including FHCs, may take advantage of the expanded data processing authority granted by the final rule.

The Board believes that the final rule will allow all bank holding companies to leverage more effectively the experience and resources they have developed from engaging in financial data processing activities. In addition, by allowing bank holding companies to process additional amounts of nonfinancial data for their customers, the final rule should allow bank holding companies to achieve additional economies of scale and compete more effectively with nonbank providers of data processing services.

The 49-percent revenue limit included in the final rule ensures that the data processing subsidiaries of bank holding companies operating under section 4(c)(8) of the BHC Act remain predominantly engaged in processing financial, banking or economic data. The Board believes this limit provides reasonable assurances that any nonfinancial data processing activities conducted by a bank holding company under section 225.28(b)(14) will remain incidental to the company's financial data processing for purposes of section 4(c)(8) of the BHC Act.

Bank holding companies that provide data processing services to customers should take appropriate steps to maintain the security, integrity and confidentiality of the customer's data.[22] In addition, bank holding companies must take appropriate steps to ensure compliance with all applicable federal and state laws governing the privacy of consumer data processed by the bank holding company on behalf of third parties.

Several commenters asked the Board to clarify the ability of bank holding companies to provide data storage, retrieval and imaging services as part of their data processing activities under section 225.28(b)(14). Data storage, retrieval and imaging are functions that are an integral and often necessary part of data processing and data transmission activities. Accordingly, the Board previously has indicated that the data processing services that bank holding companies may provide under section 225.28(b)(14) include data storage, imaging and retrieval.[23] In light of the commenters' requests, the Board has included language in the final rule that clarifies that bank holding companies may provide data storage, imaging and retrieval services for financial, economic or banking data without limit, and may provide such services for nonfinancial data to the extent permitted by the 49-percent revenue limit adopted by the final rule.[24]

A few commenters also asserted that the Board should allow a bank holding company to use any excess capacity that may exist in the company's data processing systems to process nonfinancial data. The Board previously has indicated that bank holding companies may use any excess capacity that results in good faith from the bank holding company's financial data processing activities under section 225.28(b)(14) to process nonfinancial data, and bank holding companies may continue to use their excess capacity in this manner subject to the Board's regulations and policies governing these activities.[25] The Board also previously has indicated that revenue derived by a bank holding company from the use of excess capacity is not included for purposes of determining the company's compliance with the rule's revenue limit on nonfinancial data processing activities.[26]

A bank holding company may use any currently available or newly developed technological means, including dedicated or shared electronic facilities, the Internet and optical technology, to provide its customers permissible data processing services. In addition, a bank holding company may provide its customers data processing services either as a stand-alone service or in conjunction with other products and services that the bank holding company is authorized to provide under the BHC Act.

The Board notes, however, that the authority to provide data processing services for financial and nonfinancial data does *not* authorize bank holding companies to engage in an activity simply because it involves the use of a computer or the transmission of data in electronic form. Section 225.28(b)(14)

software designed and marketed for the processing and transmission of financial, banking or economic data, and any general purpose hardware may not constitute more than 30 percent of the cost of any packaged offering. *See* 12 CFR 225.28(b)(14)(i)(B).

[20] *See The Toronto-Dominion Bank,* 83 Federal Reserve Bulletin 335 (1997); *Royal Bank of Canada,* 83 Federal Reserve Bulletin 135 (1997); *Compagnie Financiere de Paribas,* 82 Federal Reserve Bulletin 348 (1996); *BNCCORP, INC.,* 81 Federal Reserve Bulletin 294 (1995); *The Bank of New York Company, Inc.,* 80 Federal Reserve Bulletin 1107 (1994); *Bank One Corporation,* 80 Federal Reserve Bulletin 139 (1994); *see also* Letter from J. Virgil Mattingly, General Counsel of the Board, to Thomas A. Plant, Esq., dated Nov. 25, 1997.

[21] *See* 12 U.S.C. 1843(c)(8). At the time the Board adopted the current 30-percent revenue limit on nonfinancial data processing activities, the Board specifically noted that it reserved the authority to review and adjust this limit as appropriate. *See* 62 FR 9290, 9304, Feb. 28, 1997.

[22] *See* Federal Financial Institutions Examination Council, IT Examination Handbook—Information Security (Dec. 2002).

[23] *See Royal Bank of Canada,* 83 Federal Reserve Bulletin 135 (1997); *BNCCORP, INC.,* 81 Federal Reserve Bulletin 295 (1995); *State Street Boston Corporation,* 81 Federal Reserve Bulletin 1049 (1995).

[24] A few commenters expressed concern that any revenue-based limit on nonfinancial data processing activities may be difficult to monitor or may cause pricing distortions in the market for data processing services. These commenters did not present any evidence indicating that the existing 30-percent test, which also is based on revenue, has caused significant compliance or pricing difficulties, and the Board notes that other measures of activity (such as one based on the quantity of financial and nonfinancial data processed) likely would be even more difficult for bank holding companies to monitor than the existing revenue-based test.

[25] *See* 12 CFR 225.123(e)(1); *Citicorp,* 68 Federal Reserve Bulletin 505, 510 (1982). These policies prohibit a bank holding company from acquiring equipment solely for the purpose of creating excess capacity and limit the ability of bank holding companies to provide hardware and software in connection with their sale or provision of excess data processing capacity. *See* 12 CFR 225.123(e)(1).

[26] *See* 62 FR 9290, 9304 at n.5, Feb. 28, 1997.

permits a bank holding company to provide data processing services to third-party customers to support the functions or activities of the customer. Where the bank holding company's data processing activities represent the conduct of a separate or different activity by the bank holding company itself, the bank holding company must have the authority to engage in that activity under other provisions of Regulation Y. For example, while a bank holding company may provide data processing support to an unaffiliated insurance agency under section 225.28(b)(14), such as, for example, by processing customer payments and optically scanning and storing the insurance policies issued by the agency, a bank holding company may not itself sell insurance (through electronic means or otherwise) under section 225.28(b)(14).

A few commenters asked that the Board permit bank holding companies to determine their compliance with the 49-percent revenue limit on nonfinancial data processing activities on a business line or organization-wide basis. The Board recognizes that there may be situations where a bank holding company has bona fide operational reasons for conducting its financial and related nonfinancial data processing activities through separately incorporated subsidiaries. Accordingly, bank holding companies may request permission to administer the 49-percent revenue limit on a business-line or multiple-entity basis in appropriate circumstances. The Board has delegated authority to its General Counsel, in consultation with the Director of the Division of Banking Supervision and Regulation, to review and act on these requests. Such requests should describe the structure of the holding company's data processing operations, the methodology the holding company proposes to use to administer the revenue test, and the reasons why the holding company believes the proposed methodology is appropriate. The General Counsel or the Board where appropriate will consider any request in light of all the facts and circumstances, including the inter-relationships between the data processing activities conducted by the bank holding company's separate subsidiaries, the holding company's business or operational reasons for conducting its data processing activities in different subsidiaries, and the level of the holding company's ownership interest in the individual subsidiaries.

The Board will revisit whether it would be appropriate to authorize all bank holding companies to monitor compliance with the revenue limit on a consolidated or business-line basis based on the experience gained from reviewing any such requests.

2. General Data Storage, Data Processing, Electronic Information Portal, Technology, Communication and E:Commerce Investments

In response to requests from FHCs, the Board also requested comment on whether the Board should adopt a rule permitting FHCs to invest, as a complementary activity, in any company that provides (1) Data storage services for nonfinancial data without regard to the revenue limitations discussed above, so long as the company provided data storage services for some financial data; (2) data processing services for nonfinancial data, so long as the company derived at least 20 percent of its total revenues from processing financial data, processing data for depository institutions, or the sale of other financial products or services; or (3) electronic information portal services.[27] The Board proposed limiting the aggregate carrying value of an FHC's investments in companies engaged in these activities to 5 percent of the FHC's Tier 1 capital. FHCs also had requested authority to invest in companies that develop technology that might support the marketing or sale of financial products or services in the future; provide communication linkages for any type of information; or market and sell nonfinancial and financial products or services through electronic means.

The Board notes that much of the need expressed by FHCs for authority to make these types of investments may be addressed by the Board's decision to raise the revenue limit on the nonfinancial data processing activities of bank holding companies to 49 percent. In addition, the Board notes that FHCs currently have the authority to make investments in data processing companies that do not comply with the 49 percent revenue limit and other technology-related companies under the GLB Act's merchant banking authority. Although some commenters noted that the cross-marketing restrictions applicable to merchant banking investments may diminish the attractiveness of this investment authority, the Board notes that these restrictions apply only to the depository institution subsidiaries of an FHC (and not to the FHC itself or its nonbank affiliates) and Congress currently is considering legislation that would loosen these restrictions in several important respects.[28] Commenters also presented little evidence that, in the Board's view, indicates why data processing, information portal and the other technology-related activities, without limit on the type of data processed or amount of nonfinancial data processed, should, in all circumstances, be found to be financial in nature or incidental to a financial activity.

The GLB Act does permit an FHC to engage in, or acquire a company engaged in, a nonfinancial activity if the Board determines that the activity is complementary to financial activities and does not pose a substantial risk to the safety and soundness of depository institutions or the financial system. As noted above, this authority was intended to provide the Board a mechanism to allow an FHC to engage to a limited degree in commercial activities if the proposed commercial activities would meaningfully complement or enhance the financial activities of the FHC, and the proposed activities would not present undue risks to the subsidiary depository institutions of the FHC or the financial system.

The Board believes that there are a variety of relationships or connections between a commercial activity or investment and an FHC's financial activities that may indicate that the activity or investment is complementary to the FHC's activities within the meaning of the GLB Act. Ultimately, the determination whether a commercial activity or investment is complementary will depend on the nature of the activity and the level and quality of the many types of connections that may exist between the proposed activity or investment and the FHC's financial activities.

The Board does not believe that the limited record developed during this rulemaking provides the Board a sufficient basis for determining, by rule, that nonfinancial data processing and information portal activities are as a general matter financial in nature, incidental to a financial activity, or complementary to the financial activities of FHCs. The Board also does not believe that the record is sufficient at this time to warrant developing a formal proposal requesting comment on whether the Board should determine, by rule, that the other technology-related

[27] The Board indicated that it expected an FHC to market or provide financial products or services through any electronic information portal service owned under this proposed authority.

[28] *See* Financial Services Regulatory Relief Act of 2003, section 501, H.R. 1375, 108 Cong., 1st Sess. (2003); H. Rept. 108–152, Part 1, 108 Cong., 1st Sess. (2003).

investments suggested by the initial FHC requestors are as a general matter financial in nature, incidental to a financial activity, or complementary to the financial activities of FHCs.

In light of the foregoing, the Board believes it is appropriate to review proposals by FHCs to engage in, or acquire a company engaged in, general data processing and electronic information portal activities, as well as other nonfinancial technology-related activities, on a case-by-case basis under section 4(j) of the BHC Act. This approach is consistent with the procedure established by the GLB Act for FHCs to engage in complementary activities.[29] This process will allow an FHC to present, and the Board to review, all the connections that may demonstrate that a proposed investment or activity is complementary to the FHC's financial activities for purposes of the GLB Act. Moreover, because the proposed rule would have required FHCs to obtain the Board's approval under section 4(j) prior to making any complementary investment under the proposal, the procedural approach adopted by the Board does not impose any additional filing burden on FHCs.

FHCs that believe a proposed investment or activity is complementary to the FHC's financial activities should submit a notice to the Board in accordance with section 4(j) of the BHC Act and section 225.89 of the Board's Regulation Y (12 CFR 225.89). The notice should, among other things, identify and define the proposed complementary activity, identify the financial activity to which the proposed complementary activity would be complementary, and describe the relationships and connections between the proposed activity and the identified financial activity that the FHC believes support a finding that the proposed activity is complementary.[30] In addition, the notice should explain why the proposed complementary activity or investment would not pose undue risks to the safety and soundness of the FHC's subsidiary depository institutions or the financial system and what, if any, limits would be appropriate to ensure that the investment or activity remains small in relation to the FHC's financial activities.

Regulatory Flexibility Act

In accordance with section 4(a) of the Regulatory Flexibility Act (5 U.S.C. 604(a)), the Board must publish a final regulatory flexibility analysis with this rulemaking. The final rule expands the ability of bank holding companies of all sizes to process, store and transmit nonfinancial data in connection with their financial data processing activities. The Board specifically requested comment on the likely burden that the proposed rule would have on bank holding companies of all sizes, including small bank holding companies.[31] Commenters noted that the rule should enhance the ability of bank holding companies of all sizes to compete with other providers of data processing services, achieve additional economies of scale and utilize more efficiently their existing data processing resources and expertise. In response to comments received, the Board also has clarified the ability of bank holding companies to engage in data storage, imaging and retrieval activities in connection with their permissible data processing activities, and to use any excess capacity that may result, in good faith, from the bank holding company's financial data processing activities to process, store and transmit nonfinancial data.

A few commenters asked that the Board permit bank holding companies to derive more than 49 percent of their data processing revenues from processing, storing or transmitting nonfinancial data, or to apply the rule's revenue limit on nonfinancial data processing activities on a business-line or organization-wide basis. For the reasons discussed in the supplementary information above, the Board does not believe such actions would generally be appropriate or consistent with section 4(c)(8) of the BHC Act. The Board, however, has established a process whereby any bank holding company, including small bank holding companies, may obtain permission to administer the rule's revenue limit on nonfinancial data processing activities on a multiple-entity or consolidated basis. This process will permit bank holding companies, including small bank holding companies, to administer the revenue test in a more flexible manner when such action would be consistent with the BHC Act.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (''OMB''). The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, an information collection unless it displays a currently valid OMB control number.

As discussed in the **SUPPLEMENTARY INFORMATION** above, bank holding companies may request permission to administer the 49-percent revenue limit on nonfinancial data processing activities adopted by the final rule on a business-line or multiple-entity basis in appropriate circumstances. Such requests should be directed to the Board's General Counsel and should describe the structure of the holding company's data processing operations, the methodology the holding company proposes to use to administer the revenue test, and the reasons why the holding company believes the proposed methodology is appropriate. It is estimated that there will be 5 respondents per year with an estimated burden of 2 hours per response. Therefore the total amount of annual burden is estimated to be 10 hours. There is estimated to be $200 annual cost burden over the annual hour burden. An OMB control number for this information collection will be obtained.

A request may be filed in letter form and there will be no reporting form for this information collection. The agency form number for the notice will be the FR 4021. A bank may request confidentiality for the information contained in the notice in accordance with the Freedom of Information Act and the Board's Rules Regarding the Availability of Information. *See* 5 U.S.C. 552; 12 CFR part 261.

As required by the GLB Act, section 225.89 of the Board's Regulation Y currently requires an FHC to obtain the Board's approval prior to engaging in, or acquiring a company engaged in, an activity that the FHC believes is complementary to a financial activity. *See* 12 CFR 225.89. Section 225.89 also describes the information that must be included in any request to engage in, or acquire a company engaged in, a complementary activity. The Board previously has reviewed and approved this information collection in accordance with the requirements of the Paperwork Reduction Act. *See* Requests for Approval to Engage in an Activity that is Complementary to a Financial Activity (FR 4012; OMB No. 7100–0292).

The Board has a continuing interest in the public's opinions of the Federal Reserve's collections of information. At any time, comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden,

[29] *See* 12 U.S.C. 1843(j)(A) and (E).

[30] *See* 12 CFR 225.89(a).

[31] For purposes of the Regulatory Flexibility Act, small entities are defined to include bank holding companies that have $150 million or less in assets. *See* 13 CFR 121.201. As of March 31, 2003, there were 3117 bank holding companies with consolidated total assets of $150 million or less.

may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Use of Plain Language

Section 722 of the GLB Act requires the Board to use ''plain language'' in all proposed and final rules published after January 1, 2000. The Board requested comment on whether there were ways to make the proposed rule easier to understand. One commenter suggested that the Board reformat the portion of the proposed rule relating to the complementary general data processing activities of FHCs (§ 225.89(d)(1)(B) of the proposed rule) to make the rule easier to understand. For the reasons discussed above, the Board has determined not to adopt that section of the proposed rule. The Board also believes that the final rule is written plainly and presented clearly.

List of Subjects in 12 CFR Part 225

Administrative practice and procedures, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

■ For the reasons set forth in the preamble, Title 12, Chapter II, of the Code of Federal Regulations is amended as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1843(k); 1844(b), 1972(1), 2903, 3106, 3108, 3310, 3331–3351, 3907, and 3909; 15 U.S.C. 6801 and 6805.

■ 2. Section 225.28(b)(14) is revised to read as follows:

§ 225.28 List of permissible nonbanking activities.

* * * * *

(b) * * *

(14) *Data processing.* (i) Providing data processing, data storage and data transmission services, facilities (including data processing, data storage and data transmission hardware, software, documentation, or operating personnel), databases, advice, and access to such services, facilities, or data-bases by any technological means, if:

(A) The data to be processed, stored or furnished are financial, banking or economic; and

(B) The hardware provided in connection therewith is offered only in conjunction with software designed and marketed for the processing, storage and transmission of financial, banking, or economic data, and where the general purpose hardware does not constitute more than 30 percent of the cost of any packaged offering.

(ii) A company conducting data processing, data storage, and data transmission activities may conduct data processing, data storage, and data transmission activities not described in paragraph (b)(14)(i) of this section if the total annual revenue derived from those activities does not exceed 49 percent of the company's total annual revenues derived from data processing, data storage and data transmission activities.

Dated: November 26, 2003.

By order of the Board of Governors of the Federal Reserve System

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–29997 Filed 12–8–03; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM269; Special Conditions No. 25–253–SC]

Special Conditions: Israel Aircraft Industries Model 1124 Airplanes; 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 Israel Aircraft Industries Model 1124 airplanes modified by Garrett Aviation Services. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of dual Innovative Solutions & Support (IS&S) Air Data Display Unit systems with the IS&S Air Data Sensor that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety 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 that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is November 24, 2003.

Comments must be received on or before January 8, 2004.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM269, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Directorate at the above address. All comments must be marked: Docket No. NM269.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that the notice and opportunity for public comment is impracticable because these procedures would significantly delay certification of the airplane and delivery of the affected airplane. 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, however, 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 commit closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday thru 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 this proposal, 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 September 26, 2003, Garrett Aviation Services, 1200 North Airport Drive, Capital Airport Springfield, IL 62707, applied for a Supplemental Type Certificate (STC) to modify Israel Aircraft Industries (IAI) Model 1124 airplanes approved under Type Certificate No. A2SW. The IAI Model 1124 is a small transport category airplane. The IAI Model 1124 airplane is powered by two AiResearch Manufacturing Company TFE731–3–1G turbofans and has a maximum takeoff weight of 23,500 pounds. This airplane operates with a 2-pilot crew and can hold up to 10 passengers. The modification incorporates the installation of dual Innovative Solutions & Support Air Data Display Units (ADDU) and a single IS&S Air Data Sensor (ADS) interfaced with an existing Collins AP–105 Autopilot. The ADDU is a replacement for the existing analog flight instrumentation, while also providing additional functional capability and redundancy in the system. The ADS is a digital replacement for the existing analog Collins 590A–3() Air Data Controller which outputs vertical and lateral mode signals to the Collins flight guidance system. The digital avionics/electronics and electrical systems installed under this project in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Garrett Aviation Services must show that the IAI Model 1124 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A2SW, 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 certification basis for the modified IAI Model 1124 airplanes include 14 CFR Part 25, dated February 1, 1964, as amended by Amendments 25–1 through 25–20 except for special conditions and exceptions noted in Type Certificate Data Sheet (TDCS) A2SW.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the IAI Model 1124 airplanes because of novel or unusual design features, special conditions are prescribed under the provisions § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the IAI Model 1124 airplanes must comply with the associated change requirements of § 21.93(b).

Special conditions, as defined in 14 CFR 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 Garrett Aviation Services apply at a later date 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, these special conditions would also apply to the other model under the provisions of 14 CFR 21.101.

Novel or Unusual Design Features

The IAI Model 1124 airplanes modified by Garrett Aviation Services will incorporate dual Air Data Display Units and a single Air Data Sensor system that will perform critical functions. These systems have to potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane. The current airworthiness standards (part 25) do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effect of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference; special conditions are needed for IAI Model 1124 airplanes modified by Garrett Aviation Services. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1, or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated. Both peak and average field strength components from the Table are to be demonstrated.

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

Frequency	Field Strength (volts per meter)	
	Peak	Average
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to IAI Model 1124 airplanes modified by Garret Aviation Services. Should Garrett Aviation Services apply at a later date 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, 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 the IAI Model 1124 airplanes modified by Garrett Aviation Services. 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 procedure in several prior instances and has been derived without substantive change from those previously issued. 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 to comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Israel Aircraft Industries Model 1124 airplanes modified by Garrett Aviation Services.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

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 Renton, Washington, on November 24, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30447 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM271, Special Conditions No. 25–254–SC]

Special Conditions: Boeing Model 707–300 Airplanes; 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 Boeing Model 707–300 airplanes modified by AeroMech Incorporated. These modified airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of dual Innovative Solutions and Support Air Data Display Units. The applicable airworthiness regulations do not contain adequate or appropriate safety 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 that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 1, 2003.

Comments must be received on or before January 8, 2004.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM271, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM271.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification of the airplane 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; however, 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 7:30 a.m., and 4 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 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 August 29, 2003, AeroMech Incorporated applied to the FAA, Fort Worth Special Certification Office, for a supplemental type certificate (STC) to modify certain Boeing Model 707–300 airplanes. These models are currently approved under Type Certificate No. 4A26. The Model 707–300 is a transport category airplane powered by four Pratt & Whitney turbojet engines. This airplane operates with three flightcrew and can hold up to 189 passengers. The modification incorporates the installation of dual Innovative Solutions and Support (IS&S) Air Data Display Units. The information presented is flight critical. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, AeroMech Incorporated must show that the Boeing Model 707–300 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. 4A26, 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 certification basis for the Model 707–300 airplanes includes Civil Air Regulations (CAR) 4b, as amended by Amendments 4b–1, 4b–2, and 4b–3; and additional requirements identified in the type certificate data sheet that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (CAR 4b, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 707–300 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 Boeing Model 707–300 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 14 CFR 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 AeroMech Incorporated apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate 4A26 to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

As noted earlier, Boeing Model 707–300 airplanes modified by AeroMech Incorporated will incorporate brand new avionics/electronics and electrical systems (IS&S Air Data Display Units) that will perform critical functions. These systems may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this sytem is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Boeing Model 707–300 airplanes modified by AeroMech Incorporated. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, and the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

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

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization

Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 707–300 series airplanes modified by AeroMech Incorporated. Should AeroMech Incorporated apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate 4A26 to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well as under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on the Boeing Model 707–300 airplanes modified by AeroMech Incorporated. 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 procedure in several prior instances and has been derived without substantive change from those previously issued. 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 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

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

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Boeing Model 707–300 airplanes modified by AeroMech Incorporated.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

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 Renton, Washington, on December 1, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30448 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15466; Airspace Docket No. 03–ASO–9]

Establishment of Class D and E Airspace; Ormond Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D and E4 airspace at Ormond Beach, FL. A Federal contract tower with a weather reporting system has been constructed at the Ormond Beach Municipal Airport. Therefore, the airport meets criteria for Class D and E4 airspace. Class D surface area airspace and Class E4 airspace designated as an extension to Class D airspace is required when the control tower is open to contain Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to but not including 1,200 feet MSL, within a 3.2-mile radius of the Ormond Beach Municipal Airport and a Class E4 airspace extension that is 4.8 miles wide and extends 6.9 miles northwest of the airport.

EFFECTIVE DATE: 0901 UTC, February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On July 17, 2003, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D and E4 airspace at Ormond Beach, FL, (68 FR 42322). This action provides adequate Class D and E4 airspace for IFR operations at Ormond Beach Municipal Airport. Class D airspace designations for airspace areas extending upward from the surface of the earth and Class E4 airspace areas designated as an extension to a Class D surface area are published in Paragraphs 5000 and 6004 respectively, of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E4 designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D and E4 airspace at Ormond Beach, FL.

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. It therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) 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.

List of Subjects in CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO FL D Ormond Beach, FL [NEW]

Ormond Beach Municipal Airport, FL
(Lat. 29°18′04″ N, long. 81°06′50″ W)

That airspace extending upward from the surface, to but not including 1,200 feet MSL within a 3.2-mile radius of Ormond Beach Municipal Airport; excluding that airspace within the Daytona Beach, FL, Class C airspace area. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E4 Airspace Areas Designated as an Extension to a Class D Airspace Area.

* * * * *

ASO FL E4 Ormond Beach, FL [NEW]

Ormond Beach Municipal Airport, FL
(Lat. 29°18′04″ N, long. 81°06′50″ W)
Ormond Beach VORTAC
(Lat. 29°18′12″ N, long. 81°06′46″ W)

That airspace extending upward from the surface within 2.4 miles each side of the Ormond Beach VORTAC 342° radial, extending from the 3.2-mile radius to 6.9 miles northwest of the VORTAC. This Class E4 airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in College Park, Georgia, on November 26, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–30461 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15229; Airspace Docket No. 03–AEA–05]

Establishment of Class E Airspace; Buckhannon, WV

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Buckhannon, WV. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft operating into Upshur County Regional Airport, Buckhannon, WV under Instrument Flight Rules (IFR).

EFFECTIVE DATE: 0901 UTC April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On June 30, 2003, a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace extending upward from 700 feet above the surface within a 6-mile radius of Gettysburg Airport and Travel Center, Gettysburg, PA was published in the **Federal Register** (68 FR 38652–38653). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before July 30, 2003. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from the surface of the earth are published in paragraph 6005 of FAA Order 7400 9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting IFR operations within a 6-mile radius of Upshur County Regional Airport, Buckhannon, WV.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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 affected air traffic procedures and air navigation, it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6005 Class E Airspace Areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA WV E5, Buckhannon, WV [NEW]

Upshur County Regional Airport, WV
(Lat. 39°00′01″ N., long. 80°16′26″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Upshur County Airport, excluding that portion that coincides with the Clarksburg, WV Class E airspace area.

* * * * *

Issued in Jamaica, New York, on November 19, 2003.

John G. McCartney,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–30458 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16080; Airspace Docket No. 03–ACE–72]

Modification of Class E Airspace; Great Bend, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Great Bend, KS revealed discrepancies in the Great Bend Municipal Airport airport reference point and in the direction of the Class E airspace extension. This action corrects the discrepancies by modifying the Great Bend, KS Class E airspace extension. This action corrects the discrepancies by modifying the Great Bend, KS Class E airspace and by incorporating the current Great Bend Municipal Airport reference point and the correct direction of the Class E airspace extension into the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, April 15, 2004. Comments for inclusion in the Rules Docket must be received on or before January 13, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16080/ Airspace Docket No. 03–ACE–72, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* you may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Great Bend, KS. It incorporates the current airport reference point for Great Bend Municipal Airport and modifies the Class E airspace extension from the 303° bearing from the airport to the 302° bearing. It brings the legal description of this airsapce area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this 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 and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16080/Airspace Docket No. 03–ACE–72.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Great Bend, KS

Great Bend Municipal Airport, KS
(Lat. 38°20′39″ N., long. 98°51′33″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Great Bend Municipal Airport and within 4 miles each side of the 302° bearing from the airport extending from the 6.9-mile radius to 15.6 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on November 24, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–30454 Filed 12–08–03; 8:45 am]

BILLING CODE 4910–13 M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16081–; Airspace Docket No. 03–ACE–73]

Modification of Class E Airspace; Kingman, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: Kingman Municipal Airport, Kingman, KS, has been renamed Kingman Airport—Clyde Cessna Field. Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedrues (SIAPs) have been developed to serve Kingman Airport—Clyde Cessna Field. Also, an existing SIAP serving Kingman Airport—Clyde Cessna Field has been amended. An examination of controlled airspace for Kingman, KS revealed discrepancies in the legal description of the Class E airspace area.

This action modifies the Kingma, KS Class E airspace area, replaces ''Kingman Municipal Airport'' in the legal description of Kingman, KS Class E airspace area with ''Kingman Airport—Clyde Cessna Field,'' provides controlled airspace of appropriate dimensions to protect aircraft executing SIAPs to Kingman Airport—Clyde Cessna Field and brings the Class E airspace area and legal description into compliance with FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, April 15, 2004. Comments for inclusion in the Rules Docket must be received on or before January 14, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16081/ Airspace Docket No. 03–ACE–73, at the beginning of your comments. You may also submit comments on the Internet at *http://www.dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Kingman, KS. It replaces ''Kingman Municipal Airport,'' the former name of the airport, with ''Kingman Airport—Clyde Cessna Field,'' the new name of the airport, in the legal description. A review of controlled airspace at Kingman, KS indicates existing 700 feet Above Ground Level (AGL) airspace does not meet criteria for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The area is enlarged to conform to the criteria in FAA Order 7400.2E. An amendment to the Very High Frequency Omni-Directional Range (VOR)/Distance Measuring Equipment (DME) Runway (RWY) 18 SIAP raises the final approach fix crossing altitude and thereby eliminates the need for the north extension of the Kingman, KS Class E airspace area. This action brings the legal description of this airspace area into commpliance with FAA Order 7400.2E. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16. 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this 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 and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to

Docket No. FAA–2003–16081/Airspace Docket No. 03–ACE–73.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

Adoption of the Amendment

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Kingman, KS

Kingman Airport—Clyde Cessna Field, KS

(Lat. 37°40′08″ N., long. 98°07′26″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Kingman Airport—Clyde Cessna Field.

* * * * *

Issued in Kansas City, MO on November 24, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–30455 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16504; Airspace Docket No. 03–ACE–88]

Modification of Class E Airspace; Greenfield, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace area at Greenfield, IA. A review of controlled airspace for Greenfield Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2E. A discrepancy in the airspace extension was also detected. The area is modified and enlarged to conform to the criteria in FAA Order 7400.2E.

DATES: This direct final rule is effective on 0901 UTC, April 15, 2004. Comments for inclusion in the Rules Docket must be received on or before January 22, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16504/Airspace Docket No. 03–ACE–88, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Greenfield, IA. An examination of controlled airspace for Greenfield Municipal Airport reveals it does not meet the criteria for 700 AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. This amendment also modifies the extension to the Greenfield, IA Class E airspace area by defining it with the 144° bearing from the Greenfield nondirectional radio beacon (NDB) versus the current 142° bearing. This amendment brings the legal description of the Greenfield, IA Class E airspace area into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment

period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this 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 and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16504/Airspace Docket No. 03–ACE–88.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Greenfield, IA

Greenfield Municipal Airport, IA
(Lat. 41°19′37″ N., long. 94°26′45″ W.)
Greenfield NDB
(Lat. 41°19′32″ N., long. 94°26′40″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Greenfield Municipal Airport and within 2.6 miles each side of the 144° bearing from the Greenfield NDB extending from the 6.4-mile radius to 7.4 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on November 24, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–30456 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16079; Airspace Docket No. 03–ACE–71]

Establishment of Class E4 Airspace; and Modification of Class E5 Airspace; Goodland, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a Final rule that was published in the **Federal Register** on Friday, November 14, 2003, (68 FR 64524) [FR Doc. 03–38538]. It corrects an error in the classification of a Goodland, KS Class E airspace area.

DATES: This direct final rule is effective on 0901 UTC, December 25, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

History

On Monday, September 22, 2003, the FAA proposed to amend 14 CFR part 71 by establishing a Class E airspace area designated as an extension to the Class E surface area and revising the Class E airspace area extending upward from 700 feet or more above the surface at Goodland, KS (68 FR 55015) [FR Doc. 03–24143]. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received and a Final rule was subsequently published in the **Federal Register** on Friday, November 14, 2003, (68 FR 64524) [FR Doc. 03–28538].

A determination has been made that airspace comprising the extension to the Goodland, KS Class E surface area was necessary and properly established. However, this airspace area was erroneously categorized as an extension to the Class E surface area (E4) when it should have been added to the existing Class E airspace designated as a surface area (E2). This correction has no effect on the dimensions or definition of controlled airspace established by the rule, it merely identifies the extension as part of the basic surface area.

■ Accordingly, pursuant to the authority delegated to me, the Goodland, KS Class E4 airspace, as published in the **Federal Register** on Friday, November 14, 2003, (68 FR 64524) [FR Doc. 03–28538] is corrected as follows:

§ 71.1 [Corrected]

■ 1. On page 64524, column 3, following amendatory instruction 2, revise ''Paragraph 6004 Class E airspace areas designated as an extension to Class D or Class E Surface area'' to read ''*Paragraph 6002 Class E Airspace Designated as Surface Areas.*''

■ 2. On page 64524, column 3, following amendatory instruction 2, revise:

"ACE KS E4 Goodland, KS

Renner Field-Goodland Municipal Airport, KS
(Lat. 39°22′14″N., long. 101°41′56″W.)
Goodland VORTAC
(Lat. 39°23′16″N., long. 101°41′32″W.)

That airspace extending upward from the surface within 2.4 miles each side of the Goodland VORTAC 164° radial extending from the 4.1-mile radius of Renner Field-Goodland Municipal Airport to 7 miles southeast of the VORTAC." to read:

"ACE KS E2 Goodland, KS

Renner Field-Goodland Municipal Airport, KS
(Lat. 39°22′14″N., long. 101°41′56″W.)
Goodland VORTAC
(Lat. 39°23′16″N., long. 101°41′32″W.)

Within a 4.1-mile radius of Renner Field-Goodland Municipal Airport and within 2.4 miles each side of the Goodland VORTAC 164° radial extending from the 4.1-mile radius of the airport to 7 miles southeast of the VORTAC."

Issued in Kansas City, MO, on November 24, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–30459 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 347

[Docket Nos. 78N–0021 and 78N–021P]

RIN 0910–AA01

Skin Protectant Drug Products for Over-the-Counter Human Use; Final Monograph; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulation that established conditions under which over-the-counter (OTC) skin protectant drug products are generally recognized as safe and effective and not misbranded as part of FDA's ongoing review of OTC drug products. This amendment revises several of the indications for OTC skin protectant drug products to provide additional labeling claims that should not have been excluded from the final monograph (FM).

DATES: *Effective Date*: This rule is effective June 4, 2004.

Compliance Dates: The compliance date for products subject to part 347 (21 CFR part 347) with annual sales less than $25,000 is June 6, 2005. The compliance date for all other products subject to part 347 is June 4, 2004. The compliance date for combination products containing skin protectant and sunscreen active ingredients in § 347.20(d) and for all products subject to part 352 was stayed until further notice at 68 FR 33362, June 4, 2003.

Comment Date: Submit written or electronic comments by February 9, 2004.

ADDRESSES: Submit written comments 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*.

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 4, 2003 (68 FR 33362), FDA issued a FM for OTC skin protectant drug products in part 347. Section 347.50(b)(2) of that FM includes the following indications for OTC skin protectant drug products:

(2) *For products containing any ingredient in § 347.10(a), (d), (e), (g), (h), (i), (k), (l), (m), and (r)*—(i) The labeling states "temporarily protects" (which may be followed by: "and helps relieve") "chapped or cracked skin" (which may be followed by: "and lips"). This statement may be followed by the optional statement: "helps protect from the drying effects of wind and cold weather". [If both statements are used, each is preceded by a bullet.]

(ii) *For products formulated as a lip protectant*. The labeling states "temporarily protects" (which may be followed by: "and helps relieve") "chapped or cracked lips". This statement may be followed by the optional statement: "helps protect lips from the drying effects of wind and cold weather". [If both statements are used, each is preceded by a bullet.]

Shortly after FDA issued the FM, an industry national trade association submitted a petition ("The petition," Ref. 1) requesting FDA to amend the FM to permit the terms "helps prevent" and "chafed" in the indications in § 347.50(b)(2). The petition stated that FDA had included these terms in the indication in this section proposed in the tentative final monograph (TFM) (February 15, 1983, 48 FR 6820 at 6832), which stated: "Helps prevent and temporarily protects chafed, chapped, cracked, or windburned skin and lips."

The petition noted that the preamble to the FM contained a discussion of a study using nonmonograph concentrations of glycerin (less than 20 percent) that were found to be inadequate to support the indication that had been proposed in the TFM (see 68 FR 33362 at 33367). The petition added that the FM did not provide adequate justification or discussion for the elimination of this claim for other skin protectant active ingredients. The petition stated that skin protectant products are selected frequently for their preventative as well as their protective benefits. The petition requested FDA to reconsider its decision not to include the terms "helps prevent" and "chafed" in the indications in § 347.50(b)(2) of the FM.

II. FDA's Conclusions on the Petition

FDA has reevaluated the indications in § 347.50(b)(2) of the FM and concurs with the petition that these terms should have remained in these indications, as proposed in the TFM. However, because labeling space may be limited for some OTC skin protectant drug products and all manufacturers of these products may not wish to include this additional language in their products' indications, FDA is including these additional terms as optional labeling in the indications in § 347.50(b)(2). Including these additional terms as labeling options will enable those manufacturers who wish to include these terms in product labeling to do so, but will not require all manufacturers of these products to have to include the terms if they do not wish to do so. Accordingly, in this final rule, FDA is amending § 347.50(b)(2) to read as follows:

(2) *For products containing any ingredient in § 347.10(a), (d), (e), (g), (h), (i), (k), (l), (m), and (r)*—(i) The labeling states (optional: "helps prevent and") "temporarily protects" (optional: "and helps relieve") (optional: "chafed,") "chapped or cracked skin" (optional: "and lips"). This statement may be followed by the optional statement: "helps" (optional: "prevent and") "protect from the drying effects of wind and cold weather". [If both statements are used, each is preceded by a bullet.]

(ii) *For products formulated as a lip protectant*. The labeling states (optional: "helps prevent and") "temporarily protects" (optional: "and helps relieve") (optional: "chafed,") "chapped or cracked lips". This statement may be followed by the optional statement: "helps" (optional: "prevent and") "protect from the drying effects of wind and cold weather". [If both statements are used, each is preceded by a bullet.]

FDA concludes that this revised labeling provides manufacturers a number of ways to state the indications for these OTC skin protectant drug

products. Although not requested by the petition, FDA is also amending the indications in § 347.50(e)(1)(ii) [for products formulated and labeled as a lip protectant and that meet the criteria established in § 201.66(d)(10)] and (f)(1)(ii) [for products containing only cocoa butter, petrolatum, or white petrolatum, singly or in combination with each other, and marketed other than as a lip protectant]. FDA is amending these indications so that OTC skin protectant drug products labeled under these sections of the monograph can have comparable labeling to products labeled under § 347.50(b)(2). These amended sections read as follows:

(e)(1)(ii) The heading and the indication required by § 201.66(c)(4) of this chapter may be limited to: ''Use [in bold type] helps'' (optional: ''prevent and'') ''protect'' (optional: ''and relieve'') ''chapped lips''. If both optional terms are used, the indication may be limited to: ''Use [in bold type] helps prevent, protect, and relieve chapped lips''.

(f)(1)(ii) The heading and the indication required by § 201.66(c)(4) of this chapter may be limited to ''Use [in bold type] helps protect minor cuts and burns'' or ''Use [in bold type] helps'' (optional: ''prevent and'') ''protect chapped skin'' or ''Use [in bold type] helps protect minor cuts and burns and'' (optional: ''prevent and protect'') ''chapped skin''.

FDA also intends to amend one of the indications in § 352.52(f)(1)(ii) to add the optional ''prevents'' language to be comparable to the other labeling revisions being made above. FDA intends to propose that the revised indication state:

''For a lip protectant product, the heading and the indication required by § 201.66(c)(4) may be limited to: ''Use [in bold type] helps protect against sunburn and'' (optional: ''prevent and protect'') ''chapped lips''.

Because the final monograph for OTC sunscreen drug products in part 352 is currently stayed, FDA intends to propose this revision in an amendment of that monograph, in a future issue of the **Federal Register**.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it comes within the good cause exceptions in 5 U.S.C. 553(b)(3)(B) in that obtaining public comment is impracticable, unnecessary, and contrary to public interest. The labeling revisions represent a minor change to reinstate language that should not have been excluded from the FM, and to make other labeling in the FM consistent with the labeling proposed in the TFM. In addition, given the imminence of the current compliance dates (see DATES) for the FM, seeking prior public comment on this delay is contrary to the public interest in the orderly issuance and implementation of regulations. In accordance with 21 CFR 10.40(e)(1), FDA is providing an opportunity for comment on whether the regulation should be modified or revoked.

III. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule may have a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any 1 year (adjusted annually for inflation).

FDA concludes that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. The final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

The purpose of this final rule is to revise several monograph indications. These changes provide manufacturers of OTC skin protectant drug products additional options to state the uses in the labeling for their products.

All manufacturers of OTC skin protectant drug products will need to relabel their products as a result of the FM issued on June 4, 2003. Based on the amount of time it takes to relabel products (6 to 10 months, on average) FDA estimates that few, if any, manufacturers have relabeled their products as of the date of this technical amendment to the FM.

For the reasons stated in the previous paragraphs and under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commissioner of Food and Drugs certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling statements are a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

V. Federalism

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

VI. Environmental Impact

FDA has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Comments

Interested persons may submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**). Three copies of all written comments are to be submitted. Individuals submitting written comments or anyone submitting electronic comments may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Division of Dockets Management

between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Reference

The following reference is on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. PRC1.

List of Subjects in 21 CFR Part 347

Labeling, Over-the-counter drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 347 is amended as follows:

PART 347—SKIN PROTECTANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

■ 1. The authority citation for 21 CFR part 347 continues to read as follows:

Authority: Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

■ 2. Section 347.50 is amended by revising paragraphs (b)(2), (e)(1)(ii), and (f)(1)(ii) to read as follows:

§ 347.50 Labeling of skin protectant drug products.

* * * * *

(b) *Indications.* * * *

(2) *For products containing any ingredient in § 347.10(a), (d), (e), (g), (h), (i), (k), (l), (m), and (r)*—(i) *The labeling states* (optional: ''helps prevent and'') ''temporarily protects'' (optional: ''and helps relieve'') (optional: ''chafed,'') ''chapped or cracked skin'' (optional: ''and lips''). This statement may be followed by the optional statement: ''helps'' (optional: ''prevent and'') ''protect from the drying effects of wind and cold weather''. [If both statements are used, each is preceded by a bullet.]

(ii) *For products formulated as a lip protectant.* The labeling states (optional: ''helps prevent and'') ''temporarily protects'' (optional: ''and helps relieve'') (optional: ''chafed,'') ''chapped or cracked lips''. This statement may be followed by the optional statement: ''helps'' (optional: ''prevent and'') ''protect from the drying effects of wind and cold weather''. [If both statements are used, each is preceded by a bullet.]

* * * * *

(e) *Products formulated and labeled as a lip protectant and that meet the criteria established in § 201.66(d)(10) of this chapter.* * * *

(1) * * *

(ii) The heading and the indication required by § 201.66(c)(4) of this chapter may be limited to: ''Use [in bold type] helps'' (optional: ''prevent and'') ''protect'' (optional: ''and relieve'') ''chapped lips''. If both optional terms are used, the indication may be limited to: ''Use [in bold type] helps prevent, protect, and relieve chapped lips''.

* * * * *

(f) *Products containing only cocoa butter, petrolatum, or white petrolatum identified in § 347.10(d), (m), and (r), singly or in combination with each other, and marketed other than as a lip protectant.* (1) * * *

(ii) The heading and the indication required by § 201.66(c)(4) of this chapter may be limited to ''Use [in bold type] helps protect minor cuts and burns'' or ''Use [in bold type] helps'' (optional: ''prevent and'') ''protect chapped skin'' or ''Use [in bold type] helps protect minor cuts and burns and'' (optional: ''prevent and protect'') ''chapped skin''.

* * * * *

Dated: December 1, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–30394 Filed 12–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9094]

RIN 1545–BC01

Return of Partnership Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that were published in the **Federal Register** on November 10, 2003 (68 FR 63733), that authorize the Commissioner to provide exceptions to the requirements of section 6301(a) of the Internal Revenue Code for certain partnerships by guidance published in the Internal Revenue Bulletin.

EFFECTIVE DATE: This correction is effective November 5, 2003.

FOR FURTHER INFORMATION CONTACT: David A. Shulman (202) 622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of these corrections are under section 6031 of the Internal Revenue Code.

Need for Correction

As published, these final and temporary regulations (TD 9094) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

■ Accordingly, the publication of the final and temporary regulations (TD 9094), which were the subject of FR Doc. 03–28190, is corrected to read as follows:

■ On page 63734, Authority Citation, column 1, the language ''Section 1.6031(a)–1T also issued under'' is corrected to read ''Section 1.6031(a)–1T is also issued under''.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–30524 Filed 12–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS PINCKNEY (DDG 91) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: June 16, 2003.

FOR FURTHER INFORMATION CONTACT: Commander Scott A. Kenney, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE, Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy

amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS PINCKNEY (DDG 91) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction; Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; and Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

■ 1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS PINCKNEY:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
* * * * *	*	*
USS PINCKNEY	DDG 91	1.87 meters.
* * * * *	*	*

■ 3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS PINCKNEY:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
* * * * *	*	*
USS PINCKNEY	DDG 91	107.07 thru 112.50°
* * * * *	*	*

■ 4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS PINCKNEY:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
* *	*	*	*	*	*
USS PINCKNEY	DDG 91	X	X	X	14.4
* *	*	*	*	*	*

Dated: June 16, 2003.

S.A. Kenney,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

[FR Doc. 03–30418 Filed 12–8–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS CHAFEE (DDG 90) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: June 11, 2003.

FOR FURTHER INFORMATION CONTACT: Captain James H. Hohenstein, JAGC, U.S. Navy Reserve, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law)(Acting), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS CHAFEE (DDG 90) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction; Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; and Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[AMENDED]

■ 1. The authority citation for 32 CFR part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Table Four, paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS CHAFEE:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
* * * * *	*	*
USS CHAFEE	DDG 90	1.90 meters
* * * * *	*	*

■ 3. Table Four, paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS CHAFEE:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
* * * * *	*	*
USS CHAFEE	DDG 90	108.88 thru 112.50°
* * * * *	*	*

4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS CHAFEE:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than 1/2 × ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
* *	*	*	*	*	*
USS CHAFEE	DDG 90	X	X	X	14.6
* *	*	*	*	*	

Dated: June 11, 2003.

J.H. Hohenstein,

Captain, JAGC, U.S. Navy Reserve, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) (Acting).

[FR Doc. 03–30419 Filed 12–8–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) of the Navy has determined that USS RONALD REAGAN (CVN 76) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: January 30, 2003.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Dominick G. Yacono, JAGC, U.S. Navy Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS RONALD REAGAN (CVN 76) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 21(a), pertaining to the placement of the masthead lights over the fore and aft centerline of the ship; Annex I, paragraph 2(g), pertaining to the placement of the sidelights above the hull; and Annex I, paragraph 3(a), pertaining to the placement of the forward masthead light in the forward quarter of the ship. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

■ Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[AMENDED]

■ 1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605

§ 706.2 [Amended]

■ 2. Table Two of § 706.2 is amended by adding, in numerical order, the following entry for USS RONALD REAGAN:

TABLE TWO

Vessel	Number	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(K), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters; § 2(g), Annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I
USS RONALD REAGAN	CVN–76	31,09	.....	.....	.....	.....	0.56	.....	.....

■ 3. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS RONALD REAGAN:

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained.
USS RONALD REAGAN	CVN 76	.....	X	.....	.....

Dated: January 30, 2003.

D.G. Yacono,

Lieutenant Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

[FR Doc. 03–30420 Filed 12–8–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS BENFOLD (DDG 65) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Commander S. A. Kenney, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS BENFOLD (DDG 65) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provision of 72 COLREGS without interfering with its special function as a naval ship: Annex I paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements. This amendment further provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), has amended that certification to reflect that certain masthead lights on USS BENFOLD (DDG 65), previously certified as not in compliance with 72 COLREGS, now comply with the applicable 72 COLREGS requirements, to wit: the arc of visibility of the forward masthead light is no longer obstructed, as required by Rule 21(a).

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[AMENDED]

■ 1. The authority citation for 32 CFR part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

■ 2. Table Four, Paragraph 16 of § 706.2 is amended by removing the entry for USS BENFOLD.

■ 3. Table Five of § 706.2 is amended by revising the following entry for USS BENFOLD:

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After mast-head light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
* *	*	*	*	*	*
USS BENFOLD	DDG 65	X	X	X	21.0
* *	*	*	*	*	*

Dated: July 25, 2003.

S.A. Kenney,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. 03–30421 Filed 12–8–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), acting pursuant to authority delegated from the Secretary of the Navy: has determined that USS THEODORE ROOSEVELT (CVN 71) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval aircraft carrier. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Commander S. A. Kenney, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Department of the Navy, Office of the Judge Advocate General, 1322 Patterson Avenue, Suite 3000, SE., Washington Navy Yard, DC 20374, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. The Secretary of the Navy previously certified that USS THEODORE ROOSEVELT (CVN 71) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with 72 COLREGS. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has amended that certification to reflect that certain anchor lights on USS THEODORE ROOSEVELT (CVN 71), previously certified as not in compliance with 72 COLREGS, now comply with the applicable 72 COLREGS requirements, to wit: the forward and aft anchor lights are now located on the centerline of the ship, the required height above the hull, as required by Rules 21(e), 30(a)(i), and 30 (a)(ii).

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

■ Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[Amended]

■ 1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

■ 2. Table Two of § 706.2 is amended by revising the entry for USS THEODORE ROOSEVELT (CVN 71):

TABLE TWO

Vessel	Hull No.	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(K), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters; § 2(g) Annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I
USS THEODORE ROOSEVELT.	CVN 71	30.0	.....	.....	.....	.....	0.51	.....	.....

Dated: July 25, 2003.

S.A. Kenney,

CDR, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. 03–30422 Filed 12–8–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS CARNEY (DDG 64) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: September 17, 2003.

FOR FURTHER INFORMATION CONTACT: Commander Scott A Kenney, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS CARNEY (DDG 64) is a vessel of the Navy which, due

to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, section 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; and, Annex I, section 2(f)(ii) pertaining to vertical placement of task lights. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

■ Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[AMENDED]

■ 1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

■ 2. Table Five of § 706.2 is amended by revising the following entry for USS CARNEY:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS CARNEY	DDG 64	X	X	X	14.0

Dated: September 17, 2003.

Scott A. Kenney,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. 03–30423 Filed 12–8–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

[Air Force Instruction 37–132]

Privacy Act; Implementation

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is revising an existing exemption rule for the Privacy Act system of records notice F031 AF SP A, entitled Correction and Rehabilitation Records. The amendments consist of changing the system identifier to F031 AF SF A, and revising the reasons for exempting from disclosure certain subsections of the Privacy Act of 1974.

EFFECTIVE DATE: October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043 or DSN 329–4043.

SUPPLEMENTARY INFORMATION: The proposed rule was published on August 29, 2003, at 68 FR 51959. No comments were received; therefore, the rule is being adopted as published.

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and 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 this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 806b

Privacy.

■ Accordingly, 32 CFR part 806b is revised to read as follows:

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

■ 1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Paragraph (a)(5) of Appendix C to part 806b is revised to read as follows:

Appendix C to Part 806b—General and Specific Exemptions

* * * * *

(a) General exemptions. * * *

(5) *System identifier and name:* F031 AF SF A, Correction and Rehabilitation Records.

(i) *Exemption:* (A) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency, which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(B) Portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from the following subsections of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(3), (e)(4)(G), (H) and (I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority:* 5 U.S.C. 552a(j)(2).

(iii) *Reasons:* (A) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), this subsection will not be applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(E) From subsections (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsections (j)(2) of the Privacy Act of 1974.

(F) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(G) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(H) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(I) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(J) From subsection (g) because this system of records compiled for law enforcement purposes and has been exempted from the access provisions of subsections (d) and (f).

(K) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Air Force will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Air Force's Privacy Instruction, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis necessary for effective law enforcement.

* * * * *

November 20, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–30400 Filed 12–8–03; 8:45 am]

BILLING CODE 5000–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD07–03–200]

RIN 1625–AA11

Regulated Navigation Area; San Carlos Bay, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary regulated navigation area on the waters of San Carlos Bay, Florida. The regulated navigation area is needed to minimize the risk of potential bridge allisions by vessels utilizing the main channel under span ''A'' (bascule portion) of the Sanibel Island Causeway Bridge and enhance the safety of vessels transiting the area and vehicles crossing over the bridge. This temporary rule covers the entire effective period from November 29, 2003 to November 28, 2004, but the Coast Guard may change this rule based on comments received.

DATES: This rule is effective from 12:01 a.m. on November 29, 2003 until 11:59 p.m. on November 28, 2004. Comments must be received by January 29, 2004.

ADDRESSES: You may mail comments and related material to Commander (m), Seventh Coast Guard District, 8th Floor, 909 SE 1st Ave., Miami, FL 33131–3050.

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 [CGD07–03–200] and are available for inspection or copying at the Seventh Coast Guard District Marine Safety Division, located at the above address, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Brian Gove, Project Officer, Seventh Coast Guard District, Marine Safety Branch, telephone 305–415–6743.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–03–200], indicate the specific section of this document to which each comment applies, and give the reason for each comment. The Coast Guard is interested in comments that, among other issues, detail specific economic impact to stakeholders on the waterway. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

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 a NPRM. The updated information concerning the state of disrepair of the Sanibel Island Causeway Bridge was brought to the attention of the Coast Guard on November 25, 2003. Publishing a NPRM and delaying its effective date would be contrary to the public interest because immediate initial action is needed to maximize the risk of potential bridge allusions by vessels utilizing the main channel under span ''A'' (bascule portion) of the bridge and enhance the safety of vessels transiting the area and vehicles crossing over the bridge. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restrictions. Additionally, the Coast Guard is soliciting comments on this rule and may make changes in light of them.

For the same reasons, 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 is making this rule effective on November 29, 2003 because immediate initial action is needed to minimize the risk of potential bridge allisions by vessels utilizing the main channel under span ''A'' (bascule portion) of the Sanibel Island Causeway Bridge and enhance the safety of vessels transiting the area and vehicles crossing over the bridge.

Public Meeting

We do not now plan to hold a public meeting. However, you may submit a request for a meeting by writing to Marine Safety Division, Seventh Coast Guard District, 909 SE 1st Ave, 8th Floor, Miami, FL 33131, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On November 18, 2003, the Lee County Board of Commissioners issued an emergency declaration that present conditions of the Sanibel Island Causeway Bridge pose an immediate threat to the safety of the traveling public. Immediate initial action is thus required to minimize the risk of potential bridge allisions by vessels utilizing the main channel under span ''A'' (bascule portion) of the bridge and enhance the safety of vessels transiting the area and vehicles crossing over the bridge.

Discussion of Rule

The regulated navigation area will encompass the main channel under the ''A'' span (bascule portion) of the Sanibel Island Causeway Bridge out to 100 feet on either side of the bridge encompassing the main shipping channel. All vessels are required to transit the area at no wake speed. However, nothing in this rule negates the requirement to operate at a safe speed as provided in the Navigation Rules and Regulations. A one-way traffic scheme is imposed within the regulated navigation area. Overtaking is prohibited. Stern towing is prohibited. Side towing is permitted. However, tugs with barges must be arranged in a push-ahead configuration with barges made up in tandem. Tugs must be of adequate horsepower to fully maneuver the barges. Tug and barge traffic may transit the regulated navigation area at slack water only. These regulations are going into effect to minimize the risk of potential bridge allisions by vessels utilizing the main channel under span ''A'' (bascule portion) of the Sanibel Island Causeway Bridge and enhance the safety of vessels transiting the area and vehicles crossing over the bridge.

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. The Coast Guard bases this finding on the following: vessels may still transit the area; the waterway is not a major commercial route, and the Coast Guard expects only modest delays due to the nature of marine traffic that traditionally uses the waterway.

Additionally, the Coast Guard is soliciting comments to determine the impact on the boating public, and may make adjustments based on comments we receive.

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 would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit a portion of San Carlos Bay. The Coast Guard certifies that this rule would not have a significant economic impact on a substantial number of small entities for the following reasons: vessels may still transit the area; the waterway is not a major commercial route, and the Coast Guard expects only modest delays due to the nature of marine traffic that traditionally uses the waterway.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule has a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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. If the temporary rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.** The Coast Guard has created a comment period for this temporary rule, and is particularly interested in comments describing specific economic impacts to small entities. This will allow the Coast Guard to better evaluate impacts to small entities. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small business 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 businesses. 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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule does 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 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. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

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 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)(g), of the Instruction, from further environmental documentation.

An ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' (CED) has been placed in the docket where indicated under **ADDRESSES.**

List of Subjects in 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 is amending 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T07–200 to read as follows:

§ 165.T07–200 San Carlos Bay, Florida—Regulated Navigation Area

(a) *Location.* The following area is a regulated navigation area (RNA): the waters bounded by the following points:
NW Corner: 26° 28.992N, 082° 00.895 W;
NE Corner: 26° 28.998N, 082° 00.874 W;
SW Corner: 26° 28.942N, 082° 00.875 W;
SE Corner: 26° 28.948N, 082° 00.854 W.

(b) *Regulations.* (1) A vessel in the RNA established under paragraph (a) of this section will operate at no wake speed. Nothing in this rule is to be construed as to negate the requirement to at all times operate at a safe speed as provided in the Navigation Rules and Regulations.

(2) A one-way traffic scheme is established. Vessel traffic may proceed in one direction at a time through the RNA. Overtaking is prohibited.

(3) Stern tows are not authorized. Side tows may be used. However, tugs with barges must be arranged in a push-ahead configuration with the barges made up in tandem. Tugs must be of adequate horsepower to maneuver the barges. Tug and barge traffic may transit the RNA at slack water only.

(c) *Definition.* The following definitions apply to this section:

Vessel. Every description of watercraft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on the water.

Overtaking. A vessel shall be deemed to be overtaking when coming up with another vessel from a direction more than 22.5 degrees abaft her beam, that is, in such a position with reference to the vessel she is overtaking, that at night she would be able to see only the stern light of the vessel but neither of her sidelights.

Slack water. The state of a tidal current when its speed is near zero, especially the moment when a reversing current changes direction and its speed is zero. The term also is applied to the entire period of low speed near the time of turning of the current when it is too weak to be of any practical importance in navigation.

(d) *Enforcement.* Persons in violation of these regulations will be subject to civil penalty under 33 U.S.C. 1232 of this part, to include a maximum civil penalty of $27,500 per violation.

(e) *Effective period.* This section is effective from 12:01 a.m. on November 29, 2003, until 11:59 p.m. on November 28, 2004.

Dated: November 29, 2003.

Harvey E. Johnson, Jr.,

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

[FR Doc. 03–30446 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 199–1199a; FRL–7592–5]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving an amendment to the Missouri State Implementation Plan (SIP) pertaining to an update to a St. Louis city SIP-approved Ordinance and incinerator permit. The effect of this action is to ensure Federal enforceability of the local agency's air program rules and to maintain consistency between the local agency adopted rules and the approved SIP.

DATES: This direct final rule will be effective February 9, 2004, without further notice, unless EPA receives adverse comment by January 8, 2004. If adverse comment is 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 Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Electronic comments should be sent either to *kaiser.wayne@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 above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

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

In August 2003, the St. Louis city Board of Aldermen updated the current SIP-approved Ordinance No. 64749 by rescinding it and adopting replacement Ordinance No. 65645. The only changes in the SIP-approved portion of the new Ordinance is the renumbering of Section 7—Definitions, to Section 6, and Section 17—Open Burning Restrictions, to Section 15.

Approving the new Ordinance subsequently necessitated that a reference to it in a SIP-approved St. Louis University Hospital incinerator permit, No. 00–01–004, be revised. Consequently, we are also approving a letter from the City of St. Louis Department of Health to St. Louis University Hospital, dated April 25, 2003, which revises Section II, B of incinerator permit No. 00–01–004, by updating the referenced Ordinance number to No. 65645.

A technical support document (TSD) containing additional information and background material for this action has been prepared and is available from the EPA contact listed above.

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 TSD

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 approving the State's request to amend the SIP by rescinding the SIP-approved provisions of St. Louis city Ordinance No. 64794 and concurrently approving the same, but renumbered provisions, in Ordinance No. 65645. We are also approving an administrative revision to the incinerator permit for St. Louis University Hospital.

We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives relevant 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, MO 199–1199a, 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 *kaiser.wayne@epa.gov.* Please include identification number, MO 199–1199a, 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 February 9, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it

extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 18, 2003.

William W. Rice,

Acting Regional Administrator, Region 7.

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

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

■ 2. Section 52.1320 is amended by:

■ a. In paragraph (c) removing the heading and entries for St. Louis City Ordinance 64749 and adding a heading and entries for St. Louis City Ordinance 65645.

■ b. In paragraph (d) adding an entry to the end of the table for St. Louis University.

■ The revisions and addition read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
* * * * * * *				
St. Louis City Ordinance 65645				
Section 6	Definitions	8/28/03	12/9/03 *[insert FR page citation].*	The phrase ''other than liquids or gases'' in the Refuse definition has not been approved.
Section 15	Open Burning Restrictions	8/28/03	12/9/03 *[insert FR page citation].*	

(d) * * *

EPA-APPROVED STATE SOURCE-SPECIFIC PERMITS AND ORDERS

Name of source	Order/permit number	State effective date	EPA approval date	Explanation
* * * * * * *				
St. Louis University	Permit Matter No. 00–01–004	8/28/03	12/9/03 *[insert FR page citation].*	Updates a reference in section II.B. to Ordinance No. 65645.

* * * * *

[FR Doc. 03–30039 Filed 12–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD152–3105a; FRL–7596–4]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Emissions of Volatile Organic Compounds From Consumer Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). The revisions pertain to the control of volatile organic compound (VOC) emissions from consumer products. EPA is approving these revisions to the Maryland SIP in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on January 23, 2004 without further notice, unless EPA receives adverse written comment by January 8, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@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 Part III of the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and Maryland Department of

the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: On November 19, 2003, the Maryland Department of the Environment (MDE) submitted a formal revision to its State Implementation Plan (SIP). The SIP revision (Maryland SIP revision # 03–07) consists of the standards and requirements to control VOC emissions from consumer products.

I. Background

In December 1999, EPA identified emission reduction shortfalls in several one-hour ozone nonattainment areas in the Ozone Transport Region (OTR) and required those areas to address the shortfalls. The Ozone Transport Commission (OTC) developed control measures into model rules for a number of source categories and estimated emission reduction benefits from implementing those model rules that will close the shortfalls. The OTC Commissioners formally supported these model rules, including a consumer products rule. The OTC Consumer Products model rule was based on the existing rules developed by the California Air Resources Board, which were analyzed and modified by the OTC workgroup to address VOC reduction needs in the OTR. The standards and requirements contained in Maryland's Consumer Products rule are consistent with the OTC model rule.

II. Summary of SIP Revision

On July 25, 2003, the Secretary of the Environment adopted new regulation COMAR 26.11.32, Control of Emissions of VOC from Consumer Products that includes COMAR 26.11.32.01 through COMAR 26.11.32.23. This regulation establishes VOC content limits for approximately 80 categories and subcategories of consumer products. Consumer products are household and industrial products such as cleaning compounds, floor finishes, personal care products, automotive products, disinfectants, aerosol adhesives, and lawn and garden products.

The regulation applies to a person who sells, supplies, offers for sale, or manufactures consumer products on or after January 1, 2005 for use in the State of Maryland. Also included in the regulation are definitions, the VOC content limits, standards and exemptions, innovative products, administrative requirements, recordkeeping and reporting requirements, variances, test methods, and an alternative control plan.

On October 21, 2003, the Secretary of the Environment adopted an amendment to COMAR 26.11.32.01 by the addition of COMAR 26.11.32.01F, which clarifies the enforcement policy relative to the sale of a non-complying consumer product by a retailer. The amendment includes good faith efforts to be used by a retailer in safeguarding against the sale of a non-compliant product, and in the course of business, ensure that the products meet applicable state requirements.

III. Final Action

EPA is approving revisions to the Maryland SIP, COMAR 26.11.32, to establish VOC content limits for approximately 80 categories and subcategories of consumer products that was submitted on November 19, 2003 by MDE. The implementation of this rule will result in the reduction of VOC emissions in the Baltimore Metropolitan Area.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on January 23, 2004 without further notice unless EPA receives adverse comment by January 8, 2004. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number, MD152–3105, in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov*, attention: MD152–3105. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, then select ''Environmental Protection Agency'' at the top of the page 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.

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

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and will be available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Considerations When Preparing Comments to EPA

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

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

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 9, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and

shall not postpone the effectiveness of such rule or action. This action pertaining to Maryland's Consumer Products Rule, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 28, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 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 V—Maryland

■ 2. Section 52.1070 is amended by adding paragraph (c)(185) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(185) Revisions to the Code of Maryland Administrative Regulations (COMAR) on the Control of VOC Emissions from Consumer Products submitted on November 19, 2003 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) A letter dated November 19, 2003 from the Maryland Department of the Environment transmitting additions to Maryland's State Implementation Plan pertaining to the control of volatile organic compounds (VOC) emissions from consumer products.

(B) Addition of new COMAR 26.11.32—Control of Emissions of VOC from Consumer Products:

(*1*) Addition of COMAR 26.11.32.01 through COMAR 26.11.32.23 adopted by the Secretary of the Environment on July 25, 2003 and effective on August 18, 2003.

(*2*) Addition of new COMAR 26.11.32.01F—Retail Sales, adopted by the Secretary of the Environment on October 22, 2003 and effective on November 24, 2003.

(ii) Additional Material.—Remainder of the State submittals pertaining to the revisions listed in paragraph (c)(185)(i) of this section.

[FR Doc. 03–30509 Filed 12–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7597–5]

Louisiana: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Louisiana has applied for final authorization of revisions to its Hazardous Waste Program under the Resource Conservation and Recovery Act (RCRA), Clusters X, XI and XII which contain Federal rules promulgated from July 1, 1999, to June 30, 2002. The EPA has determined that these revisions satisfy the requirements needed to qualify for final authorization, and is authorizing the State's revisions through this immediate final action. The EPA is publishing this rule to authorize the revisions without a prior proposal because we believe this action is not controversial and do not expect adverse comments. We note that a petition to withdraw the State of Louisiana's authorization to operate its RCRA program dated March 13, 2002 has been filed by Concerned Citizens of New Sarpy and Louisiana Bucket Brigade. Currently, we are in the final stages of review of the allegations contained in the petition. As such, the Region is not yet in a position to determine the outcome of the petition at this time. EPA is continuing to review the Petition and will take whatever action is deemed necessary as a result of its investigation of the allegations contained in the petition. The approval of this revision to the State's authorized program is a completely separate and unrelated action to EPA's review of the petition. Under RCRA Section 3006(b), 42 U.S.C. 6926(b), States must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Since there were modifications made to the federal program, the changes to Louisiana's RCRA program are necessary. In most circumstances, the Federal Rules require the authorized State's program be revised within one year of the Federal modification. Therefore, EPA does not believe that action on this revision to Louisiana's program should be delayed.

Unless we get adverse comments which oppose this authorization during the comment period, the decision to authorize the State of Louisiana Department of Environmental Quality (LDEQ) revisions to their hazardous waste program will take effect. If adverse comments are received, the EPA will publish a document in the **Federal Register** (FR) either: A withdrawal of the immediate final decisions (and the proposed rule published elsewhere in this issue of the **Federal Register** will serve as a proposal to authorize the changes), or a document containing a response to comments and which either affirms that the immediate final decision takes effect or reverses the decision.

DATES: This immediate final rule is effective February 9, 2004 unless EPA receives adverse written comments by January 8, 2004. Should EPA receive such comments, it will publish a timely document either: Withdrawing the immediate final publication or affirming the publication and responding to comments.

ADDRESSES: Written comments, referring to Docket Number LA–01–03 should be sent to Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. You may submit your comments electronically to *Patterson.alima@epa.gov.* Copies of the Louisiana program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday, at the following addresses: Louisiana Department of Environmental Quality, 602 N. Fifth Street, Baton Rouge, Louisiana 70884–2178, (225) 219–3559 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone number (214) 665–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States that receive final authorization from EPA under RCRA Section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when

Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260–266, 268, 270, 273, and 279.

B. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Louisiana subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Louisiana has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to: (1) Do inspections, and require monitoring, tests, analyses or reports, (2) enforce RCRA requirements and suspend or revoke permits and (3) take enforcement actions after notice to, and consultation with the State. This action does not impose additional requirements on the regulated community because the regulations for which Louisiana is being authorized by today's action are already effective, and are not changed by today's action.

C. What Is the History of Louisiana's Final Authorization and Its Revisions?

The State of Louisiana initially received final authorization on February 7, 1985 (50 FR 3348), to implement its base Hazardous Waste Management Program. Since the Base Program authorization, the following are publication dates for the State of Louisiana's program revisions: November 28, 1989 (54 FR 48889) effective January 29, 1990; August 26, 1991 (56 FR 41958) effective August 26, 1991; November 7, 1994 (59 FR 55368) effective January 23, 1995; December 23, 1994 (59 FR 66200) effective March 8, 1995; there were technical corrections made on January 23, 1995 (60 FR 4380), effective January 23, 1995; and another technical correction was made on April 11, 1995 (60 FR 18360) effective April 11, 1995. We authorized the following additional revisions: October 17, 1995 (60 FR 53704) effective January 2, 1996; March 28, 1996 (61 FR 13777) effective June 11, 1996; December 29, 1997 (62 FR 67572) effective March 16, 1998; October 23, 1998 (63 FR 56830) effective December 22, 1998; August 25, 1999 (64 FR 46302) effective October 25, 1999 ; September 2, 1999 (64 FR 48099) effective November 1, 1999; February 28, 2000 (65 FR 10411) effective April 28, 2000 and January 2, 2001 (66 FR 23) effective March 5, 2001. On October 23, 2001, April 4, 2003, and June 9, 2003, Louisiana applied for approval of its program revisions for RCRA Clusters X, XI and XII. In this application, Louisiana is seeking approval of RCRA Clusters X, XI and XII in accordance with 40 CFR 271.21(b)(3).

Since 1979, the State of Louisiana, through the Louisiana Department of Natural Resources, has conducted a program designed to regulate those who generate, transport, treat, store, dispose of or recycle hazardous waste. During the 1983 Regular Session of the Louisiana Legislature, Act 97, the Environmental Affairs Act, was adopted. This Act amended and reenacted Louisiana Revised Statutes (LRS) 30:1051 *et seq.* and also created the Louisiana Department of Environmental Quality (LDEQ). During the 1999 Regular Session of Louisiana Legislature, Act 303 revised the LRS 30:2011 *et seq.*, allowing LDEQ to re-engineer itself to perform more efficiently and to meet its strategic goals.

Act 97 transferred the duties and previously delegated responsibilities of the Department of Natural Resources, Office of Environmental Affairs, to LDEQ. The LDEQ and the Department of Natural Resources, Office of Conservation, has a memorandum of understanding that outlines the protocol for activities associated with the exploration, development, or production of oil, gas, or geothermal resources. The LDEQ has lead agency jurisdictional authority for administering the RCRA Subtitle C program in Louisiana. The LDEQ is designated to facilitate communication between the EPA and the State.

The State law governing the generation, transportation, treatment, storage and disposal of hazardous waste can be found in LRS 30:2171–2205. This part may be cited as the ''Louisiana Hazardous Waste Control Law.'' The laws governing hazardous waste should be viewed as part of a larger framework of environmental laws specified in Title 30, Subtitle II Louisiana Revised Statutes. The State of Louisiana adopted the Federal regulations for Cluster X , XI and XII promulgated from July 1, 1999 through June 30, 2002, and the State's regulations which became effective May 20, 1997, June 20, 1998, September 20, 1998, March 20, 1999, August 20, 1999, March 20, 2001, April 20, 2001, July 20, 2001, and March 20, 2003.

State Initiated Changes

The State has made amendments to the provisions listed in the table which follows. These amendments correct typographical and/or printing errors, clarify and make the State's regulations more internally consistent. The State's laws and regulations, as amended by these provisions, provide authority which remains equivalent to and no less stringent than the Federal laws and regulations. These State initiated changes are submitted under the requirements of 40 CFR 271.21(a).

MANIFEST RULE CHANGES

State citation	Federal citation	Result of re-promulgated rule (amended/effective date January 20, 2001)
903	n/a	repealed.
905.A.4	264.71(a)	from more stringent to equivalent.
905.A.5	264.71(a)(5)	from more stringent to equivalent.
905.D	264.71(d)	changed the offices to reflect the re-engineered offices.
907.B	264.72(b)	from more stringent to equivalent.
913	n/a	repealed.
915	n/a	repealed.
917	n/a	repealed.
919	n/a	repealed.
1107.A.8	n/a	reserved.
1107.C	262.22	copies of manifest will no longer be sent to the State.
111.C.1	n/a	Reserved .
Chapter 11. Appendix A		Appendix to Part 262 equivalent.
1309.F	n/a	deleted.

MANIFEST RULE CHANGES—Continued

State citation	Federal citation	Result of re-promulgated rule (amended/effective date January 20, 2001)
1309.G	n/a	deleted.

D. What Changes Are We Authorizing With Today's Action?

Louisiana applied for final approval of its revision to its hazardous waste program in accordance with 40 CFR 271.21. Louisiana's revisions consist of regulations which specifically govern RCRA Clusters X, XI and XII rules. Louisiana requirements are included in a chart with this document. The EPA is now making a final decision, subject to receipt of written adverse comments that oppose this action, that Louisiana's hazardous waste program revision satisfies the requirements necessary to qualify for final authorization. Therefore, we grant Louisiana final authorization for the following program revisions:

Federal citation	State analog
1. Clarification of Standards for Hazardous Waste LDR Treatment Variances, [62 FR 64504] December 5, 1997. (Checklist 162).	Louisiana Revised States (LRS) 30: Section 2180 *et seq.*, as amended May 7, 1996, effective May 7, 1996; Louisiana Hazardous Waste Regulations (LHWR) Sections 2231.C, 2231.D and 2231.G, as amended July 20, 2001, effective July 20, 2001.
2. Land Disposal Restrictions Phase IV—Final Rule Promulgating Treatment Standard for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Material and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters, [63 FR 28556] May 26, 1998. (Checklist 167 B).	LRS:30:2180 *et seq.*, as amended May 7, 1996, effective May 7, 1996; LHWR Sections 1109.E.1.e, 2223.J, 2236.C.1.a-b, 2245.C.3, Chapter 22. Table 2, and Chapter 49. Table 2, as amended March 20, 2001, effective March 20, 2001; 2223.J, as amended March 20, 1999, effective March 20, 1999; 2231.C–D and 221.G, as amended July 20, 2001, effective July 20, 2001.
3. Hazardous Waste Management System; Modification of the Hazardous Waste Program; Hazardous Waste Lamps, [64 FR 36466] July 6, 1999. (Checklist 181).	LRS:30:2180 *et seq.*, as amended May 7, 1996, effective May 7, 1996; LHWR Sections 105.D.7, 105.D.7.c-d, 305.C.11.b-d, 1501.C.11.b-d, 2201.1.I.5.b-d, 3801.A as amended September 20, 1998, effective September 20, 1998; 3801.B, as amended June 20, 1998, effective June 20, 1998; 3801.C–D, as amended April 20, 2001, effective April 20, 2001; 3803.A.1, 3803.B.2, 3803.B.3, 3805.A, 3807.A, as amended May 20, 1997, effective May 20, 1997; 3809.A, as amended June 20, 1998, effective June 20, 1998, 3809.B, as amended September 20, 1998, effective September 20, 1998, 3809.B.1–2, as amended March 20, 2001, 3809.C, as amended September 20, 198, effective September 20, 1998; 3809.C.1, as amended March 2001, effective March 20, 2001; 3809.C.2, as amended September 20, 1998, effective September 20, 1998; 3813.Definition—Lamps, as amended March 20, 2001, effective March 20, 2001; 3813.Definition—Large Quantity Handler of Universal Waste, as amended September 20, 1998, effective September 20, 1998 and 3813.Definition of small Quantity Handler; May 20, 1997, effective May 20, 1997; 3821.D, 3821.D.1, 3821.D.2, 3823.A.5, 3837, as amended March 20, 2001, effective March 20, 2001; 3813.Definitions—Universal Waste, as amended September 20, 1998, effective September 20, 1998; 3815.B, as amended May 20, 1997, effective May 20, 1997; 3821.D, 3821.D.1–2, and 3823.A.5, as amended March 20, 2001, effective March 20, 2001; 3837, as amended May 20, 1997, effective May 20, 1997, 3841.B.4, 3841.B.5, as amended September 20, 1998, effective September 20, 1998; 3843.D, 3843.D.1–2, 3845.A.5, as amended March 20, 2001, effective March 20, 2001; 3859, 3873.A, as amended May 20, 1997, effective May 20, 1997; 3883.A.1, as amended February 20, 1998, effective February 20, 1998; 4301.C.13.b-c, as amended March 20, 1999, effective March 20, 1999; and 4301.C.13.d, as amended August 20, 1999, effective August 20, 1999.
4. NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combusters, [64 FR 52828; 64 FR 63209] September 30, 1999; and November 19, 1999. (Checklist 182).	LRS:30:2180 *et seq.*, as amended May 7, 1996, effective May 7, 1996; LHWR Sections 109 Definitions—Dioxins and furans (D/F), 109 Definitions—TEQ, 332.B.8, 322.L.9, 529.Intro, 529.F, 525.G, 537.D, 3001.B, 3001.B.1–2, 3001.B.2.a-d, 3001.C–D, 3001.D.1, 3001.D.1.a-D.2–3, 3001.D.3.a-D,3.b, 3001.E–G, 3001.H, 3003.C, 3003.C.1, 3011.C, 3011.C.1-3, 3011.D, 3025.B.1, 3025.B.2.a, 3025.B.2.a.Note, Chapter 30 Appendix H, 3105.B, 3105.B.1–2, 3105.C–E, 3115.E, 3203.Intro, 4513.B, 4513.B.1, 4513.B.2, 4513.C, and Chapter 49.Table 7, as amended March 20, 2001, effective March 20, 2001.
5. Land Disposal Restrictions Phase IV: Final Rule Promulgating Treatment Standards for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Materials and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters, [64 FR 56469] October 20, 1999. (Checklist 183).	LRS:30:2180 *et seq.*, as amended May 7, 1996, effective May 7, 1996; LHWR Sections 1109.E.1.e, 2214, as amended March 20, 2001, effective March 20, 2001; 2223.J, as amended March 20, 1999, effective March 20, 1999; 2236.C.1.a-b, 2245.C.3, Chapter 22 Table 2, Chapter 22.Table 7, Chapter 31.Table 1, Chapter 49.Table 4, Chapter 49.Table 6 and Chapter 49.Table 2, as amended March 20, 2001, effective March 20, 2001.
6. Waste Water Treatment Sludges From the Metal Finishing Industry; 180-day Accumulation Time, [65 FR 12378] March 8, 2000. (Checklist 184).	LRS 30:2180 *et seq.*, as amended May 7, 1996, effective May 7, 1996; LHWR Sections 1109.E.1.e, as amended March 20, 2001, effective March 20, 2001, 1109.E.10, 1109.E.10.a-d, 1109.E.10.d.i(a)-(c), 1109.E.10.d.i(c).(i) and (ii), 1109.E.10.d.ii-v, 1109.E.11 and 1109.E.12, as amended July 20, 2001, effective July 20, 2001.

Federal citation	State analog
7. Organobromine Production Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Listing of CERCLA Hazardous Substances, Reportable Quantities; Final Rule, [65 FR 14472] March 17, 2000. (Checklist 185).	LRS:30.2180 *et seq.*, as amended May 7, 1996, effective May 7, 1996; LHWR Sections 1109.E.1.e, as amended March 20, 2001, effective March 20, 2001; 2223.J, as amended March 20, 1999, effective March 20, 1999; 2236.C.1.a-b, 2245.C.3, Chapter 22 Table 2, Chapter 49.Table 2, 2214, Chapter 22.Table 2, Chapter 22.Table 7, Chapter 31.Table 1, Chapter 49.Table 2, Chapter 49.Table 4, and Chapter 49.Table 6, as amended March 20, 2001, effective March 20, 2001.
8. Organobromines Production Wastes; Petroleum Refining Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions, Final Rule and Correcting Amendments, [64 FR 36365] June 8, 2000. (Checklist 187).	LRS:30.:2180 *et seq.*, as amended May 7, 1996, effective May 7, 1996; LHWR Section Chapter 49.Table 1, as amended March 20, 1999, effective March 20, 1999.
9. NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustor, [65 FR 42292] July 10, 2000. (Checklist 188).	LRS:30.:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 4909.D.2.d, 3105.B.1, 3105.B.3, 321.C.10.a, as amended March 20, 2003, effective March 20, 2003.
10. NESHAPS: Second Technical Correction Vacatur, [66 FR 27270] May 14, 2001. (Checklist 188.1).	LRS:30.:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 4909.D.2.d, 3105.B.1, 3105.B.3, 321.C.10.a as amended March 20, 2003, effective March 20, 2003.
11. NESHAPS; Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustor: Direct Final Rule [66 FR 35087] July 3, 2001. (Checklist 188.2).	LRS:30.:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 4909.D.2.d, 3105.B.1, 3105.B.3, 321.C.10.a as amended March 20, 2003, effective March 20, 2003.
12. Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes, [65 FR 67068] November 8, 2000. (Checklist 189).	LRS:30:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 4901.C Table 2, 4901.G Table 6, 3105 Table 1, Sections 2213.A–B, 2213.B.1–5, 2213.C–D, 2213.D.1, Chapter 22 Table 2, and Chapter 22 Table 7, as amended March 20, 2003, effective March 20, 2003.
13. Land Disposal Restrictions Phase IV—Deferral for PCBs in Soil, [65 FR 8137] December 26, 2000. (Checklist 190).	LRS:30:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 2215.A–B, 2215.B.1–4, Chapter 22 Table 7, 2236.D, and 2215 Appendix Table 9 as amended March 20, 2003, effective March 20, 2003.
14. Mixed Waste Rule, [66 FR 27218] May 16, 2001. (Checklist 191).	LRS:30:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 4201, 109, 4203, 4205, 4207.A–B, 4207.B.1–5, 4209, 4211.A, 4211.A.1, 4211.A.1.a-c, 4211.A.2, 4211.B, 4213.A, 4213.A.1–2, 4213.A.1–4, 4213.B, 4215.A, 4215.A.1–4, 4215.B, 4217.A–B, 4219.A, 4221.A, 4223.A, 4223.A.1, 4223.A.2, 4225.A–4, 4227, 4229.A, 4231.A, 4231.A.1–4, 4233.A, 4235.A, 4235.A.1–3, 4235.A.3, 4237.A, 4237.B, 4237.B.1–7, 4239.A, 4239.A.1–5, 4241.A.1, 4241.A.1.a-c, 4241.A.2, 4241.B. 4243.A, 4243.A.2, 4243.A.2.a-d, and 4243.B–C, as amended March 20, 2003, effective March 20, 2003.
15. Mixture and Derived-From Rules Revisions, [66 FR 27266] May 16,2001. (Checklist 192 A).	LRS:30:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 109.Hazardous Waste.2.c, 109.HW.4.f, and 109 Hazardous Waste.4.g, as amended March 20, 2003, effective March 20, 2003.
16. Land Disposal Restrictions Correction, [66 FR 27266] May 16, 2001. (Checklist 192 B).	LRS:30:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Section Chapter 22 Table 11, as amended March 20, 2003, effective March 20, 2003.
17. Change of Official EPA Mailing Address, [66 FR 34374] June 28, 2001. (Checklist 193).	LRS:30:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Section 110.A.11, as amended March 20, 2003, effective March 20, 2003.
18. Mixture and Derived-From Rules Revision II, [66 FR 50334] October 3, 2001. (Checklist 194).	LRS:30:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 109 Hazardous Waste.2.c-vii and 109 Hazardous Waste.4.f, as amended March 20, 2003, effective March 20, 2003.
19. Inorganic Chemical Manufacturing Waste Identification and Listing, [66 FR 58258]; [67 FR 17119] November 20, 2001; April 9, 2002. (Checklist 195).	LRS:30:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 105.D.2.p, 105.D.2.p.i, 105.D.2.p.ii-v, 4901.C.Table 2, 4901.G.Table 6, 2219.A, 2219.B, 2219.B.1–5, 2219.C, and 22 Table 2, as amended March 20, 2003, effective March 20, 2003.
20. Corrective Action Management Units (CAMU), [67 FR 2962) January 22, 2002. (Checklist 196).	LRS:30:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 109, 2601.A&B, 2602, 2602.A, 2603.A, 2603.A.1, 2603.A.1.b, 2603.A.1.b.i-ii, 2603.A.1.b-c, 2603.A.3, 2603.A.3.a-d, 2603.A.4–5, 2603.B, 2603.b.1, 2603.B.2, 2603.B.326.3.C, 2603.C.2, 2603.C.4–7, 2603.D. 2603.D.1–3, 2603.E, 2603.E.1–3, 2603.E.3.b, 2603.E.3.b.i-ii, 2603.E.4, 2603.E.4.a, 2603.E.4.a.i, 2603.E.4.a.i(a)-(b), 2603.E.4.a.ii-iii, 2603.E.4.b, 2603.E.4.c-d, 2603.E.4.d.i-ii, 2603.E.4.d.iii-vi, 2603.E.4.e, 2603.E.4.e.i-v, 2603.E.4.e.v(a)-(g), 2603.E.5, 2603.E.5.a-c, 2603.E.6, 2603.E.6, 2603.E.6.a, 2603.E.6.a.i-ii, 2603.E.b, 2603.E.6.b.i-ii, 2603.E.6.c, 2603.E.6.c.i-vi, 2603.E.6.d, 2603.E.6.d.i, 2603.E.6.i.(a)-(e), 2603.E.6.d.ii, 2603.E.6.e, 2603.F, 2603.F.1-2, 2603.F.2.a-b, 2603.G–K, 2605.A, 2607.A, 2607.A,12607.A.2, 2607.A.2.a-c, 2607.A.3, 2607.B–E, 2607.E.1-6, 2607.F and 2607.G, as amended March 20, 2003, effective March 20, 2003.

Federal citation	State analog
21. Hazardous Air Pollutant Standards for Combustors; Interim Standards, [67 FR 6792] February 1, 2002. (Checklist 197).	LRS:30:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 3105.B.1, 3105.B.4, 3105.B.4.a-b, 4513.B.1, 4513.B.3, 3001B.2.a-d, 529.F, 535.G, 3115.E, 537.D, 2001.A, 2001.A.1, 2001.A.1.a, 2001.A.1.a.i-ii, 2001.A.1.b, 2001A.1.b.i. 2001.A.1.b.i(a)-(b), 2001.A1.b.ii, 2001.A.1.b.ii(a), 2001.A.1.b.ii(b), 2001.A.1.c, 2001.A.1.c.i-ii, 2001.A.2, 2001.A.2.a, 2001.A.2.a.i-ii, 2001.A.2.b. 2001.A.2.b.i(a), 2001.A.2.b.i.(b), 2001.A.2.b.ii, 2001.A.2.b.ii(a), 2001.A.2.b.ii(b), 2001.A.2.c, 2001.A.2.c.i-ii, 2001.B, 2001.B.1, 2001.B.1.a-b, and 2001.B.2, as amended March 20, 2003, effective March 20, 2003.
22. Hazardous Air Pollutant Standards for Combusters; Corrections, [67 FR 6968] February 14, 2002. (Checklist 198).	LRS:30:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 3001.A, 3001.B.1, 3001.D.1.a.ii, 3001.D.2.a-b, 3001.D.3, 3001.D.3.a, 3001.D.3.a.iv, and 321.C.10.a, as amended March 20, 2003, effective March 20, 2003.
23. Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste, [67 FR 11251] March 13, 2002. (Checklist 199).	LRS:30:2180 *et seq.*, as amended through 2001 Regular Legislative Session; Louisiana Hazardous Waste Regulations (LHWR) Sections 109 Solid Waste.3.c, 105.D.1.p, 105.D.1.p.i-iv, 105.D.1.p.iv(a)-(c)(iv), 105.D.1.p.v-vi, and 4903.E.1, as amended March 20, 2003, effective March 20, 2003.

E. What Decision Has EPA Made?

We conclude that Louisiana's application to revise its authorized program meets the statutory and regulatory requirements established by RCRA. Therefore, we grant Louisiana final authorization to incorporate the changes described in the authorization application into its hazardous waste program. Louisiana has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Louisiana, including issuing permits, until the State is granted authorization to do so.

F. How Do the Revised State Rules Differ From the Federal Rules?

In this authorization of the State of Louisiana's program revisions for RCRA Clusters X, XI and XII, there are no provisions that are more stringent or broader in scope. The State's regulations are equivalent and consistent with the Federal regulations.

G. Who Handles Permits After This Authorization Takes Effect?

The EPA will administer any RCRA permits or portions of permits it has issued to facilities in the State until the State becomes authorized. At the time the State program is authorized for new rules, EPA will transfer all permits or portions of permits issued by EPA to the State. The EPA will not issue any more permits or portions of permits for the provisions listed in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which the State is not yet authorized.

H. Why Wasn't There a Proposed Rule Before Today's Notice?

The EPA is authorizing the State's changes through this immediate final action and is publishing this rule without a prior proposal to authorize the changes because EPA believes it is not controversial and we expect no comments that oppose this action. The EPA is providing an opportunity for public comment now. In addition, in the proposed rules section of today's **Federal Register**, we are publishing a separate document that proposes to authorize the State changes. If EPA receives comments opposing this authorization, that document will serve as a proposal to authorize the changes. '

I. Where Do I Send My Comments and When Are They Due?

You should send written comments to Alima Patterson, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533. You may submit comments electronically to Patterson.alima@epa.gov. Please refer to Docket Number LA–01–03. We must receive your comments by January 8, 2004. You may not have an opportunity to comment again. If you want to comment on this action, you must do so at this time.

J. What Happens if EPA Receives Comments Opposing This Action?

If EPA receives comments opposing this action, we will publish a second **Federal Register** document before the immediate final rule takes effect. The second document may withdraw the immediate final rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes or the document may identify the issues raised, respond to comments, and affirm that the immediate final rule will take effect February 9, 2004.

K. When Will This Approval Take Effect?

Unless EPA receives comments opposing this action, this final authorization approval will become effective without further notice on February 9, 2004.

L. Where Can I Review the State's Application?

You can view and copy the State of Louisiana's application from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: Louisiana Department of Environmental Quality, 602 N. Fifth Street, Baton Rouge, Louisiana 70884–2178, (225) 219–3559 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444. For further information contact Alima Patterson, Region 6 Regional Authorization Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

M. How Does Today's Action Affect Indian Country in Louisiana?

Louisiana is not authorized to carry out its Hazardous Waste Program in Indian country within the State. This

authority remains with EPA. Therefore, this action has no effect on Indian country.

N. What Is Codification?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. The EPA does this by referencing the authorized State rules in 40 Code of Federal Regulations part 272. The EPA reserves the amendment of 40 CFR part 272, subpart T for this codification of Louisiana's program changes until a later date.

Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action 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 action authorizes 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). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355) May 22, 2001 because it is not a significant regulatory action under Executive Order 12866. Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the Executive Order.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document 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 in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective on February 9, 2004.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and Recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: November 25, 2003.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 03–30511 Filed 12–8–03; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, 18, 90 and 95

[ET Docket Nos. 01–278 and 95–19; FCC 03–149]

Radio Frequency Device Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document relaxes and updates certain regulations for unlicensed devices, to allow for improved operations. It also grants a petition for reconsideration concerning the acceptance of foreign laboratory accreditations and grants a petition for declaratory ruling concerning the certification requirements for transmitters in the private land mobile radio services. The rules will permit the development of new types of unlicensed devices while protecting authorized users of the radio spectrum from harmful interference.

DATES: Effective January 8, 2004. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of January 8, 2004.

FOR FURTHER INFORMATION CONTACT: Hugh L. Van Tuyl, Office of Engineering and Technology, (202) 418–7506, TTY (202) 418–2989, e-mail: *Hugh.VanTuyl@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order and Memorandum Opinion and Order,* ET Docket Nos. 01–278 and 95–19, FCC 03–149, adopted June 25, 2003, and released July 17, 2003. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio

format), send an e-mail to *fcc504@fcc.gov* or call the FCC Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY).

Summary of the Second Report and Order and Memorandum Opinion and Order

1. In this Second Report and Order and Memorandum Opinion and Order, the Commission is updating certain regulations for unlicensed radio frequency devices contained in parts 2, 15 and 18 of our rules. Specifically, the Commission is: (1) Changing certain emission levels in the restricted bands above 38.6 GHz; (2) eliminating the prohibition on data transmissions and making other changes to rules governing part 15 remote control devices; (3) modifying the rules for radio frequency identification systems to allow for improved operation; (4) simplifying the labeling requirement for manufacturer self-authorized equipment; and (5) making other changes to update and correct our rules. Because of certain decisions in this Second Report and Order, the Commission is granting a petition for reconsideration filed by the Information Technology Industry Council (ITI) in ET Docket No. 95–19 to the extent indicated herein and granting a petition for declaratory ruling filed by M/A-COM Private Radio Systems, Inc. to the extent indicated herein.

2. In recent years, there has been a significant increase in the proliferation of unlicensed radio frequency devices that are regulated under part 15 of our rules (part 15 devices). Such devices are increasingly relied upon for many everyday functions in consumers' lives. Examples of common part 15 devices include cordless phones, computers, baby monitors, and garage door openers. The range of applications and technologies for these types of devices continues to evolve at a rapid pace. For example, digital processing speeds of personal computers are above 2400 MHz as compared to only 25 MHz about 10 years ago. Cordless telephones now operate at higher frequencies, with digital modulation techniques providing users with improved performance and additional service features. In addition, technological innovations are now being employed to develop new part 15 equipment and systems for business and professional applications, *e.g.* high speed, high capacity wireless local area networks (LANs). The part 15 rules have been highly successful in permitting the development of new types of unlicensed devices while protecting authorized users of the radio spectrum from harmful interference. Many millions of part 15 devices operate at the current limits without any significant interference problems.

3. On October 15, 2001, the Commission adopted a *Notice of Proposed Rule Making and Order* (*NPRM*), 66 FR 59209, that proposed a number of changes to part 15 and other parts of the rules. These proposals were based on recommendations contained within the *Biennial Regulatory Review 2000 Updated Staff Report,* two petitions for rule making concerning radio frequency identification systems, and other staff recommendations. We received 153 comments and 58 reply comments in response to the *NPRM.* On July 12, 2002, the Commission adopted a *First Report and Order,* 67 FR 48989, in this proceeding that required radar detectors to comply with the part 15 emission limits for unintentional radiators with regard to emissions in the 11.7–12.2 GHz band to protect very small aperture satellite terminals (VSATs) from interference. This Second Report and Order and Memorandum Opinion and Order addresses many of the issues raised in the *NPRM* that were not addressed in the *First Report and Order.* We plan to address the issues of radio frequency identification systems in the 425–435 MHz band and further changes to the emission limits in the restricted band above 38.6 GHz other than those discussed herein at a later date.

Restricted Frequency Bands Above 38.6 GHz

4. Specific frequency bands are designated as restricted bands in part 15 to protect certain sensitive radio services from interference, such as those that protect safety-of-life or those that use very low received levels, such as satellite downlinks or radio astronomy. Only spurious emissions are permitted in restricted bands, and such emissions must comply with the limits in § 15.209. The entire frequency range above 38.6 GHz is a restricted band, although there is an exception that permits transmitters to operate in the 46.7–46.9 GHz, 76–77 GHz and 57–64 GHz bands. At the time this frequency range above 38.6 GHz was designated as a restricted band, there was no requirement in our rules to make measurements above 40 GHz because of limitations in measurement technology. Designating the entire frequency range above 38.6 GHz as restricted, rather than restricting designated segments, was simply a matter of administrative convenience and had no impact on manufacturers because measurements were not required at those frequencies. However, due to advancements in measurement technology, the Commission now requires measurements above 40 GHz for some devices, so these devices must now comply with the restricted band limits.

5. In the *NPRM,* the Commission sought comment on the need for changes to the restricted bands above 38.6 GHz and the potential benefits to manufacturers of such changes. This Commission stated its belief that it is not necessary to restrict the entire band above 38.6 GHz because only certain portions of the band contain sensitive radio services that require this protection, such as those that protect safety-of-life or those that use very low received levels, such as satellite downlinks or radio astronomy. The Commission also stated in the *NPRM* that restricting the entire band above 38.6 GHz makes compliance more difficult to achieve for certain devices because they must comply with tighter harmonic limits than would otherwise apply if the band were not restricted. For example, the limit on harmonic emissions from a transmitter operating in the 24.0–24.25 GHz band under § 15.249 of the rules is 2500 μV/m at 3 meters. However, because the harmonics from a device operating in this band fall in the designated restricted band above 38.6 GHz, they must actually comply with a tighter limit of 500 μV/m at 3 meters. This conflict arose as a result of a 1995 rule change that required spurious emissions from transmitters operating above 10 GHz to be measured at frequencies above 40 GHz. Prior to that date, measurements were not required above 40 GHz for such transmitters, so there was effectively no limit on radiated emissions above 40 GHz.

6. Safety Warning System, L.C. (SWS), the Short Range Automotive Radar Frequency Allocation Group (SARA) and Cisco Systems, Inc. (Cisco) support modifying the restricted band above 38.6 GHz. SWS states that there is no need for a restricted band at the second and third harmonics of the 24 GHz band, and that the current restricted band bars socially valuable products at a reasonable price from the market. SARA states that the Commission should lift the blanket restricted status of frequencies above 38.6 GHz and maintain protection only for bands with sensitive services. It states that at a minimum, the Commission should lift the restriction at the third harmonic of 24 GHz, *i.e.* 72 GHz, because that is the most difficult harmonic to suppress and that lifting that restriction would not adversely affect any passive services. SARA claims that complying with the restricted band harmonic limits can

double the cost of a 24 GHz transmitter. The National Aeronautics and Space Administration (NASA) submitted a list of 13 bands that it believes should be designated as restricted because they are used for passive sensing.

7. We are eliminating the requirement that the second and third harmonics from field disturbance sensors operating under § 15.245 in the 24.075–24.175 GHz band, specifically harmonics in the 48.15–48.35 GHz and 72.225–72.525 GHz bands, must comply with the restricted band limits in § 15.209. We are also eliminating the requirement that the second and third harmonics from devices operating under § 15.249 in the 24.0–24.25 GHz band, specifically harmonics in the 48.0–48.5 GHz and 72.0–72.75 GHz bands, must comply with the restricted band limits in § 15.209. These changes will resolve the current discrepancy in our rules concerning the harmonic emission limits for transmitters in the 24 GHz band. It will permit second and third harmonic emission levels of 2500 μV/m at 3 meters from devices operating in the 24.0–24.5 GHz band under the provisions of 15.249 of the rules, and 25,000 μV/m at 3 meters from disturbance sensors operating in the 24.075–24.175 GHz band under § 15.245 of the rules. These changes will benefit manufacturers because equipment will no longer have to meet limits that are tighter than necessary to control interference. These changes will not result in interference to Federal Government operations because there are currently no such operations in the 48.0–48.5 GHz or 72.0–72.75 GHz bands that would be adversely affected by these changes. In addition, there are currently no non-government operations in these bands. We note that there is a pending proceeding that proposes to change from uplinks to downlinks the Fixed Satellite Service allocation in the 71–75.5 GHz band and the Mobile Satellite Service allocation in the 71–74 GHz band. We do not expect that the changes we are adopting would affect any future operations in the 72.0–72.75 GHz band, even if this band were reallocated for satellite downlinks, because the high propagation losses and directivity of signals at these frequencies would significantly attenuate unwanted signals at a satellite receive site. We believe that there may be additional bands above 38.6 GHz which need not be designated as restricted because they do not contain services that require protection. We are continuing our discussions with NTIA to determine which bands above 38.6 GHz should continue to be designated as restricted and we defer a decision on this matter to a later date.

Data Transmission by Remote Control Devices

8. Section 15.231 of the rules allows the operation of remote control devices in the 40.66–40.70 MHz band and at any frequency above 70 MHz, except in designated restricted bands. There are two separate provisions for operation under this section. The first provision, in paragraph (a) of this rule section, contains field strength limits for devices that transmit control signals, such as those used with alarm systems, door openers and remote switches. A device operated under this paragraph must cease transmission within 5 seconds after being activated automatically or after a manually operated switch is released. Continuous transmissions such as voice and video are not permitted. Data transmissions are permitted only to identify specific transmitters in a system, but no additional data may be sent. For example, a device could transmit a warning when the pressure of a tire is low but could not transmit the actual pressure level, or could remotely activate a thermostat but not transmit the desired temperature setting information. The rule also prohibits periodic transmissions at regular predetermined intervals, although one transmission of not more than one second is permitted once per hour per transmitter in a system to verify the integrity of security transmitters. A device that is employed for radio control purposes during emergencies involving fire, security and safety of life may transmit continuously to signal an alarm. The second provision, in paragraph (e) of this section, allows any type of transmission, including data and transmissions at regular periodic intervals. However, the provisions of this paragraph specify lower field strength limits than paragraph (a). In addition, the provisions of this paragraph limit transmissions to no more than one second, with a silent period between transmissions of at least 30 times the duration of the transmission, but in no case less than 10 seconds. The field strength limits for remote control devices specified in paragraphs (a) and (e) are based on the average value of the measured emissions. For devices that use pulsed emissions, the field strength is determined by averaging over one complete pulse train, including blanking intervals, as long as the pulse train does not exceed 100 milliseconds. In cases where the pulse train exceeds 100 milliseconds, the field strength is determined by averaging over the 100 millisecond interval that produces the maximum value.

9. In the *NPRM*, the Commission proposed to allow data transmissions by remote control devices operating under § 15.231(a) of the rules, stating that the prohibition on data transmissions appears to be unnecessarily constraining and can be an impediment to the development of new types of devices, and that removing this restriction would not result in an increased potential for harmful interference. It also proposed to remove the prohibition on voice, video and continuous transmissions and on the radio control of toys, because data representing voice or video has no greater interference potential than any other type of data, so there is no need to expressly prohibit them. The Commission sought comment on the potential benefits of such changes to manufacturers. It also sought comment on whether allowing data transmissions would result in an increased proliferation of devices or in devices transmitting for a greater amount of time, and whether there is a need to modify the timing requirements in § 15.231 to avoid interference to other radio services.

10. ADEMCO, Cisco, Enalasys, Interlogix, ITI, JCI, Lifeline, Linear and Mattel all support removing the restriction on data transmission by remote control devices. Enalasys submits that removing this restriction will allow manufacturers to make more flexible and imaginative low power remote control devices. JCI states that permitting data transmissions would eliminate confusion about distinguishing between data and recognition codes, which are actually a form of data. ADEMCO believes that permitting data transmissions would enable new products such as comprehensive wireless displays. It also states that the proposed changes would provide for advanced user interfaces, better control capability, improvements in the installation process, and a higher level of security to residential and business premises. Lifeline states that its emergency alert transmitters designed for use by persons living alone would be more useful if voice and data transmissions were permitted, because they would be able to transmit medical data such as blood pressure. Lifeline, Linear, JCI and Mattel support permitting voice transmissions by remote control devices, stating that this change would make devices more useful. JCI and Mattel support permitting video transmissions. Mattel states that this change would permit devices such as video baby monitors to

operate at 300 MHz. It also notes that the proposed elimination of the prohibition on radio control toys would allow for increased bandwidth and multiple receivers needed to permit racing of several remote control cars. Mattel believes that harmful interference is unlikely from such applications because the devices would be battery operated with low radiated radio frequency power. Ademco does not believe that the Commission should remove the restriction on radio control toys because predicted intensive and repeated use of radio control toys could interrupt security, safety and other vital applications of remote control devices. Cisco and ITI state that permitting a limited data stream for remote control devices would not lead to an increase in interference. Cisco notes that the interference potential is a function of the field strength levels and transmission duration and not the type of information being sent. The National Telecommunications and Information Administration (NTIA) expresses concern about the Commission's proposed changes. It states that under the proposed rules, systems using voice and data would proliferate, and that because the only timing restriction would be to turn off after five seconds, some devices could be transmitting virtually all the time. It believes that the increased transmission time of such devices as compared to devices that transmit short-duration control signals would increase the likelihood of interference to licensed services.

11. Several parties recommend rule changes beyond those proposed in the *NPRM*. CEA requests that the Commission allow duty cycle averaging over a one second interval instead of the 100 millisecond interval currently specified in the rules, because this would allow for the longer transmissions necessary to complete the setup, synchronization, transmitter identification and sending of a string of data. Enalasys wants the Commission to permit devices used only by trained operators to operate with 10 dB higher power than currently permitted. JCI wants the Commission to reevaluate its policy of permitting more rapid duty cycles or continuous operation only during emergencies involving fire, security or safety of life. It states that the Commission should permit more rapid duty cycles to report on additional conditions that might endanger property, machinery or the operation of systems. JCI believes that requiring transmissions to cease after five seconds is arbitrary, and believes the Commission should delegate authority to the Office of Engineering and Technology (OET) to waive this requirement at its discretion, although it did not suggest any specific standards that should be considered in granting waivers. Interlogix wants the Commission to permit devices to operate with a total of two seconds of polling time per hour, with no limit on the number of individual transmissions, because it will allow more useful information to be sent, such as the time of entry/exit from a building or the identity of a person entering or leaving. Interlogix also wants the five second transmission time permitted by the rules to be the total transmission time excluding the ''off'' times between pulses, because it claims that the rule was designed to allow five seconds of continuous transmission, so excluding the ''off'' times between pulses would allow the same transmission time that the rule originally intended. Interlogix also wants professional installers to be permitted to automatically initiate transmissions longer than five seconds during the set-up of equipment because sophisticated systems often require longer transmissions to initialize them. Ademco supports the Interlogix proposal to allow a total transmission time of two seconds per hour for polling, but it disagrees with both Interlogix and JCI that the five second time limit for transmissions should be changed. It states that this rule is effective in ensuring a quiet band and promotes interference-free operation of part 15 devices. Ademco disagrees with CEA that the duty cycle averaging time should be increased to one second, because it would be contrary to the short-burst principal underlying the shared used of spectrum by devices operating pursuant to the rules. It also disagrees with Enalasys that higher power should be permitted for devices under the control of trained operators because any type of high power operation is incompatible with existing part 15 uses.

12. We find that the restriction on data transmissions by remote control devices in § 15.231(a) should be removed. As noted by the commenting parties, this change will allow manufacturers to make more flexible, imaginative and useful remote control devices. It is not practical to prohibit all data transmissions as NTIA requested. Virtually all modern remote control devices transmit a string of bits, and bits representing identification codes are indistinguishable from bits representing information. Maintaining the prohibition on data transmission inhibits the development of improved devices that pose no significant risk of harmful interference. We note that the interference potential of a device is a function of the field strength and duration of the transmission, rather than the type of information being sent; and, we are not changing the field strength or transmission timing limits. We decline to remove the prohibition on voice, video and continuous transmissions and on the operation of radio control toys as the Commission proposed in the *NPRM*. There are already a number of provisions in part 15 of the rules that permit voice, video, radio control toys, and continuous transmissions in other frequency bands, so there is no need to establish additional provisions for them under § 15.231(a). On further review, allowing such operation would in fact significantly and unnecessarily expand the goal of the *NPRM*, which was to allow manufacturers to develop devices that transmit identification codes, supplemented with the transmission of some additional data. The net result of the changes we are adopting is that operation under § 15.231(a) will continue to be limited to devices that transmit a control signal, but such devices will be permitted to transmit data with the control signal. They will have to meet the same field strength, timing and other operational limits that currently exist. We believe that these changes adequately address NTIA's concerns about harmful interference from devices transmitting continuously because the rules will continue to explicitly prohibit continuous transmissions. Furthermore, the transmission timing and other restrictions in § 15.231(a), which limit operation to devices that transmit a control signal and prohibit voice, video and the radio control of toys, will preclude continuous data transmissions in any case. No changes are being made to § 15.231(e) because data transmissions are already permitted under this section.

13. We decline to allow duty cycle averaging over a one second interval as requested by CEA, rather than over the 100 millisecond interval currently specified in the rules. The requested change effectively allows higher signal strength, which could result in increased interference potential of devices. The current requirement does not preclude devices from transmitting for more than 100 milliseconds as CEA implies; it simply specifies the time interval for determining the average field strength of a device that uses pulsed transmission. Allowing an average to be calculated over a longer time interval could result in a lower

value that does not accurately reflect the interference potential because the average could include blanking intervals between signal bursts that would be excluded from an average calculated over a shorter time interval. We also decline to allow trained operators to use equipment which operates with a 10 dB higher power than currently permitted, as requested by Enalasys. Such equipment would have a higher potential for interference to other services, and it is unlikely that even a trained operator would have sufficient information to determine whether harmful interference would occur in a particular location. We decline to broaden the criteria under which more rapid duty cycles are permitted as requested by JCI, or to allow setup transmissions longer than 5 seconds as requested by Interlogix. JCI and Interlogix have not shown why the existing limits are inadequate for the situations it identified. Finally, we decline to change our requirement for a device to cease transmission within five seconds after being activated automatically or after release of a control that manually activates it, and we decline to specify the five second time as excluding the ''off'' time between pulses. This requirement to cease transmissions within five seconds prevents continuous transmissions which could result in interference to other devices.

14. As recommended by Interlogix and Ademco, we will permit remote control devices to transmit for a maximum of two seconds per hour, instead of the current one second, for polling the integrity of transmitters used in security or safety applications. The number of individual transmissions will not be limited, provided the total transmission time does not exceed two seconds per hour. This change will allow for increased reliability in alarm systems by permitting systems checks to be performed at more frequent intervals. Any increased interference potential as a result of this change is negligible because polling transmissions will still only be permitted for less than one tenth of one percent of the time.

Radio Frequency Identification Systems

15. Radio frequency identification (RFID) systems use radio signals to track and identify items such as shipping containers and merchandise in stores. A system typically consists of a tag mounted on the item to be identified, and a transmitter/receiver unit that interrogates the tag and receives identification data back from the tag. The tag may be a self-powered transmitter, or it may receive power from the interrogating transmitter. RFID systems can operate in a number of frequency bands under part 15. Part 15 currently permits the operation of intentional radiators, including RFID systems, in the 13.553–13.567 MHz band at a field strength limit of 10,000 μV/m at 3 meters. Emissions outside this band must comply with the radiated emission limits in § 15.209, which specifies a limit of 30 μV/m at 30 meters for emissions in the 1.705–30 MHz band.

16. In the *NPRM,* the Commission proposed to modify the part 15 limits for operation in the 13.553–13.567 MHz band and the adjacent 13.110–13.553 MHz and 13.567–14.010 MHz bands, as requested by National Council for Information Technology Standardization Technical Committee B10 (NCITS B10), to allow the development of RFID tags capable of operating uniformly in the United States, Europe and Australia. Specifically, the Commission proposed to increase the maximum field strength within the 13.553–13.567 MHz band from 10,000 μV/m to 15,848 μV/m at a distance of 30 meters, to increase the maximum field strength permitted in the 13.410–13.553 MHz and 13.567–13.710 MHz bands from 30 to 334 μV/m at 30 meters, and to increase the maximum field strength permitted in the 13.110–13.410 MHz and 13.710–14.010 MHz bands from 30 to 106 μV/m at 30 meters. These are the limits developed by the European Telecommunications Standards Institute (ETSI) for low power devices operating in these bands. The Commission further proposed to allow devices operating in the 13.110–14.010 MHz band to place emissions other than spurious emissions into the 13.36–13.41 MHz restricted band because that band is used at only one radio astronomy site in Florida and NTIA has no objection to allowing emissions from RFID devices in this restricted band. In addition, the Commission proposed to allow powered RFID tags and readers to be approved together and labeled with a single FCC identification number.

17. CEA, Chester Piotrowski, DataBrokers, Inc. (DataBrokers), Gap, Inc., MagTek, Inc., Motorola, NCITS B10, Philips Semiconductor (Philips), the Telecommunications Industry Association (TIA), and Texas Instruments (TI) support the proposed changes, stating they will allow increased range for RFID tags, permit the development of new types of devices, and harmonize the United States regulations with those of other countries. TI states that this rule change would simplify the design and manufacturing of RFID products and allow lower costs due to worldwide commonality of standards. Both TI and Philips state that the proposed changes would allow higher security, data transfer rates and read range performance in RFID applications. HID Corporation believes the proposed emission limits are not likely to cause interference to other services and will benefit the public by permitting devices with better performance. It believes that the 13.36–13.41 MHz band should be removed from the list of restricted bands to permit sidebands from devices at 13.553–13.567 MHz to fall in that frequency range.

18. Cubic Corporation (Cubic) states it does not support the proposed changes for RFID tags unless a quantitative analysis is provided to show that new systems will not interfere with existing RFID systems in the band. It states that the petition was premised on the idea that RFID tags would not be self-powered, but new self-powered devices are being developed that will increase the noise floor in the band. Both Cubic and Nickolaus E. Leggett state that part 15 devices should not be permitted to operate in the 13.36–13.41 MHz radio astronomy band because that would make it unusable for radio astronomy. TI responds that Cubic has not shown that operation of RFID tags under the proposed parameters would cause interference to other part 15 RFID tags, and that the emissions from RFID tags would be too low to cause interference to radio astronomy. NTIA states that it has no objection to operation of RFID devices in the 13.110–14.010 MHz band, which includes the 13.36–13.41 MHz restricted band, at the emission levels proposed in the *NPRM.*

19. We are adopting the changes proposed in the *NPRM* to increase the maximum field strength permitted in the 13.553–13.567 MHz band from 10,000 to 15,848 μ/m at 30 meters, to increase the maximum field strength permitted in the 13.410–13.553 MHz and 13.567–13.710 MHz bands from 30 to 334 μV/m at 30 meters, and to increase the maximum field strength permitted in the 13.110–13.410 MHz and 13.710–14.010 MHz bands from 30 to 106 μV/m at 30 meters. In addition, we will permit emissions other than spurious emissions in the restricted band at 13.36–13.41 MHz. These changes will allow for improved operation of RFID tags in the 13.56 MHz band without adverse consequences to other devices, and will allow for the development of RFID tags that can work in both the United States and other countries. As proposed in the *NPRM,* we also will allow powered RFID tags to be

approved either as part of a system with a tag reader under one FCC identification number, or under separate FCC identification numbers. Allowing powered tags and readers to be approved together will simplify the filing requirements in cases where the devices are always sold together, and permitting tags and readers to be approved separately will provide increased flexibility to manufacturers by permitting the sale of different combinations of tags and readers.

20. We disagree with Cubic that an analysis is required to show that new systems would not interfere with existing RFID systems in the band. Cubic has not provided information to indicate that a problem exists warranting scrutiny. We note that part 15 devices have no interference protection from other part 15 devices. Also, because the existing rules for the 13.553–13.567 MHz band place no restrictions on the types or lengths of transmissions, self-powered tags are already permitted. The rule changes we are adopting simply provide for an increase in field strength within the 13.553–13.567 MHz band and adjacent bands. We disagree with Cubic and Nickolaus E. Leggett that emissions from RFID tags should not be permitted in the 13.36–13.41 MHz restricted band. Neither party has provided information beyond unsubstantiated allegations that there are any radio astronomy operations in this band in the United States that would receive interference from RFID tags. Radio astronomy operations in this band in the United States are performed at only a single site in Florida. Further, the proposal was coordinated with the Interdepartment Radio Advisory Committee (IRAC), which includes the National Science Foundation, which represents radio astronomy interests. No objections to the proposed changes were received from radio astronomy interests.

Declaration of Conformity (DoC) Labeling

21. Declaration of Conformity (DoC) is an equipment authorization procedure in which the manufacturer or other responsible party has the equipment tested for compliance at a laboratory accredited to make the required measurements. If an accredited laboratory finds that the equipment complies with the applicable rules, it may be marketed without an approval from the Commission. Equipment authorized through the DoC procedure must be labeled as specified in § 15.19 of the rules, which provides two variations of the DoC label. One is for equipment tested for compliance as a complete unit, and the other is for personal computers assembled from components that were tested separately for compliance. Either variation of label must include the trade name, the equipment model number, the FCC logo, the phrase ''For Home or Office Use'', and a statement as to whether the complete device was tested for compliance or whether it was assembled from tested components. A compliance information statement must be supplied with equipment authorized through the DoC procedure, and this statement must include the name and model number of the product, a statement that the equipment complies with part 15 of the rules, and the name, address and telephone number of the party responsible for the compliance of the product. The compliance information statement supplied with equipment that was assembled from tested components must also identify the components used in the assembly.

22. In the *NPRM,* the Commission proposed several changes to simplify the labeling required on products authorized through the DoC procedure. It proposed to delete the requirement that the phrase ''For Home or Office Use'' appear on the label as unnecessary and because including it requires the use of a larger label, which could become increasingly burdensome as advancements in technology result in smaller and smaller equipment. The Commission also proposed to eliminate the statement on the label that the complete device was tested for compliance in order to further streamline the label. However, it proposed to continue requiring that personal computers assembled from tested components contain a statement to that effect on their label because that information could assist us in determining the source of compliance problems when investigating cases of non-compliant equipment. The Commission sought comment on whether electronic labeling should be permitted for devices authorized under the DoC procedure, and if so, the appropriate method for electronically labeling equipment such as computers that are authorized through the DoC procedure.

23. CEA, Cisco, IBM, ITI, Motorola, Shure, Uniden and TIA all support the proposed simplification of the DoC labeling requirements, stating that the changes will allow smaller labels on equipment. CEA, Cisco and Motorola agree that the phrase ''For Home or Office Use'' is not necessary on the label because Class B devices can be used anywhere. Cisco agrees that the label on a computer assembled from tested components should state that it was assembled from tested components to assist the Commission in determining the source of, and resolving interference that may originate with such devices. IBM requests that we require the statement in § 15.19(a)(3) to appear only in the instruction manual rather than on the product to save space, and that the product be labeled with the phrase ''Class A'' or ''Class B'' in place of the statement. Shure requests that we allow manufacturers to use externally accessible areas such as battery compartments for labeling because it is undesirable for labeling on wireless microphones to show up on camera, and because the battery compartment offers protection from wear and perspiration and will be seen when the user replaces batteries. IBM and ITI request that we codify the accepted practice of allowing the trade name and model number to be placed in locations other than the compliance label to avoid using critical space for redundant information. CEA requests that we provide sufficient lead time for manufacturers to plan and implement any labeling changes.

24. IBM, ITI and TIA support permitting electronic labeling for equipment authorized under the DoC procedure in order to reduce costs and allow easy re-labeling of equipment. ITI and TIA believe that electronic labeling should be permitted for equipment authorized under all parts of the rules, as an alternative to physical labeling, and IBM believes that electronic labeling should be permitted to display the FCC identification number of transmitters that are installed in laptops by selecting the proper pull-down menu, similar to what is permitted for software defined radios.

25. As proposed, we are eliminating the requirement for the DoC label to contain the phrase ''For Home or Office Use'' as unnecessary, because the DoC procedure is applicable to Class B digital devices and other types of equipment that can be used anywhere. This change will simplify the labeling requirements and permit smaller labels on equipment. We are also eliminating as unnecessary the requirement for the DoC label to state if the complete device was tested for compliance. We will continue to require the DoC label on computers assembled from tested components to state that they were assembled from tested components, because that information could assist the Commission in determining the source of compliance problems with such devices. It will be presumed that the complete device was tested for compliance unless the label states otherwise. We believe that the vast

majority of equipment subject to DoC is tested as a complete unit rather than assembled from tested components. Therefore, this action will allow labels to be further streamlined on the majority of devices subject to this procedure. Because this change is deregulatory in nature and requires no new information to be added to labels, no transition period is necessary. Responsible parties may continue to use labels that were designed to meet the old requirements as long as they wish and may change to the simplified labels at their convenience.

26. We decline to limit the appearance of the statement required by § 15.19(a)(3) to the instruction manual, as requested by IBM. This statement advises users that operation of the equipment is subject to the conditions that it not cause harmful interference and that it must accept any interference received, including interference that may cause undesired operation. We believe that many users may be unaware of this requirement for part 15 devices, so this statement provides useful information to users. In addition, § 15.19(a)(5) already contains a provision that permits the label to be placed in the instruction manual in cases where a device is so small that it is not practicable to place the statement on the device. We decline to change the rules as requested by ITI and IBM to specify that the trade name and model number do not have to appear on the DoC label if they appear elsewhere on the equipment, because we already permit placement of this information elsewhere on the equipment when necessary. Therefore, there is no need for the recommended rule change. Likewise, labeling for a device may be placed inside a battery compartment when necessary, so there is no need for a rule change.

27. We decline to permit electronic labeling of equipment subject to DoC or for any other equipment except software defined radios. The rules currently permit electronic labeling for software defined radios because there is sometimes a need for a third party to change the identification number of a radio in the field when changes are made to the software that affect the device's operating frequency, modulation type or maximum output power. This permits the identification number to be changed without physical re-labeling of a radio. None of the comments in this proceeding have shown that there is a similar need for us to allow this capability in equipment subject to DoC or in any other equipment besides software defined radios.

Test Procedure for Unlicensed PCS Equipment

28. In the *NPRM,* the Commission proposed to incorporate into our rules by reference American National Standards Institute (ANSI) C63.17–1998 as the procedure it will use for testing unlicensed Personal Communication Service (PCS) equipment. This procedure was developed by the ANSI C63 Committee specifically for testing unlicensed PCS equipment for compliance with the requirements in part 15 of the rules.

29. CEA, Cisco and Motorola support the use of the C63.17–1998 procedure for testing unlicensed PCS equipment. CEA and Motorola state that this procedure will help ensure that equipment complies with the Commission's rules. Cisco states that it was developed by qualified industry experts. We find that ANSI C63.17–1998 provides detailed guidance that will assist manufacturers in measuring unlicensed PCS devices to ensure that they comply with the requirements in our rules. Accordingly, we are incorporating this procedure into the rules by reference as the procedure we will use for testing unlicensed PCS equipment under part 15 of the rules.

Approval of Very Low-Powered Devices

30. Part 15 currently requires all intentional radiators to be certified, regardless of how low an operating power they use. Certification requires the manufacturer to have the equipment tested for compliance, then file an application and wait for approval before the equipment can be marketed. In the *NPRM,* the Commission proposed to exempt intentional radiators operating below 490 kHz from certification if the maximum field strength emitted is more than 40 dB below the applicable part 15 limits. As an alternative, the Commission sought comment on whether such devices should be subject to verification rather than exempted from any form of equipment authorization. Verification simply requires the manufacturer to have the equipment tested and to retain certain information on file. No application filing is required for verification and the equipment may be sold as soon as it is found to comply. The Commission stated that the interference potential of such devices appears to be extremely low, and that requiring certification seems to be an unnecessary burden on manufacturers.

31. The comments support eliminating the certification requirement for very low-powered intentional radiators, arguing that it is burdensome and unnecessary. AdvaMed, Cisco, Linear, Polhemus and Uniden argue that such low-powered devices have a low potential for interference. TRP and AdvaMed state that signals 40 dB below the part 15 limit are below the ambient noise level and are difficult to measure. TRP believes that devices operating below 490 kHz that are battery operated with a self-contained antenna of much less than a wavelength should be exempted from any kind of equipment authorization if all emissions are at least 40 dB below the limit. It also believes that devices that have emissions less than 40 dB below the limit and that connect to the AC power lines should be subject to verification, rather than exempted, because they have a somewhat higher potential for interference. TRP states that compliance by low-powered devices can be determined by mathematical calculation and that open field testing is not necessary. However, ITI believes that devices must be tested to show they are at least 40 dB below the limit. It states that once a device is tested, the additional burden imposed by verification is minor in nature. Wacom recommends that the upper frequency range of devices to be exempted should be 1705 kHz instead of 490 kHz, so that devices can use higher frequencies to avoid interference from computer monitors. TIA states that the 490 kHz cutoff is too restrictive, and believes that the Commission should also eliminate the certification requirement for 2.4 GHz Bluetooth transmitters operating with less than 1 mW of power because they must already go through a rigorous private sector certification process for industry acceptance.

32. We find that requiring certification for intentional radiators operating below 490 kHz that have all emissions at least 40 dB below the limit is an unnecessary burden on manufacturers because the interference potential of such equipment is extremely low. Instead, we will require such equipment to be authorized through the verification procedure, thus eliminating the need for manufacturers to file an application and wait for an approval before marketing their equipment. Under the verification procedure, manufacturers may show that all emissions are at least 40 dB below the limit through testing. We recognize, however, that because of the low signal levels involved, it may be difficult to even detect such emissions with conventional measurement equipment. As an alternative to actual measurements, we will allow

manufacturers instead to demonstrate through calculations or other analysis that all emissions from their equipment will be at least 40 dB below the limit. We find that it is necessary for manufacturers to make a determination that a device complies with the emission limits to prevent harmful interference to authorized services, and to retain records to demonstrate compliance with the limits. The verification procedure is the most appropriate means to ensure that manufacturers make the necessary determination of compliance and maintain records of this determination.

33. We decline to expand this decision to exempt from certification equipment used in bands above 490 kHz. Wacom provided only assertions and no specific technical information to demonstrate that there would be interference problems from computer monitors to low-power transmitters operating below 490 kHz. In addition we believe that the higher level of oversight of certification is necessary at this time to protect the marine distress band at 495–505 kHz and the AM broadcast band at 535–1705 kHz from interference caused by non-compliant equipment. We decline to exempt intentional radiators from authorization if they are battery operated and all radiated emissions are more than 40 dB below the part 15 limits, as requested by TRP. As noted previously, we find that verification is the appropriate means to ensure that manufacturers make the necessary determination of equipment compliance and maintain records of this determination. We decline to permit intentional radiators operating above 490 kHz that have emissions less than 40 dB below the limit to be authorized through verification procedure, rather than the current certification procedure. As TRP noted, such equipment has a higher potential to cause interference, so we find that the higher level of oversight of certification is necessary. We also decline to exempt other types of devices such as Bluetooth transmitters from certification as TIA requested, because such equipment has a significantly higher potential for causing interference than other low power intentional radiators that we are permitting to be verified, so we find that the higher level of oversight of certification is appropriate for such equipment. TIA has not provided information to show that the private sector certification procedure it cites is comparable to our certification procedure for demonstrating compliance with the rules. We also note that Bluetooth devices operating under 1 mW can already be certificated by private sector Telecommunication Certification Bodies.

Information to the User

34. Part 15 requires certain information to be included in the instruction manual, including a statement that unauthorized modifications to a device could void the user's authority to operate it. In addition, the manual for a digital device must include a warning of the potential for interference to other devices and a list of some steps that could possibly eliminate the interference. In the *NPRM*, the Commission proposed to permit manufacturers to provide this type of information in the instruction manual in whatever form the manual is supplied. This could be on paper, a computer disk, a CD–ROM or over the Internet. The Commission noted that while the rules originally envisioned that this information would be included in a paper instruction manual, the Commission has permitted this warning information to be provided by alternative means, such as a CD–ROM. It sought comment on whether Internet-delivered manuals create accessibility problems for consumers without Internet access or for groups of consumers for whom obtaining Internet access is difficult. The Commission also sought comment on whether allowing important information to be delivered only over the Internet would result in certain consumers having insufficient access to information, and on whether allowing warnings to be delivered exclusively online would result in a significant reduction in the number of consumers who receive the warnings.

35. Linear supports the proposed change to the user manual requirements because it should make no difference if the manuals are printed on paper, on a CD–ROM or available over the Internet. ITI states that providing warnings and information statements in the same form as the user manual will result in cost savings to the industry. It believes that allowing alternative means of accessing information could enhance access to the disabled community because computers could ''read'' information to the user or magnify it for easier viewing. CEA, Motorola and TIA support providing flexibility for manufacturers to provide information by paper, disk, CD–ROM or the Internet, but believe that user warning information pertaining to safety aspects of equipment should be required in hard copy form that can be retained because not all users will have access to a computer or the Internet. Cisco states there is no reason to believe that permitting online delivery will limit access because Internet access is not limited, and because manufacturers can and do provide contact information for consumers who desire to obtain manuals and warning statements by traditional means. IBM and ITI believe that information should be allowed to be made available over the Internet only if that is the sole method through which the user manual is supplied and the equipment will be used with Internet access. IBM requests that the proposed changes also apply to § 15.27(a), which requires a statement in the user's manual when special accessories are required for a device to comply with the rules. Nickolaus E. Leggett and Steven Bryant stated that allowing instruction manuals to be provided over the Internet alone should not be permitted because many households have slow Internet access or no Internet access at all.

36. As proposed, we will permit the warning statements required by part 15 to be placed in the instruction manual when the manual is provided in formats other than paper, such as on a computer disk or over the Internet. This change will provide increased flexibility to manufacturers and will result in cost savings to the industry. As ITI notes, allowing alternative means of accessing information could enhance access to the disabled community because computers could ''read'' information to the user or magnify it for easier viewing. However, we recognize that some persons do not have access to a computer or the Internet, so such persons would not have the capability of reading instruction manuals in alternative forms. Therefore, we will allow warning statements to be provided in alterative forms only when the instruction manual is provided in the same alternative form and the user can reasonably be expected to have the capability to access information in that form. For example, warning statements may be provided in a manual on a CD–ROM or other type of computer disk when no paper manual is provided, and the equipment either has the capability of reading the disk or is used with equipment that is capable of reading the disk. Warning statements may be provided in a manual on the Internet only when the manual is provided solely over the Internet and the equipment will be used with Internet access. We believe that these requirements will help ensure that the part 15 warning statements are accessible to all persons using a given device. We are also making this change applicable to § 15.27(a) as requested by IBM, because that section lists information that must be included in

the instruction manual. We note that the Commission's Laboratory sometimes requires manufacturers to provide information in the instruction manual advising users that equipment must be operated at a minimum distance from the body to comply with the RF safety guidelines in the rules. We will allow such statements to be provided in the same manner as the part 15 warning statements. If the instruction manual is provided in an alternative format, manufacturers can provide the RF safety statements information in hard copy form if they choose, but we will not require them to do so.

Emission Limits Above 2 GHz

37. While the Commission did not propose any changes to the general radiated emission limits in part 15 of the rules or to the radiated emission limits that apply outside the Industrial, Scientific and Medical (ISM) bands under part 18 of the rules, several parties filed comments recommending changes to these limits. ITI states that it may be appropriate to increase the part 15 limits in steps above 6 GHz, 10.5 GHz and 15 GHz, but did not recommend specific limits. Linear believes that the current part 15 limit of 500 μV/m at 3 meters above 960 MHz should increase by 3 dB for every doubling of frequency. Sirius Satellite Radio, Inc. (Sirius) requests that we reduce the current part 15 and 18 limits to 8.6 μV/m at 3 meters in the satellite digital audio radio service (SDARS) band. XM Radio, Inc. (XM) requests that we establish a limit in the SDARS band of 18 μV/m at 3 meters for part 15, 18 and 95 devices operating exclusively in vehicles, and a limit of 8.6 μV/m at 3 meters for such devices operating in all other environments. Intersil and Motorola oppose Sirius' and XM's recommended emission limits in the SDARS bands, disputing the methodology used to arrive at the recommended limits. Because the Notice did not include proposals for any changes to the general radiated emission limits for equipment operating under parts 15, 18 or other parts of the rules, we find that the requests made by ITI and Linear to raise the emission limits above 960 MHz are outside the scope of this proceeding. Likewise, we find that the requests by XM and Sirius for tighter emission limits in the SDARS band are also outside the scope of this proceeding.

Additional Changes to Part 15

38. In the *NPRM,* the Commission proposed additional changes to part 15 of the rules to modify rule sections that needed to be updated to reflect the availability of more recent industry documents, or that needed other minor revisions. The following is a summary of the proposed changes:

- *Section 15.31 Measurement standards:* remove references to measurement procedures that are no longer used, correct the Commission's mailing address, update the reference to reflect the new ANSI C63.4–2001 measurement procedure and clarify the type of antenna used for radiated measurements below 30 MHz.
- *Section 15.118 Cable ready consumer electronics equipment:* correct the Commission's mailing address.
- *Section 15.120* Program blocking technology requirements for television receivers: correct the Commission's mailing address.
- *Section 15.255 Operation in the band 59.0–64.0 GHz:* correct the wording in paragraph (b)(5) from ''emission limits'' to ''emission levels''.

39. CEA, IBM, Motorola and TIA support these proposals to update and correct the rules. ITI and Cisco support referencing the C63.4–2001 measurement procedure in place of the C63.4–1992 measurement procedure currently referenced in the rules. They also request that we exclude the use of section 8.2.2 of C63.4, which permits measurements of radiated emissions below 30 MHz to be made with a rod antenna, because the Commission and Telecommunication Certification Bodies only accept measurements made with a calibrated loop antenna. Retlif and ACIL oppose the use of the C63.4–2001 measurement procedure, stating that there will be no consistent application of the new standard for many years because there were wide differences in interpretation of the standard within the committee that approved it. IBM suggests that we permit use of the CISPR 22 measurement procedure below 1 GHz as an alternative to the C63.4 procedure to eliminate the potential for dual testing of products worldwide. IBM also suggests that we adopt the CISPR 22 emission limits as alternatives to our AC power line and radiated emission limits for intentional radiators in §§ 15.207 and 15.209 of the rules. IBM states this could eliminate multiple testing of computers that contain transmitters because our rules permit computers, but not transmitters, to be tested for compliance with the CISPR 22 limits, so multiple tests may be required for one device.

40. We are adopting the changes we proposed to update and correct the rules, including referencing the C63.4–2001 measurement procedure. C63.4–2001 provides clarifications to the measurement procedure and configuration of the equipment under test, but does not contain any significant changes from C63.4–1992 that will affect measurement results. As proposed, we will exclude the use of section 8.2.2 of C63.4–2001 concerning rod antennas because we have found that calibrated loop antennas provide more accurate and repeatable field strength measurements below 30 MHz. Referencing the new procedure is necessary because the C63.4–1992 procedure referenced in our rules is no longer available from the Institute of Electrical and Electronics Engineers (IEEE) Standards Department. We do not accept the recommendation of Retlif and ACIL not to reference C63.4–2001 in the rules. C63.4–2001 has gone through the ANSI review process and has been adopted as an ANSI standard. We decline to specify the use of the CISPR 22 measurement procedure as an alternative to the C63.4 procedure as requested by IBM. We support the concept of a single compliance test for equipment. In this case, though, there are differences between the two procedures and it has not been shown that the procedures produce equivalent measurement results. For example, the CISPR 22 procedure specifies the use of ferrite clamps on some cables on the equipment under test, while the C63.4 procedure does not. We will consider the possibility of recognizing the CISPR 22 procedure as an alternative to the C63.4 procedure, as well as the possibility of accepting the CISPR 22 limits for intentional radiators, at a later time.

Family Radio Service Equipment Measurements.

41. In the *NPRM,* the Commission proposed to require that carrier frequency tolerance measurements for Family Radio Service (FRS) transmitters be made over the temperature range of – 20 °C to +50 °C rather than − 30 °C to +50 °C. This proposal was intended to correct an inadvertent conflict between the rules and existing Commission measurement practices that arose when the Commission streamlined the equipment authorization procedures in 1998.

42. Cobra Electronics Corporation (Cobra) and Uniden America Corporation (Uniden) support the proposed change. Uniden states that measurements should be required only to − 20 °C, because years of experience with radios tested to this temperature show that no adverse consequences have been observed in the real world. Cobra states that millions of FRS units have been produced that were tested to − 20 °C with no reported difficulties

from the users of the radio, so the rules should be amended to reflect the temperature range over which measurements have been required.

43. We find that −20 °C to +50 °C is the appropriate temperature range for which frequency stability measurements should be made on FRS transmitters. FRS is a very short distance voice communication service intended for facilitating family and group activities, and we do not expect that FRS equipment would be used frequently at temperatures below −20 °C (−4 °F). The relatively low power of this equipment means that there would not be a significant risk of interference even if the carrier frequency were to drift out of tolerance below −20 °C. We note that the −20 °C to +50 °C temperature range is consistent with the requirements in part 15 for low power transmitters that require frequency stability measurements. Finally, as Uniden and Cobra stated, many FRS transmitters have been approved and marketed that have been tested to only −20 °C, and there have been no apparent problems. Accordingly, we are requiring the frequency tolerance of FRS transmitters to be measured over the temperature range of −20 °C to +50 °C, as proposed.

Accreditation of Test Laboratories

44. In the *NPRM,* the Commission proposed that a test laboratory that has been accredited by an organization recognized by the Commission would no longer have to file a description of its measurement facilities with the Commission, provided the accrediting organization submitted certain information about the laboratory to the Commission. The information that would have to be submitted would be the laboratory name, address, contact information, scope of accreditation, date of accreditation, and the date by which the accreditation must be renewed. This proposal was intended to reduce the burden on laboratories by eliminating the need for them to file duplicate information with both the Commission and an accrediting organization. The Commission also proposed to clarify the conditions for recognizing the accreditation of laboratories outside the United States. Specifically, laboratories outside the United States would be recognized by the Commission if one of the following two conditions are met: (1) The laboratory has been designated by a foreign authority and recognized by the Commission under the terms of a government-to-government Mutual Recognition Agreement or Arrangement (MRA); or (2) the laboratory has been accredited by an organization whose accreditations are recognized by the Commission.

45. CEA, Cisco, IBM, Motorola and TIA support eliminating the requirement for accredited laboratories to file a description of their measurement facilities with the Commission. These parties state that it is unnecessary for this information to be filed with the Commission because it has already been filed with the accrediting organization. However, Retlif Testing Laboratories (Retlif) and the American Council for Independent Laboratories (ACIL) oppose removing this requirement, stating the change would add costs for the accredited laboratory because the accredited laboratory would have to pay for the accrediting organization to file this information with the Commission. CEA, Cisco, ITI, Motorola and TIA support the proposed criteria for recognizing the accreditations of laboratories outside the United States. Cisco states that the change would be an enormous benefit for companies participating in the global marketplace. ITI states that the proposed change would simplify the conditions under which an accredited laboratory may be accredited for testing to Commission requirements and would be an improvement in the process of obtaining approval to use foreign laboratories for testing for a DoC. IBM and ITI recommend that we recognize the accreditation of foreign laboratories by National Institute of Standards and Technology National Voluntary Laboratory Accreditation Program (NIST NVLAP) or the American Association for Laboratory Accreditation (A2LA). They also believe that the language in the rules should reference ''measurement facilities'' rather than ''open field sites'' so as not to preclude the use of semi-anechoic chambers for testing.

46. We are adopting our proposal to not require accredited laboratories to file a description of their measurement facilities with us, provided the accrediting organization has submitted certain information about the laboratories to the Commission. This information must include the laboratory name, address (both the test site address and company mailing address), contact information, the accrediting organization's name, its designation number for the laboratory and the date by which the accreditation must be renewed. In addition, the name of the MRA must be provided for accredited laboratories outside of the United States designated under the terms of a government-to-government MRA. Consistent with the current requirements for filing measurement facility descriptions, the information submitted by the accrediting organization must also include an FCC Registration Number (FRN), which is required for all organizations doing business with the Commission, and a ''yes/no'' indication as to whether the laboratory will perform testing on a contract basis. This will reduce the burden on accredited laboratories by eliminating the need for them to file duplicate information with the Commission and an accrediting organization.

47. We disagree with Retlif and ACIL that this change would significantly increase costs for laboratories. Accrediting organizations already have the information that we need in their records, and the Commission has developed an electronic system that these organizations can use to quickly and easily transmit the information to us. Further, accrediting organizations currently submit certain information about the laboratories they have accredited in paper form to the Commission, and we do not expect that a change from paper filing to electronic filing of this information will result in any increase in accreditation costs. We are not mandating accreditation for laboratories, and laboratories that are not accredited may continue to use the current procedure for filing test site description information with the Commission to be placed on our test site list.

48. We also are adopting the criteria we proposed for accepting the accreditation of laboratories located outside the United States, which are that the laboratory has been accredited by a foreign authority and recognized by the Commission under the terms of a government-to-government Mutual Recognition Agreement or Arrangement, or that the laboratory has been accredited by an organization whose accreditations are recognized by the Commission. These changes will simplify the conditions for accepting the accreditation of foreign laboratories by eliminating the prohibition on foreign accreditors accrediting laboratories outside their own country. The current rules already permit NVLAP and A2LA to accredit laboratories outside the United States, so there is no need for us to make a change to permit this as requested by IBM and ITI. These changes address the concerns raised by ITI in its petition for reconsideration filed in ET Docket 95–19, so we are in effect granting that petition. We agree with IBM and ITI that the rules should reference ''measurement facilities'' rather than ''open field sites'' so as not to preclude the use of semi-anechoic

chambers for testing, and the rules we are adopting reflect that recommendation.

Additional Changes to Part 2

49. In the *NPRM,* the Commission proposed to make additional changes to part 2 of the rules to modify sections that need to be updated to reflect the availability of more recent industry documents, or that needed other minor revisions. We received comments supporting the proposals and are adopting the following changes.

• *Section 2.202 Bandwidths:* add entries to the table of necessary bandwidth calculations in paragraph (g) for newer digital modulation types.

• *Section 2.948 Description of measurement facilities:* remove references to expired transition dates and obsolete measurement procedures, update references to reflect the availability of the new ANSI C63.4–2001 measurement procedure, and to correct the Commission's mailing address.

• *Section 2.1033 Application for certification:* re-designate paragraph 2.1033(c)(17) on composite devices as paragraph 2.1033(d) to correct a numbering error.

• *Sections 2.1061 through 2.1065 Filing for Application Reference:* remove this procedure because it is not used.

50. In addition to these changes, we are adding the heading ''Telecommunication Certification Bodies (TCBs)'' prior to § 2.960 of the rules. This change clarifies that the subsequent sections refer to the requirements for TCBs, and are not part of the requirements for verification, which is the last heading prior to § 2.960. Because this is an editorial change, it can be made without notice and comment.

Changes to Part 18

51. In the *NPRM,* the Commission proposed to delete certain rule sections in part 18 that appear to be unnecessary. We received no comments opposing these proposals, and remain convinced of their propriety. We are therefore adopting the following changes.

• *Section 18.103 Organization and applicability of the rules:* remove because it duplicates the table of contents for part 18.

• *Section 18.105 Other applicable rules:* remove because it provides little information and is not necessary.

• *Section 18.119 Importation:* remove because it duplicates portions of the rules in part 2.

Changes to Part 90

52. In the *NPRM,* the Commission proposed to correct an error in § 90.203(k) of the rules concerning the certification requirements for equipment used in the Private Land Mobile Radio Service (PLMRS). Specifically, the Commission proposed to delete the requirement that PLMRS transmitters in the 220 MHz band comply with minimum standards for spectral efficiency that was erroneously in this section. This error occurred when a summary of the *Report and Order* in ET Docket No. 97–94 streamlining the equipment authorization processes was published in the **Federal Register.** This *Report and Order* modified § 90.203(k) by changing the term ''type acceptance'' to ''certification'' throughout, but made no changes to the rest of the section. For clarity, the rule appendix in the *Report and Order* showed the entire text of this paragraph as revised. Subsequent to the adoption of the *Report and Order,* the Commission adopted a *Memorandum Opinion and Order* in a separate proceeding that also revised § 90.203(k). In that action, the Commission removed the requirement for part 90 transmitters operating in the 220 MHz band to comply with spectral efficiency requirements. While the *Memorandum Opinion and Order* was adopted and released after the *Report and Order*, a summary of it was published in the **Federal Register** before the summary of the *Report and Order.* Therefore, when the *Report and Order* was published in the **Federal Register,** the spectral efficiency requirement that was deleted by the *Memorandum Opinion and Order* was inadvertently placed back in the rules.

53. On May 23, 2001, M/A-COM Private Radio Systems, Inc. (M/A-COM) filed a Petition for Declaratory Ruling, requesting that we clarify that the spectral efficiency requirement should no longer be in § 90.203(k) of the rules. M/A-COM notes that this section is incorrect because of the two rule making items adopted by the Commission that were published in the **Federal Register** out of sequence. We are correcting this section by deleting the spectral efficiency requirement that was removed by the *Memorandum Opinion and Order*, and are therefore in effect granting M/A-COM's petition.

Changes to Part 95

54. Section 95.1115(b) specifies the out-of-band field strength limits for transmitters operating in the Wireless Medical Telemetry Service. We are correcting two typographical errors in this section that arose when the rules were published in the **Federal Register.** Specifically, we are correcting the field strength units of measurement to read ''μV/m'', rather than ''μ/m'' and ''μm'' as they currently appear in the rules. Because these are editorial changes, they can be made without notice and comment.

Final Regulatory Flexibility Analysis.

55. As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making and Order, Review of Part 15 and other Parts of the Commission's Rules (NPRM).*[2] The Commission sought written public comments on the proposals in the Notice, including comment on the IRFA.[3] This Final Regulatory Flexibility Analysis conforms to the RFA.[4]

A. Need for, and Objectives of, the Second Report and Order and Memorandum Opinion and Order

56. Section 11 of the Communications Act of 1934, as amended, and section 202(h) of the Telecommunications Act of 1996 require the Commission (1) to review biennially its regulations pertaining to telecommunications service providers and broadcast ownership; and (2) to determine whether economic competition has made those regulations no longer necessary in the public interest. The Commission is directed to modify or repeal any such regulations that it finds are no longer in the public interest.

57. As part of the biennial review for the year 2000, the Commission reviewed its regulations pertaining to telecommunications service providers and broadcast ownership and recommended a number of changes to those rules. While not specifically required by statute, the Commission also reviewed parts 2, 15 and 18 as part of this process.

58. The Second Report and Order and Memorandum Opinion and Order makes several changes to part 15 and other parts of the rules. Specifically, it:

(1) Relaxes the restricted band emission limits for the second and third harmonics of low-power transmitters operating in the 24.0–24.25 GHz band.

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.,* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *See Notice of Proposed Rule Making and Order* in ET Docket No. 01–278, 16 FCC Rcd 18205 (2001).

[3] *Id.*

[4] *See* 5 U.S.C. 604. We also note that, given the deregulatory nature of our action, we may certify this action under 5 U.S.C. 605.

(2) Removes the restriction on data transmissions by remote control device because it may hinder the development of new types of devices, and the distinction between control signals and data signals is becoming increasingly blurred.

(3) Relaxes the requirements for radio frequency identification (RFID) systems operating at 13.56 MHz to allow faster data transmission. RFID systems use a small transmitter attached to an item that transmits data identifying the item.

(4) Streamlines the labeling process for equipment authorized under the Declaration of Conformity (DoC) procedure. As equipment becomes smaller, it becomes more difficult to include all the information currently required on the label.

(5) Changes the authorization requirement from certification to verification (no application required) for transmitters operating below 490 kHz in which all emissions are at least 40 dB below the part 15 limit.

(6) Make minor corrections and updates to part 15 and other parts of the rules.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

59. None.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

60. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[5] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[6] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[7] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[8]

61. The SBA has developed small business size standards for two pertinent Economic Census categories, ''Radio and Television Broadcasting and Communications Equipment'' (RTB) and ''Other Communications Equipment,'' both of which consist of all such companies having 750 or fewer employees.[9] According to Census Bureau data for 1997, there were a total of 1,215 establishments in the first category, total, that had operated for the entire year.[10] Of this total, 1,150 had 499 or fewer employees, and an additional 37 establishments had 500 to 999 employees.[11] Consequently, we estimate that the majority of businesses in the first category are small businesses that may be affected by the rules and policies adopted herein. Concerning the second category, the data for 1997 show that there were a total of 499 establishments that operated for the entire year.[12] Of this total, 491 had 499 or fewer employees, and an additional 3 establishments had 500 to 999 employees.[13] Consequently, we estimate that the majority of businesses in the second category are small businesses that may be affected by the rules and policies adopted herein.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

62. The Second Report and Order and Memorandum Opinion and Order streamlines the labeling requirements for equipment authorized under the Declaration of Conformity (DoC) procedure. DoC is a self-approval procedure in which the manufacturer has the equipment tested for compliance at a laboratory accredited to make the required measurements. There is an alternative procedure that allows personal computers to be assembled using compliant motherboards and power supplies with no additional testing required. Equipment that complies with the applicable rules may be marketed without an approval from the Commission, and must be labeled as specified in part 15 of the rules. The Second Report and Order and Memorandum Opinion and Order eliminates the requirement for the phrase ''For home or office use'' to appear on the label for all equipment subject to DoC. In addition, it eliminates the requirement for the phrase ''Tested to comply with FCC standards'' to appear on the label for equipment that was tested as a complete unit, although this phrase will still be required on personal computers that were assembled from tested components. These changes will permit smaller labels on equipment. These changes will not be required, and small entities can change labels as they change and upgrade models.

63. The Second Report and Order and Memorandum Opinion and Order incorporates the ANSI C63.17–1998 procedure into the part 15 of the rules by reference as the procedure the Commission will use for testing unlicensed Personal Communication Service (PCS) equipment for compliance. Our rules already provide that unlicensed PCS equipment must comply with a number of specialized technical requirements designed to prevent interference between devices. Specifically, there is a defined ''spectrum etiquette'' that requires unlicensed PCS transmitters to monitor the spectrum for other users before transmitting, and to use a defined transmission format. There was no procedure listed in the rules for testing unlicensed PCS equipment to these requirements. The American National Standards Institute (ANSI) C63 Committee recently completed work on a procedure for measuring unlicensed PCS equipment, which the Second Report and Order incorporates into the rules as the procedure that the Commission will use.

64. Part 15 referenced the ANSI C63.4–1992 procedure as the one that will be used for testing most intentional and unintentional radiators for compliance with the rules. The ANSI C63 Committee recently completed a minor revision of the ANSI C63.4–1992 procedure that contains a number of clarifications to the testing procedures. The Second Report and Order and Memorandum Opinion and Order references the new C63.4–2001 procedure in place of the older version

[5] 5 U.S.C. 604.

[6] 5 U.S.C. 601(6).

[7] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[8] Small Business Act, 15 U.S.C. 632 (1996).

[9] 13 CFR 121.201, NAICS codes 334220, 334290.

[10] U.S. Census Bureau, 1997 Economic Census, Industry Series: Manufacturing, Radio and Television and Wireless Communications Equipment Manufacturing, ''Industry Statistics by Employment Size: 1997,'' Table 4, NAICS code 334220 (issued Aug. 1999). The number of ''establishments'' is a less helpful indicator of small business prevalence in this context than would be the number of ''firms'' or ''companies,'' because the latter take into account the concept of common ownership or control. Any single physical business location is an establishment, and that location and others may be under the common ownership of a given firm. Thus, the numbers given in text may reflect inflated numbers of businesses in this category, including the numbers of small businesses. Census data in this context are available only for establishments.

[11] *Id.*

[12] U.S. Census Bureau, 1997 Economic Census, Industry Series: Manufacturing, Other Communications Equipment Manufacturing, ''Industry Statistics by Employment Size: 1997,'' Table 4, NAICS code 334290 (issued Sept. 1999).

[13] *Id.*

as the procedure that manufacturers should use for compliance testing.

65. The Second Report and Order and Memorandum Opinion and Order changes the temperature range for frequency stability measurements on transmitters used in the Family Radio Service (FRS) under part 95 of the rules. Most transmitters used in licensed services are required to maintain their carrier frequency within a specified tolerance over a range of voltage and temperature variations to minimize the probability of interference to other users. At the time the FRS was established in 1996, a frequency stability limit was specified for transmitters, but no temperature range was specified. The Commission staff informally interpreted that measurements must be made to –20 degrees centigrade. A 1998 rule change to the equipment authorization requirements unintentionally resulted in a new requirement to measure FRS transmitters to –30 degrees centigrade. However, the staff continued requiring measurements to –20 degrees centigrade in the interest of fairness. To clarify our existing practice, the Second Report and Order and Memorandum Opinion and Order specifically requires that FRS transmitters be measured to –20 degree centigrade as the staff has been requiring since 1996.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

66. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[14]

67. As noted in section D, *supra,* the changes adopted in the Second Report and Order and Memorandum Opinion and Order are deregulatory in nature, which we expect will simplify compliance and reporting requirements for all parties, particularly small entities. For example, we reduced the amount of information required on the label for products authorized through the Declaration of Conformity self-approval process. Manufacturers will be permitted to use the simplified label as soon as the rules become effective, but are not required to do so.

68. Report to Congress: The Commission will send a copy of the Second Report and Order and Memorandum Opinion and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Second Report and Order and Memorandum Opinion and Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

69. Pursuant to the authority contained in sections 4(i), 301, 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f) and 303(r), this Second Report and Order and Memorandum Opinion and Order *is adopted* and parts 2, 15, 18, 90 and 95 of the Commission's Rules are amended effective January 8, 2004.

70. Pursuant to the authority contained in sections 4(i), 301, 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f) and 303(r), the petition for reconsideration filed by the Information Technology Institute in ET Docket No. 95–19 on September 3, 1997, *is granted* to the extent indicated herein. ET Docket No. 95–19 *is terminated.*

71. Pursuant to the authority contained in sections 4(i), 301, 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f) and 303(r), the petition for declaratory ruling filed by M/A–COM Private Radio Systems, Inc. on May 23, 2001, *is granted* to the extent indicated herein.

List of Subjects

47 CFR Part 2

Communications equipment, Incorporation by reference, Radio.

47 CFR Part 15

Communications equipment, Computer technology, Incorporation by reference, Labeling, Radio, Reporting and recordkeeping requirements.

47 CFR Part 18

Radio, Reporting and recordkeeping requirements.

47 CFR Part 90

Communications equipment, Radio.

47 CFR Part 95

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 15, 18, 90 and 95 to read as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303 and 336, unless otherwise noted.

■ 2. Section 2.202 is amended by adding seven entries to the end of the table in paragraph (g) to read as follows:

§ 2.202 Bandwidths.

* * * * *

(g) Table of necessary bandwidths.

* * *

Description of emission	Necessary bandwidth		Designation of emission
	Formula	Sample calculation	
	* * *	* * * *	
Radio-relay system	$B_n = 2K/t$ K=1.6	Pulse position modulated by 36 voice channel baseband: pulse width at half amplitude 0.4 μS; $B_n = 8 \times 10^6$ Hz = 8 MHz (Bandwidth independent of the number of voice channels).	8M00M7E

[14] *See* 5 U.S.C. 603(c).

Description of emission	Necessary bandwidth		Designation of emission
	Formula	Sample calculation	
Composite transmission digital modulation using DSB–AM (Microwave radio relay system).	$B_n = 2RK/\log_2 S$	Digital modulation used to send 5 megabits per second by use of amplitude modulation of the main carrier with 4 signaling states. $R = 5 \times 10^6$ bits per second; K = 1; S = 4; B_n = 5 MHz	5M00K7
Binary Frequency Shift Keying	(0.03 < 2D/R < 1.0); $B_n = 3.86D + 0.27R$ (1.0 < 2D/R <2) $B_n = 2.4D + 1.0R$	Digital modulation used to send 1 megabit per second by frequency shift keying with 2 signaling states and 0.75 MHz peak deviation of the carrier. $R = 1 \times 10^6$ bps; $D = 0.75 \times 10^6$ Hz; B_n = 2.8 MHz	2M80F1D
Multilevel Frequency Shift Keying	$B_n = (R/\log_2 S) + 2DK$	Digital modulation to send 10 megabits per second by use of frequency shift keying with four signaling states and 2 MHz peak deviation of the main carrier. $R = 10 \times 10^6$ bps; D = 2 MHz; K = 1; S = 4; B_n = 9 MHz	9M00F7D
Phase Shift Keying	$B_n = 2RK/\log_2 S$	Digital modulation used to send 10 megabits per second by use of phase shift keying with 4 signaling states. $R = 10 \times 10^6$ bps; K = 1; S = 4; B\n\ = 10 MHz	10M0G7D
Quadrature Amplitude Modulation (QAM).	$B_n = 2R/\log_2 S$	64 QAM used to send 135 Mbps has the same necessary bandwidth as 64–PSK used to send 135 Mbps;. $R = 135 \times 10^6$ bps; S = 64; B_n = 45 MHz	45M0W
Minimum Shift Keying	2-ary: $B_n = R(1.18)$ 4-ary: $B_n = R(2.34)$	Digital modulation used to send 2 megabits per second using 2-ary minimum shift keying. $R = 2.36 \times 10^6$ bps; B_n = 2.36 MHz	2M36G1D

■ 3. Section 2.948 is amended by revising paragraphs (a)(2), (a)(3), (b)(8) and (d) and adding paragraph (e) to read as follows.

§ 2.948 Description of measurement facilities.

(a) * * *

(2) If the equipment is to be authorized by the Commission under the certification procedure, the description of the measurement facilities shall be filed with the Commission's Laboratory in Columbia, Maryland. The data describing the measurement facilities need only be filed once but must be updated as changes are made to the measurement facilities or as otherwise described in this section. At least every three years, the organization responsible for filing the data with the Commission shall certify that the data on file is current. A laboratory that has been accredited in accordance with paragraph (d) of this section is not required to file a description of its facilities with the Commission's laboratory, provided the accrediting organization (or designating authority in the case of foreign laboratories) submits the following information to the Commission's laboratory:

(i) Laboratory name, location of test site(s), mailing address and contact information;

(ii) Name of accrediting organization;

(iii) Date of expiration of accreditation;

(iv) Designation number;

(v) FCC Registration Number (FRN);

(vi) A statement as to whether or not the laboratory performs testing on a contract basis;

(vii) For laboratories outside the United States, the name of the mutual recognition agreement or arrangement under which the accreditation of the laboratory is recognized.

(3) If the equipment is to be authorized under the Declaration of Conformity procedure, the laboratory making the measurements must be accredited in accordance with paragraph (d) of this section.

(b) * * *

(8) For a measurement facility that will be used for testing radiated emissions, a plot of site attenuation data taken pursuant to the procedures contained in Sections 5.4.6 through 5.5 of the following procedure: American National Standards Institute (ANSI) C63.4–2001, entitled ''American National Standard for Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz'' published by the American National Standards Institute on June 22, 2001 as document number SH94908. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of C63.4–2001 may be obtained from: IEEE Customer Service, P.O. Box 1331, Piscataway, NJ 08855–1331, or *UPS only* IEEE Customer Service, 445 Hoes Lane, Piscataway, NJ 08854; telephone 1–800–678–4333 or +1–732–981–0600 (outside the United States and Canada). Copies of ANSI C63.4–2001 may be inspected at the following locations:

(i) Federal Communications Commission, 445 12th Street, SW., Office of Engineering and Technology (Room 7–B144), Washington, DC 20554,

(ii) Federal Communications Commission Laboratory, 7435 Oakland Mills Road, Columbia, MD 21046, or

(iii) Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

* * * * *

(d) A laboratory that has been accredited with a scope covering the required measurements shall be deemed competent to test and submit test data for equipment subject to verification, DoC and certification. Such a laboratory shall be accredited by an approved accreditation organization based on the International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) Standard 17025, ''General Requirements for the Competence of Calibration and Testing Laboratories.'' The organization accrediting the laboratory must be approved by the Commission's Office of Engineering and Technology, as indicated in § 0.241 of this chapter, to perform such accreditation based on ISO/IEC 58, ''Calibration and Testing Laboratory Accreditation Systems—General Requirements for Operation and Recognition.'' The frequency for revalidation of the test site and the information that is required to be filed, or retained by the testing party shall comply with the requirements established by the accrediting organization. However, in all cases, test site revalidation shall occur on an interval not to exceed two years.

(e) The accreditation of a laboratory located outside of the United States, or

its possessions, will be acceptable only under one of the following conditions:

(1) If the accredited laboratory has been designated by a foreign designating authority and recognized by the Commission under the terms of a government-to-government Mutual Recognition Agreement/Arrangement; or

(2) If the laboratory has been recognized by the Commission as being accredited by an organization that has entered into an arrangement between accrediting organizations and the arrangement has been recognized by the Commission.

■ 4. The following undesignated center heading is inserted before § 2.960 to read as follows: ''Telecommunication Certification Bodies (TCBs)''.

* * * * *

§ 2.1033 [Amended]

■ 5. Section 2.1033 is amended by redesignating paragraph (c)(17) as paragraph (e).

■ 6. Section 2.1055 is amended by revising paragraph (a)(2) to read as follows:

§ 2.1055 Measurements required: Frequency stability.

(a) * * *

(2) From −20° to +50° centigrade for equipment to be licensed for use in the Maritime Services under part 80 of this chapter, except for Class A, B, and S Emergency Position Indicating Radiobeacons (EPIRBS), and equipment to be licensed for use above 952 MHz at operational fixed stations in all services, stations in the Local Television Transmission Service and Point-to-Point Microwave Radio Service under part 21 of this chapter, equipment licensed for use aboard aircraft in the Aviation Services under part 87 of this chapter, and equipment authorized for use in the Family Radio Service under part 95 of this chapter.

* * * * *

■ 7. The undesignated center heading ''FILING FOR APPLICATION REFERENCE'' before § 2.1061 is removed.

§§ 2.1061 through 2.1065 [Removed]

■ 8. Sections 2.1061 through 2.1065 are removed.

PART 15—RADIO FREQUENCY DEVICES

■ 9.The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336 and 544A.

■ 10. Section 15.19 is amended by revising paragraphs (b)(1)(i) and (b)(1)(ii) to read as follows:

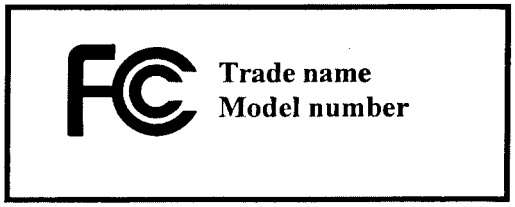
§ 15.19 Labeling requirements.

* * * * *

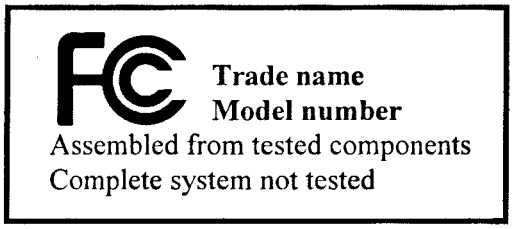
(b) * * *

(1) * * *

(i) If the product is authorized based on testing of the product or system; or



(ii) If a personal computer is authorized based on assembly using separately authorized components, in accordance with § 15.101(c)(2) or (c)(3), and the resulting product is not separately tested:



* * * * *

■ 11. Section 15.21 is amended by adding the following sentence to the end of the section to read as follows:

§ 15.21 Information to user.

* * * In cases where the manual is provided only in a form other than paper, such as on a computer disk or over the Internet, the information required by this section may be included in the manual in that alternative form, provided the user can reasonably be expected to have the capability to access information in that form.

■ 12. Section 15.27 is amended by adding the following sentence to the end of paragraph (a) to read as follows:

§ 15.27 Special accessories.

(a) * * * In cases where the manual is provided only in a form other than paper, such as on a computer disk or over the Internet, the information required by this section may be included in the manual in that alternative form, provided the user can reasonably be expected to have the capability to access information in that form.

* * * * *

■ 13. Section 15.31 is amended by revising paragraph (a) to read as follows:

§ 15.31 Measurement standards.

(a) The following measurement procedures are used by the Commission to determine compliance with the technical requirements in this part. Except where noted, copies of these procedures are available from the Commission's current duplicating contractor whose name and address are available from the Commission's Consumer and Governmental Affairs Bureau at 1–888–CALL–FCC (1–888–225–5322).

(1) FCC/OET MP–2: Measurement of UHF Noise Figures of TV Receivers.

(2) Unlicensed Personal Communication Service (UPCS) devices are to be measured for compliance using ANSI C63.17–1998: ''Methods of Measurement of the Electromagnetic and Operational Compatibility of Unlicensed Personal Communications Services (UPCS) Devices'', (incorporated by reference, see § 15.38). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(3) Other intentional and unintentional radiators are to be measured for compliance using the following procedure excluding sections 4.1, 5.2, 5.7, 9 and 14: ANSI C63.4–2001: ''Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz'' (incorporated by reference, see § 15.38). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Note to Paragraph (a)(3): Digital devices tested to show compliance with the provisions of §§ 15.107(e) and 15.109(g) must be tested following the ANSI C63.4 procedure described in paragraph (a)(3) of this section.

* * * * *

■ 14. Section 15.38 is amended by revising paragraph (b)(6) and adding paragraph (b)(12) to read as follows:

§ 15.38 Incorporation by reference.

* * * * *

(b) * * *

(6) ANSI C63.4—2001: ''Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz'', 2001, IBR approved for § 15.31, except for sections 4.1, 5.2, 5.7, 9 and 14.

* * * * *

(12) ANSI C63.17–1998: ''Methods of Measurement of the Electromagnetic and Operational Compatibility of Unlicensed Personal Communications Services (UPCS) Devices'', 1998, IBR approved for § 15.31.

* * * * *

■ 15. Section 15.105 is amended by adding paragraph (e) to read as follows:

§ 15.105 Information to the user.

* * * * *

(e) In cases where the manual is provided only in a form other than paper, such as on a computer disk or over the Internet, the information required by this section may be included in the manual in that alternative form, provided the user can reasonably be expected to have the capability to access information in that form.

§ 15.118 [Amended]

■ 16. Section 15.118(b) is amended by removing ''1919 M Street, NW., Dockets Branch (Room 239),'' and adding in its place, ''445 12th Street, SW.,''

§ 15.120 [Amended]

■ 17. Section 15.120(d) is amended by removing ''2000 M Street, NW, Technical Information Center (Suite 230),'' and adding in its place, ''445 12th Street, SW., ''

■ 18. Section 15.201 is amended by revising paragraph (a) to read as follows:

§ 15.201 Equipment authorization requirement.

(a) Intentional radiators operated as carrier current systems, devices operated under the provisions of §§ 15.211, 15.213, and 15.221, and devices operating below 490 kHz in which all emissions are at least 40 dB below the limits in § 15.209 shall be verified pursuant to the procedures in Subpart J of part 2 of this chapter prior to marketing.

* * * * *

■ 19. Section 15.205 is amended by adding paragraphs (d)(7), (d)(8) and (d)(9) to read as follows:

§ 15.205 Restricted bands of operation.

* * * * *

(d) * * *

(7) Devices operated pursuant to § 15.225 are exempt from complying with this section for the 13.36–13.41 MHz band only.

(8) Devices operated in the 24.075–24.175 GHz band under § 15.245 are exempt from complying with the requirements of this section for the 48.15–48.35 GHz and 72.225–72.525 GHz bands only, and shall not exceed the limits specified in § 15.245(b).

(9) Devices operated in the 24.0–24.25 GHz band under § 15.249 are exempt from complying with the requirements of this section for the 48.0–48.5 GHz and 72.0–72.75 GHz bands only, and shall not exceed the limits specified in § 15.249(a).

* * * * *

■ 20. Section 15.225 is revised to read as follows.

§ 15.225 Operation within the band 13.110–14.010 MHz.

(a) The field strength of any emissions within the band 13.553–13.567 MHz shall not exceed 15,848 microvolts/meter at 30 meters.

(b) Within the bands 13.410–13.553 MHz and 13.567–13.710 MHz, the field strength of any emissions shall not exceed 334 microvolts/meter at 30 meters.

(c) Within the bands 13.110–13.410 MHz and 13.710–14.010 MHz the field strength of any emissions shall not exceed 106 microvolts/meter at 30 meters.

(d) The field strength of any emissions appearing outside of the 13.110–14.010 MHz band shall not exceed the general radiated emission limits in § 15.209.

(e) The frequency tolerance of the carrier signal shall be maintained within +/−0.01% of the operating frequency over a temperature variation of −20 degrees to +50 degrees C at normal supply voltage, and for a variation in the primary supply voltage from 85% to 115% of the rated supply voltage at a temperature of 20 degrees C. For battery operated equipment, the equipment tests shall be performed using a new battery.

(f) In the case of radio frequency powered tags designed to operate with a device authorized under this section, the tag may be approved with the device or be considered as a separate device subject to its own authorization. Powered tags approved with a device under a single application shall be labeled with the same identification number as the device.

■ 21. Section 15.231 is amended by revising paragraphs (a) introductory text and (a)(3) to read as follows:

§ 15.231 Periodic operation in the band 40.66—40.70 MHz and above 70 MHz.

(a) The provisions of this section are restricted to periodic operation within the band 40.66–40.70 MHz and above 70 MHz. Except as shown in paragraph (e) of this section, the intentional radiator is restricted to the transmission of a control signal such as those used with alarm systems, door openers, remote switches, etc. Continuous transmissions, voice, video and the radio control of toys are not permitted. Data is permitted to be sent with a control signal. The following conditions shall be met to comply with the provisions for this periodic operation:

* * * * *

(3) Periodic transmissions at regular predetermined intervals are not permitted. However, polling or supervision transmissions, including data, to determine system integrity of transmitters used in security or safety applications are allowed if the total duration of transmissions does not exceed more than two seconds per hour for each transmitter. There is no limit on the number of individual transmissions,

provided the total transmission time does not exceed two seconds per hour.

* * * * *

■ 22. Section 15.245 is amended by revising paragraph (b)(1)(i) and the first sentence of paragraph (b)(1)(iii) to read as follows:

§ 15.245 Operation within the bands 902–928 MHz, 2435–2465 MHz, 5785–5815 MHz, 10500–10550 MHz, and 24075–24175 MHz.

* * * * *

(b) * * *

(1) * * *

(i) For the second and third harmonics of field disturbance sensors operating in the 24075–24175 MHz band and for other field disturbance sensors designed for use only within a building or to open building doors, 25.0 mV/m.

* * * * *

(iii) Field disturbance sensors designed to be used in motor vehicles or aircraft must include features to prevent continuous operation unless their emissions in the restricted bands, other than the second and third harmonics from devices operating in the 24075–24175 MHz band, fully comply with the limits given in § 15.209. * * *

* * * * *

■ 23. Section 15.255 is amended by revising paragraph (b)(5) to read as follows:

§ 15.255 Operation within the band 57–64 GHz.

* * * * *

(b) * * *

(5) The average emission levels shall be calculated, based on the measured peak levels, over the actual time period during which transmission occurs.

* * * * *

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

■ 24. The authority citation for part 18 continues to read as follows:

Authority: 47 U.S.C. 4, 301, 302, 303, 304, 307.

§ 18.103 [Removed]

■ 25. Section 18.103 is removed.

§ 18.105 [Removed]

■ 26. Section 18.105 is removed.

§ 18.119 [Removed]

■ 27. Section 18.119 is removed.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 28. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 29. Section 90.203 is amended by revising paragraph (k) to read as follows:

§ 90.203 Certification required.

* * * * *

(k) For transmitters operating on frequencies in the 220–222 MHz band, certification will only be granted for equipment with channel bandwidths up to 5 kHz, except that certification will be granted for equipment operating on 220–222 MHz band Channels 1 through 160 (220.0025 through 220.7975/221.0025 through 221.7975), 171 through 180 (220.8525 through 220.8975/221.8525 through 221.8975), and 186 through 200 (220.9275 through 220.9975/221.9275 through 221.9975) with channel bandwidths greater than 5 kHz.

* * * * *

PART 95—PERSONAL RADIO SERVICES

■ 30. The authority citation for part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended, 47 U.S.C. 154, 303.

■ 31. Section 95.1115 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 95.1115 General technical requirements.

* * * * *

(b) * * *

(1) Out-of-band emissions below 960 MHz are limited to 200 microvolts/meter, as measured at a distance of 3 meters, using measuring instrumentation with a CISPR quasi-peak detector.

(2) Out-of-band emissions above 960 MHz are limited to 500 microvolts/meter as measured at a distance of 3 meters, using measuring equipment with an averaging detector and a 1 MHz measurement bandwidth.

* * * * *

[FR Doc. 03–30314 Filed 12–8–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3649; MB Docket No. 02–341; RM–10594]

Radio Broadcasting Services; Encino, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rulemaking,* 67 FR 71925 (December 3, 2002) this document grants a petition for rulemaking filed by Charles Crawford proposing the allotment of Channel 283A at Encino, Texas, as the community's first local transmission service. Channel 283A is allotted at Encino, Texas, with a site restriction of 6.4 kilometers (4.0 miles) west of the community. Coordinates for Channel 283A at Encino, Texas are 26–55–42 NL and 98–11–56 WL . Since this proposal is within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government to the proposed allotment has been requested but not received. Operation with the facilities specified for Encino is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico.

DATES: Effective January 8, 2004.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–314, adopted November 14, 2003, and released November 17, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, and 336.

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Encino, Channel 283A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–30440 Filed 12–8–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 236
Tuesday, December 9, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

RIN 3150–AH19

Medical Use of Byproduct Material—Recognition of Specialty Boards

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing the medical use of byproduct material to change its requirements for recognition of specialty boards whose certifications may be used to demonstrate the adequacy of the training and experience of individuals to serve as radiation safety officers, authorized medical physicists, authorized nuclear pharmacists or authorized users. The proposed rule would also revise the requirements for demonstrating the adequacy of training and experience for pathways other than the board certification pathway. This rulemaking is necessary to address the training and experience issue for recognition of specialty board certifications.

DATES: The comment period expires February 23, 2004. Comments received after this date will be considered if it is practical to do so, but the NRC can only assure consideration for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please refer to RIN 3150–AH19 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments on this proposed rule, as well as the draft Regulatory Analysis, via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays (telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Roger W. Broseus, Office of Nuclear Material Safety and Safeguards, Mail Stop T9 C24, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–7608, e-mail *rwb@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

During development of revised 10 CFR part 35, published as a proposed rule on August 13, 1998 (63 FR 43516), and as a final rule on April 24, 2002 (67 FR 20249), there was a general belief that the boards recognized by the NRC would meet, or could make adjustments to meet, the new requirements established by that rulemaking governing recognition of specialty boards by the NRC and that these boards would continue to be recognized by NRC. However, when applications for recognition were received, the NRC staff determined that, except for one board, the boards did not meet all the requirements specified in the final rule. Specifically, the boards' certification programs failed to meet the requirements in the final rule regarding preceptor certification and work experience. The only board that currently meets the revised requirements is the Certification Board of Nuclear Cardiology (CBNC) because it developed its certification program based on the final rule. The NRC staff held several discussions with the boards to determine whether the boards would modify their certification processes to meet all the requirements specified in the rule. With the exception of the CBNC, no board indicated that it would modify its certification process.

The current regulations in 10 CFR part 35 offer three pathways for individuals to satisfy training and experience (T&E) requirements to be approved as a radiation safety officer (RSO), authorized medical physicist (AMP), authorized nuclear pharmacist (ANP), or authorized user (AU). These pathways are: (1) Approval of an individual who is certified by a specialty board whose certification has been recognized by the NRC or an Agreement State as meeting the NRC's requirements for training and experience (a ''recognized board''); (2) approval based on an evaluation of an individual's training and experience; or (3) identification of an individual's approval on an existing NRC or Agreement State license. For the sake of this discussion, pathway (1) will be referred to as the certification pathway, and pathway (2) as the alternate pathway. For example, in § 35.50, the proposed criteria for meeting training and experience requirements for the certification pathway (1) appear in § 35.50(a); those for the alternate pathway (2) appear in § 35.50(b); and those for pathway (3) appear in § 35.50(c).

On February 19, 2002, in a briefing of the Commission, the Advisory

Committee on Medical Uses of Isotopes (ACMUI) expressed concern about requirements for T&E in the revised 10 CFR part 35, approved by the Commission on October 23, 2000 (SRM–SECY–00–0118). The ACMUI was concerned that if the requirements for recognition of specialty board certifications were to become effective as drafted, there could be potential shortages of individuals qualified to serve as RSOs, AMPs, ANPs and AUs. The ACMUI indicated that, without changes to the requirements for T&E in the final rule approved by the Commission in October 2000, the boards would no longer be qualified for recognition by NRC and, therefore, a board's future diplomates could no longer be approved as RSOs, AMPs, ANPs or AUs.

The ACMUI also expressed the concern that the boards might be ''marginalized.'' Specifically, under the draft final rule, to gain approval via the certification pathway, a candidate for certification would have been required to meet all of the requirements in the alternate pathway, thereby imposing more requirements, beyond those already required by boards, on candidates using the certification pathway for approval. The extra requirements of concern to the ACMUI, incorporated from the alternate pathway by reference, include a specification for length-of-training as well as obtaining a written certification signed by a preceptor. Taken together with other requirements of boards, such as requiring candidates for certification to take written and/or oral examinations, the concern was that candidates seeking approval might bypass the board certification pathway and select the alternate pathway.

Based on these concerns, the ACMUI urged the Commission to implement measures to address the training and experience issues associated with recognition of specialty boards by the NRC in the draft final rule and to find a permanent solution after publication of the final rule. Subsequently, the NRC modified the final rule by reinserting subpart J (as contained in the proposed rule) for a 2-year transition period. Subpart J provides for continuing recognition of the specialty boards listed therein during the transition period. The final rule was published in the **Federal Register** on April 24, 2002 (67 FR 20249), and became effective on October 24, 2002. As specified in § 35.10(c), the 2-year transition period ends on October 24, 2004. In a Staff Requirements Memorandum (SRM–COMSECY–02–0014) dated April 16, 2002, the Commission directed the NRC staff to develop options for addressing the training and experience issue. The intent is to have this new rule in place before the end of the 2-year transition period.

The issue in question concerns the requirements in the rule governing the recognition of specialty boards by the NRC. These requirements are located in the current regulations at 10 CFR 35.50, 35.51, 35.55, 35.190, 35.290, 35.390, 35.392, 35.394, 35.490, 35.590, and 35.690.

The ACMUI formed a subcommittee to develop recommendations on the training and experience issue. A public subcommittee meeting was held on June 21, 2002, at NRC headquarters in Rockville, Maryland. Representatives from 13 boards, associations, and societies participated in the meeting. In addition, 8 boards and societies provided written comments to the ACMUI subcommittee on its recommendations. After considering the comments from the meeting and letters, the subcommittee developed final recommendations and submitted them to the ACMUI for consideration.

The ACMUI full committee discussed the subcommittee's recommendations in a public teleconference meeting on July 8, 2002. Members of the public and representatives from the Society of Nuclear Medicine participated in the teleconference. The ACMUI approved the recommendations of the subcommittee and submitted them in a report to the NRC on August 1, 2002. The report provided a rationale for the recommendations accompanied by suggested rule language. The NRC staff presented three options to the Commission in a Commission paper, SECY–02–0194, dated October 30, 2002, which included the recommendations of the ACMUI at Attachment 2. The three options were: Option (1) retain the existing requirements in the current regulations; Option (2) prepare a proposed rule to modify training and experience requirements based on the recommendations submitted by the ACMUI; and, Option (3) the same as Option 2 with a minor modification (*i.e.*, listing all specialty boards recognized by NRC on the NRC's Web site rather than, as recommended by the ACMUI, listing some boards in the regulation and others on the Web site).

In SRM–02–0194 dated February 12, 2003, the Commission approved Option 3, directing the NRC staff to prepare a proposed rule based on the ACMUI's recommendations with certain exceptions. Current regulations in 10 CFR part 35 require that individuals obtain a written certification that they have satisfactorily completed requirements for T&E and have achieved a level of competency sufficient to function independently (*see, e.g.*, § 35.50(b)(2)). For the sake of discussion, this certification will be referred to herein as a preceptor statement. (The term ''preceptor'' is defined in § 35.2.) The Commission directed that a list of recognized boards be posted on the NRC's web site, that the preceptor statement remain as written in the current regulations (published April 24, 2002), and that the staff should clarify that the preceptor language does not require an attestation of general clinical competency, but does require sufficient attestation to demonstrate that the candidate has the knowledge to fulfill the duties of the position for which certification is sought. This form of attestation should be preserved both for the certification pathway and the alternate pathway.

The ACMUI briefed the Commission on May 28, 2003, and members conveyed their views regarding the Commission's direction to NRC staff, relating to preceptor statements, in SRM–02–0194. The Commission subsequently issued an SRM on June 20, 2003 (SRM–M030528B). This SRM directed that the staff continue its development of a proposed rule to modify the training and experience requirements in 10 CFR part 35, with appropriate interactions with the ACMUI, so that the revised rule can be in place as promptly as possible. The NRC staff met with the ACMUI via teleconference on July 17, 2003, to further discuss the ACMUI's comments on the proposed rule. This meeting was noticed in the **Federal Register** on July 14, 2003 (68 FR 41665).

During the teleconference with the ACMUI, conducted on July 17, 2003, the ACMUI members continued to voice concern about having recognition of board certifications conditioned on requiring candidates for certification to obtain written attestation of competency signed by a preceptor. The ACMUI recommended that if the Commission still maintained that it was necessary to include a preceptor statement for all authorized positions named in 10 CFR part 35, this requirement would be separated from the criteria for recognition of board certifications, as well as the alternative pathway. Agreement State representatives participated in the teleconference and agreed with this recommendation. In a letter, dated July 23, 2003, Dr. Manuel Cerqueira, Chair of the ACMUI, restated the ACMUI's recommendation that the requirements for a preceptor statement be removed from the certification pathway; however, if the Commission

still believed it necessary to include a preceptor statement for all ''authorized positions'' named in 10 CFR part 35, the ACMUI recommended that this requirement be separated from the board certification pathway and that it be specified separately as a new paragraph in each training section. In SRM–03–0145, issued on October 9, 2003, the Commission approved the recommendation of the ACMUI that the requirement for a preceptor statement be removed from the requirements for recognition of specialty board certifications. The Commission also indicated it should be clear in the proposed rule language that a preceptor statement is required regardless of which training pathway is chosen.

Discussion

The principal changes proposed to 10 CFR part 35 involve revising the criteria for recognizing the certifications of specialty boards. These changes relate to the requirements for training and experience (T&E) that boards would place on candidates seeking board certification. The NRC staff reviewed board certification procedures and made a determination that, with one exception, the boards' certification programs failed to meet the requirements in the current regulations regarding preceptor certification and work experience. This assessment [1] resulted from a detailed comparison, performed by the NRC staff, between requirements in the regulations (in subparts D–H) and specialty board requirements for certification. The changes resulting from adoption of the proposed rule would remedy this situation and result in requirements that are less prescriptive while maintaining public health and safety. These changes would ensure that a clear regulatory determination can be made that specialty boards, both new and existing, meet the relevant criteria for recognition by the NRC or an Agreement State. Minor changes would also be made to the training and experience requirements in the alternate pathway.

The proposed changes to T&E requirements are intended to address issues raised by the ACMUI. However, the NRC disagrees with the ACMUI's belief that the training and experience criteria in the current rule would result in candidates bypassing board certification. The NRC believes that board certification has been and will continue to be essential for physicians, including AUs, to practice medicine. While health physicists, medical physicists, nuclear pharmacists and physicians can serve in the respective categories of RSO, AMP, ANP and AU by satisfying T&E requirements under the alternate pathway, the NRC also believes that individuals who would have sought certification are likely to continue to do so because certifications are useful to individuals for reasons other than satisfying requirements in 10 CFR part 35, *e.g.*, measuring areas of competence that go beyond regulatory requirements established under the Atomic Energy Act. Furthermore, some State agencies now require that individuals be certified by specialty boards before they can practice in some specialties, *e.g.*, as medical physicists and nuclear pharmacists.

The NRC is seeking public comment on specific issues related to this proposed rule (*see* the section entitled ''*Invitation for Public Comment on Specific Issues,*'' below).

Changes to the Certification Pathway

For the certification pathway, the current regulations incorporate the more prescriptive requirements for the alternate pathway. The proposed rule would establish criteria for a board to be recognized by the NRC or an Agreement State.

For the RSO, AMP, and ANP, the proposed criteria include a degree from an accredited college or university, professional experience, passing an examination administered by the board, and in some cases additional training related to the type of use for which an individual would be responsible. The requirement for passing an examination reflects the current practice of certification boards.

The addition of a requirement in § 35.50(a) for candidates for RSO to have a degree is consistent with current standards of certification boards to require a minimum of a baccalaureate degree. The NRC believes that this requirement helps ensure that a candidate for RSO has the level of knowledge necessary to fulfill duties of an RSO. However, the proposed rule will retain current regulatory provisions that allow candidates who do not hold a degree required under proposed revisions to § 35.50(a) to qualify for positions as RSO under provisions in § 35.50(b). Requirements for T&E of candidates to serve as AMPs would be revised for the board certification pathway, in proposed § 35.51(a)(2), to require 2 years of full-time practical training and/or supervised experience under the supervision of a medical physicist certified by a specialty board recognized by the NRC or an Agreement State, or in clinical radiation facilities providing high energy, external beam therapy and brachtherapy services under the direct supervision of physicians who meet the requirements for AUs in §§ 35.400 or 35.600 or under supervision of a certified medical physicist in clinical radiation facilities. This T&E would help ensure that candidates have the level of knowledge necessary to fulfill the duties of an AMP.

The requirement that boards must have candidates for certification obtain a preceptor statement as a condition for NRC recognition of certifications would be removed in the proposed rule; however, individuals would still be required to obtain preceptor statements and licensees would be required to submit them to the NRC (broad scope, type A licensees would be exempt from this requirement as provided under § 35.15(d)). This would be an addition to the current requirement in § 35.14(a) to provide a copy of board certifications to the NRC. Further discussion of the requirement for a preceptor statement appears below under the heading ''*Preceptor Certification.*'' The certification pathway also includes a specification for the number of hours of training and experience for ANPs and AUs for certain uses of byproduct material under §§ 35.100, 35.200, 35.300 (in 35.390, 35.392, 35.394 for uses under 35.300), and 35.500. The ACMUI recommended that the requirement for 200 hours of classroom and laboratory training, now required in §§ 35.490 and 35.690, be removed because it believes that the combination of degree, practical experience, and examination in the criteria for recognizing certifying boards is equivalent to the number of hours of didactic training and experience specified for the alternative pathway. A detailed analysis of T&E requirements was performed by NRC staff and appears as Attachment 1 to SECY–02–0194. This assessment included a comparison of the number of hours of training required both for the board certification and alternate pathway, with estimates of the equivalency of hours of T&E leading to board certification in comparison to the hours required under the alternate pathway. The NRC believes that, although the requirements are not identical, the T&E standard for recognizing certifying boards would be equivalent to the standard for the alternate pathway. The board certification process requires a

[1] ''Comparison Between NRC Requirements and Boards Certification Programs,'' Attachment 2 to SECY–02–0194, ''Options for Addressing part 35 Training and Experience Issues Associated with Recognition of Specialty Boards by NRC.'' SECY–02–0194 is available on the NRC's Web site, *http://www.nrc.gov,* in the ''Electronic Reading Room.''

candidate to have an academic degree, complete practical experience or a residency program, and pass an examination. Examinations test the knowledge and skills required to perform the applicable activities, including those in proposed §§ 35.490(a)(2) and 35.690(a)(2), to ensure radiation safety. The NRC believes that the combination of a degree, practical experience and an examination in the proposed criteria for recognizing certifying boards would be equivalent to the number of hours of didactic training and experience specified for the alternate pathway. Further, the proposed requirement in the certification pathway for §§ 35.390, 35.490 and 35.690 for completion of an approved, 3-year residency program provides added assurance that T&E is sufficient.

The ACMUI's recommendations included the addition of the Royal College of Physicians and Surgeons of Canada (RCPSC) in listings of entities which approve residency training to satisfy requirements for the board certification pathway for uses under §§ 35.300, 35.400, and 35.600. While the RCPSC was named in subpart J of the current rule, it is not named in other subparts. There are reciprocal arrangements between U.S. entities and the RCPSC regarding approval of residency programs. Thus, the NRC finds these reciprocal agreements to be a sufficient basis to provide that RCPSC be included in various sections of 10 CFR part 35, as previously discussed.

The proposed rule would provide the boards more latitude in making the determination that individuals are fully trained and capable of performing their duties involving radiation safety. These proposed changes to the certification pathway would continue to ensure the safe use of byproduct material by medical licensees by establishing criteria for specialty boards to use in granting certifications. The NRC made a determination that, with the exception of one specialty board, the boards do not meet the requirement in the current rule regarding preceptor certification and work experience. The proposed revisions for the certification pathway would remedy the problem of boards not meeting current requirements in 10 CFR part 35.

Changes to the Alternate Pathway

The proposed rule also contains revised requirements for some of the alternate pathways. Most of these changes are minor and would clarify the requirements for training and experience.

The ACMUI's recommendations for approval as an AU in the alternate pathway in §§ 35.490(b) and 35.690(b) include the addition of the RCPSC to the listings of organizations that approve residency programs. The NRC finds that RCPSC should be included in the listing for the reasons previously discussed above under the heading, ''*Changes to the Certification Pathway.*''

Training Specific to Type of Use

The ACMUI recommended that, in addition to meeting minimum training and experience requirements, authorized individuals should have training or experience in the use of byproduct material or specific modalities (types of use), as appropriate, for which a licensee is authorized. The requirement would also apply to newly hired authorized individuals and when a new type of use is added to the licensee's program. The NRC supports these changes, believing that they would ensure that a licensee's staff has adequate knowledge and experience to fulfill the duties for which they are responsible. The proposed rule includes new paragraphs that add this requirement in § 35.50(e) for RSOs, § 35.51(d) for AMPs and for AUs in § 35.690(d) for remote afterloader, teletherapy and gamma stereotactic radiosurgery units. For uses under § 35.300, requirements in § 35.390(b)(1) provide for training specific to type of use which applies to both the board certification and alternate pathways.

Other Changes

In the current rule, § 35.390(b)(1) specifies that work experience for uses of byproduct material in unsealed form for which a written directive is required must include administering dosages of radioactive drugs involving a minimum of three cases in each of the categories for which the individual is requesting authorized user status. Sections 35.390(b)(1)(ii)(G)(*3*) and (*4*) refer to parenteral administration of certain radionuclides. The proposed rule would clarify that this training must be with quantities of radionuclides for which a written directive is required. The NRC supports these changes because, without them, an individual might cite experience with low-level dosages to satisfy requirements for work experience; the changes place emphasis on the need for AUs to have work experience with higher level dosages, for which a written directive is required.

The ACMUI recommended that the requirements for work experience for authorized users in §§ 35.190, 35.290, and 35.390 be changed to require experience with performing quality control check of instruments rather than with calibrating instruments. The proposed rule would effect these recommendations with changes to §§ 35.190(c)(1)(ii)(B), 35.290(c)(1)(ii)(B), 35.390(b)(1)(ii)(B), 35.392(c)(2)(ii), and 35.394(c)(2)(ii). The NRC agrees with this recommendation because ensuring proper function of these instruments involves more than periodic calibration. In addition to instrument calibration, quality control procedures commonly include checks of such parameters as linearity, constancy and functionality (including battery checks).

Training requirements for authorizations as a medical physicist would be changed in § 35.51(b)(1) to remove specific requirements for a degree in biophysics, radiological physics, and health physics, and add the more general, other physical sciences, as well as engineering and applied mathematics. The requirement for 1 year of full-time training in therapeutic radiological physics would be changed to a more general requirement for 1 year of full-time training in medical physics. Similarly, the requirement for training in a clinical radiation oncology facility would be changed to a requirement for training in ''clinical radiation facilities.'' Pluralizing ''facility'' makes it possible for candidates to receive training in more than one institution. In § 35.690(b)(2), the requirement for candidates to be approved as AUs would be changed to broaden the requirement that supervised clinical experience be received in ''radiation therapy'' rather than in ''radiation oncology.'' These changes are needed to allow for the therapeutic use of byproduct material in applications other than cancer therapy and allowing for T&E to be obtained in more than one facility.

Current regulations in § 35.50(c) provide that an AMP identified on a licensee's license can serve as an RSO, provided that the individual has experience with the radiation safety aspects of similar types of use of byproduct material for which the individual has responsibilities as an RSO. However, current regulations only require services of an AMP for uses under §§ 35.433 and 35.600; a few AMPs are also named on licenses for uses under § 35.1000. Therefore, individuals who may have adequate T&E to serve as AMPs for types of use licensed under §§ 35.100, 35.200, 35.300, 35.400 and 35.500, are not listed on an NRC or Agreement State license under current rules. Medical physicists who are certified by a specialty board recognized by the Commission or an

Agreement State have training and experience in radiation safety aspects of the use of byproduct material for medical purposes. A change to the regulations in § 35.50(c) is proposed that would allow medical physicists, who are certified by a specialty board recognized by the NRC or an Agreement State, to serve as RSOs, while retaining the requirement that such individuals have experience specific to the types of use for which they would be responsible. This change would remove an impediment for individuals who have adequate T&E to become approved as RSOs. It would also avoid placing a burden on licensees to apply for an exemption to regulations and on NRC and Agreement State staff who would be required to process an application for an exemption to regulations in order to approve a licensee's request to have a medical physicist, certified by a recognized specialty board, serve as an RSO.

The term ''high energy'' is used in the proposed rule text in § 35.51(a)(2)(ii) to specify the type of training to be included in T&E for AMPs. The NRC has not defined the term ''high energy'' because, to do so, would be overly prescriptive and such definition might be misinterpreted as establishing a threshold for the minimum photon energy for which experience with external beam therapy is appropriate to qualify as an AMP.

Preceptor Certification

10 CFR part 35 currently requires a written certification that the individual has satisfactorily completed the required training and has achieved a level of knowledge or competency sufficient to function independently and requires that the written certification be signed by a preceptor who is a radiation safety officer, authorized medical physicist, authorized nuclear pharmacist or authorized user. This requirement applies to both the board certification and alternate pathways.

The ACMUI recommended that, instead of certifying ''competency,'' the preceptor should attest that the individual has satisfactorily completed the required training and experience. It further recommended that a training program director be allowed to sign the written certification.

As explained above, the Commission considered recommendations of the ACMUI and determined in SRM–02–0194 that the preceptor statement should remain as written in the current regulations. However, the Commission emphasized that the preceptor language does not require an attestation of general clinical competency, but requires sufficient attestation to demonstrate that the candidate has the knowledge to fulfill the duties of the position for which certification is sought.

The ACMUI also recommended that the Commission separate the requirement to obtain a preceptor statement from the certification and alternate pathways, and to specify this requirement as a new paragraph in the sections dealing with T&E for RSOs, AMPs, ANPs, and AUs. The Commission approved this recommendation of the ACMUI, placing the requirement on licensees to submit the preceptor statements to the NRC. The proposed regulations retain the requirements that individuals obtain preceptor statements for both the certification and alternate pathways.

The requirement for licensees to submit a preceptor statement to the NRC appears in the proposed rule in § 35.14(a). Conforming changes are proposed for definitions of RSO, AMP, ANP, and AU in § 35.2 to include the references to a requirement for preceptor statements. Conforming changes are also proposed to include appropriate references to the requirement for a preceptor statement in §§ 35.13(b)(1), 35.13(b)(2), and 35.13(b)(3).

Listing of Recognized Boards

The NRC would list on its Web site, instead of in its regulations, the names of boards whose certification process meets the NRC's criteria. This approach has the advantage of eliminating the need to amend 10 CFR part 35 to effect recognition each time a new board needs to be added to the listing. The ACMUI and specialty board representatives who participated in a public meeting on May 20, 2003, were in agreement with this approach.

Boards that are currently listed in subpart J of part 35 and other boards would be required to apply for recognition under this rule. NRC staff will review a board's submittal with the ACMUI before a decision on recognition of a board is made.

The NRC plans to place the procedures for listing and delisting of specialty boards on its Web site before the effective date of the final rule, if adopted. Because of the important role of board certification, the procedures will provide for making a clear regulatory determination that boards, both new and existing, meet the relevant criteria in the revised regulations. The procedures will provide for both adding new specialty boards to the recognized listing and for removing boards from the recognized list.

The NRC staff does not intend to conduct inspections of the recognized specialty boards, but will monitor trends in medical events. If the NRC staff determines that a series of medical events is associated with a particular specialty and the trend can be attributed to inadequate radiation safety training, the staff will determine whether the inadequate training is related to a board's requirements for radiation safety training. If this is the case, the NRC staff will review the specialty board's certification program. The assessment will include a determination of whether the board's examination adequately assesses the requisite knowledge and skills. If the staff determines that changes in the board's requirements for training in radiation safety are necessary and the board either cannot or will not make adequate changes to its training program to address these needs, then the NRC will withdraw recognition of that specialty board's certification and delist that board. The NRC staff will consult with the ACMUI regarding such actions and will inform the Commission of an NRC staff decision to withdraw recognition. The NRC has reviewed existing procedures for the conduct of inspections and has determined that they provide for collection of the information necessary to evaluate trends in medical events possibly related to requirements for T&E of specialty boards.

Stakeholder Interactions

On May 20, 2003, a public meeting was held to solicit early input on the proposed rule from representatives of professional specialty boards and other interested stakeholders. The meeting was conducted as a facilitated, roundtable discussion with representatives of specialty boards; members of the public also had the opportunity to present their views. NRC staff also made a presentation to the ACMUI on May 20, 2003, regarding the staff's approach to the proposed rule; subsequent to this, further input was obtained from the Chair of the ACMUI and the Chair of the ACMUI subcommittee as well as a comment received via e-mail from a participant in the meeting with the boards.

A draft of this proposed rule was sent to the Agreement States and the ACMUI for 30-day review and comment. A teleconference between NRC staff and the ACMUI was held on July 17, 2003; approximately 12 Agreement State representatives participated in this conference, notice of which appeared in the **Federal Register** on July 14, 2003 (68 FR 41665). Comments of the ACMUI, Agreement States, board

members, and members of the public provided useful information to the NRC in preparing the proposed rule. A person from the State of Alabama represented the Organization of Agreement States and participated as a member of the working group with the NRC staff in the development of this proposed rule.

Additional Recommendations of the ACMUI

At the teleconference held on July 17, 2003, the full ACMUI discussed the draft proposed rule. During the teleconference, the ACMUI approved the NRC staff recommendation to broaden the requirement that supervised clinical experience be received in a ''radiation facility'' rather than in a ''radiation oncology facility'' for individuals to qualify as AMPs, in § 35.51(b)(1) of the proposed rule, and to change the requirement for experience in ''radiation oncology'' in paragraph § 35.690(b)(2) to allow for experience in ''radiation therapy.'' Parallel changes were made to the certification pathway for AMPs in the proposed rule in § 35.51(a)(2)(ii) and in § 35.690(a)(1) for uses under § 35.600. Secondly, the ACMUI recommended that the requirements for experience, described in the current rule in § 35.390(b)(1)(ii)(G), not be included in criteria for recognition of specialty board certifications, but, that they continue to be required for AUs meeting T&E requirements for both the certification and alternate pathways. This recommendation was not adopted because the NRC staff believes that the requirements for work experience in § 35.390(b)(1)(ii)(G) are essential for an individual to be able to function independently as an AU for administration of byproduct material for which a written directive is required. Furthermore, if the requirement were removed from the certification pathway, individuals and applicants for licenses or amendments would be required to provide documentation of completion of requirements for experience required under § 35.390(b)(1)(ii)(G), in addition to evidence of board certification, to gain approval as AUs. Therefore, this requirement was retained in the proposed rule. Thirdly, the ACMUI recommended that the requirement for a preceptor statement be separated from the board certification pathway and the alternate pathway, and specified separately as a new paragraph in each training section. This recommendation was approved by the Commission in SRM–03–0145 and incorporated into the proposed rule. Lastly, the ACMUI recommended that the word ''attest'' should be used in place of certify (certification) in preceptor statements. The ACMUI explained that the reason for this recommendation was to reflect the current practice that preceptors do not ''certify'' individuals, but ''attest.'' As noted below under the heading ''*Invitation for Public Comment on Specific Issues,*'' the NRC is inviting comment on the issue of whether the word ''attestation'' should be used in place of the word ''certification'' in preceptor statements.

Timing of Agreement State Implementation

Normally, Agreement States have 3 years in which to adopt a compatible rule. Agreement States have until October 24, 2005, to adopt the revised 10 CFR part 35 published on April 24, 2002. For Agreement States to adopt the proposed training and experience requirements contained in this proposed rule and have them in place by October 24, 2005, the Agreement States would have a shortened time frame for developing compatible requirements. Agreement States have voiced concern regarding this shortened time frame. As indicated below under the heading ''*Invitation for Public Comment on Specific Issues,*'' the NRC is inviting comment on the timing of implementation of the proposed rule in Agreement States.

Invitation for Public Comment on Specific Issues.

The NRC is seeking public comment on the following issues:

1. Do the proposed revisions to requirements for training and experience provide reasonable assurance that RSOs, AMPs, ANPs, and AUs will have adequate training in radiation safety?

2. Should Agreement States establish the requirements to conform with this proposed rule by October 24, 2005, or should they follow the normal process and be given a full 3 years to develop a compatible rule? (*See* discussion under the heading, ''Timing of Agreement State Implementation,'' above.)

3. Should the word ''attestation'' be used in place of the word ''certification'' in preceptor statements? (*See* discussion under the topic ''*Recommendations of the ACMUI,*'' above.)

Section-by-Section Analysis

Section 35.2—Definitions

This section would be amended to incorporate conforming changes necessitated by amendments to other sections. The definition of authorized medical physicist (AMP) would be changed to include a reference in paragraph (1) to the requirement for obtaining a preceptor statement in proposed § 35.51(c) and the proposed requirement for training specific to type of use in proposed § 35.51(d). The definition for authorized nuclear pharmacist (ANP) would be changed in paragraph (1) to include a reference to the requirement for obtaining a preceptor statement in proposed § 35.55(c). The definition of authorized user (AU) would be changed in paragraph (1) to include references to the requirement for obtaining a preceptor statement in proposed §§ 35.390(c), 35.490(c), and 35.690(c). The requirement for training specific to type of use in proposed § 35.690(d) would also be added to the definition of AU. The definition of radiation safety officer (RSO) would be changed in paragraph (1) to include references to the requirements for obtaining a preceptor statement in proposed § 35.50(c) and 35.50(d)(ii) and to the requirement for training specific to type of use in proposed § 35.50(e).

Section 35.10—Implementation

This section would be amended to incorporate conforming changes necessitated by amendments to other sections. Paragraph (b) would be amended to require implementation of §§ 35.50(c), 35.50(e), 35.51(c), 35.51(d), 35.55(c), 35.390(c), 35.490(c), 35.690(c) and 35.690(d) by the effective date of the regulation.

Section 35.13—License Amendments

Paragraphs (b)(1), (b)(2), and (b)(3) of this section would be amended conform with changes to § 35.14(a) and proposed addition of §§ 35.390(c), 35.490(c), and 35.690(c) which would require submission of preceptor statements to the NRC. Paragraphs (b)(1) and (b)(3) would be amended to reference requirements for T&E specific for types of use added in proposed amendments § 35.690(d) and § 35.51(d), respectively.

Section 35.14—Notifications

This section would be amended to add a requirement to paragraph (a) to submit a copy of a written certification signed by a preceptor in addition to a copy of the board certification now required in this paragraph.

Section 35.50—Training for Radiation Safety Officer

This section would be amended to modify the requirements that must be met as part of a specialty board certification process for the specialty board to be recognized by the

Commission or an Agreement State. Instead of requiring that the certification process include the same criteria as the alternate pathway (§ 35.50(b) in the current rule), paragraph (a) would be amended to provide separate requirements for a specialty board's certification process. This process would include a requirement to pass an examination, administered by diplomates of the specialty board, which would evaluate knowledge and competency areas that are important to functioning as an RSO. Requirements for training would be changed to add requirements for a bachelor's or graduate degree from an accredited college or university in physical science or engineering or biological science with a minimum of 20 college credits in physical science, and 5 years of professional experience in health physics, including at least 3 years in applied health physics (graduate training could be substituted for up to 2 years of experience). Paragraph (a) would also be amended to include a statement that recognized board certifications will be posted on the NRC's Web page. The requirement for obtaining a preceptor statement would be removed from the requirements for recognition of specialty board certifications. This requirement, now in paragraph (b)(2), would be moved to paragraph (c) and apply to both the certification and alternate pathway. A new paragraph (d)(2)(i) would be added to allow medical physicists to serve as RSOs if they are certified by a specialty board whose certification process has been recognized by the Commission or an Agreement State, with the requirement for a preceptor statement included in paragraph (d)(2)(ii). A new paragraph (e) would be added to require training in radiation safety, regulatory issues, and emergency procedures for the types of use for which an applicant seeks authorization. Paragraph (e) would apply to all pathways.

Section 35.51—Training for an Authorized Medical Physicist

This section would be amended to modify the requirements that must be met as part of a specialty board certification process for the specialty board to be recognized by the Commission or an Agreement State. Instead of requiring that the certification process include the same criteria as the alternate pathway, paragraph (a) would be amended to provide separate requirements for a specialty board's certification process. This process would include a requirement to pass an examination, administered by diplomates of the specialty board, which would evaluate knowledge and competency areas that are important to functioning as a medical physicist. Paragraph (a) would also be amended to include a statement that recognized board certifications will be posted on the NRC's Web page. The requirement for obtaining a preceptor statement would be removed from the requirements for recognition of specialty board certifications but would, instead, apply to each individual seeking recognition as an AMP and be moved from paragraph (b)(2) to paragraph (c). A new paragraph (d) would be added to require training related to the type of use for which authorization is sought that includes ''hands on'' device operation, safety procedures, clinical use, and operation of a treatment planning system. Paragraph (d) would apply to the certification and alternate pathways. In addition, for the alternate pathway (paragraph (b)(1)), the acceptable areas of concentration for degrees would be expanded, and a requirement that the degree be from an accredited college or university would be added. Paragraph (b)(1) would also be amended to list the specific areas for which the individual needs to have training and work experience, instead of referring to other sections of 10 CFR part 35 and would allow for the T&E to be received in clinical radiation facilities that provide high energy, external beam therapy and brachytherapy services.

Section 35.55—Training for an Authorized Nuclear Pharmacist

This section would be amended to modify the requirements that must be met as part of a specialty board certification process for the specialty board to be recognized by the Commission or an Agreement State. Instead of requiring that the certification process include the same criteria as the alternate pathway, paragraph (a) would be amended to provide separate requirements for a specialty board's certification process. This certification process would include a requirement to pass an examination, administered by diplomates of the specialty board, which would evaluate knowledge and competency areas that are important to functioning as an ANP. Paragraph (a) would also be amended to include a statement that recognized board certifications will be posted on the NRC's Web page. The requirement for obtaining a preceptor statement would be removed from the requirements for recognition of specialty board certifications but would, instead, apply to each individual seeking recognition as an AMP; the requirement would be moved from paragraph (b)(2) to a new paragraph (c).

Section 35.57—Training for Experienced Radiation Safety Officer, Teletherapy or Medical Physicist, Authorized User, and Nuclear Pharmacist

Paragraphs (a) and (b) would be amended to change ''October 24, 2002,'' to the effective date of the final rule, if adopted.

Section 35.190—Training for Uptake, Dilution, and Excretion Studies

Paragraph (a) would be amended to modify the requirements that must be met as part of a specialty board certification process for the specialty board to be recognized by the Commission or an Agreement State for uses under § 35.190. A requirement would be added that candidates must pass an examination administered by diplomates of the specialty board. The requirement for obtaining a preceptor statement would be removed from the requirements for recognition of specialty board certifications but would, instead, apply to each individual seeking recognition as an AU under § 35.100. Paragraph (a) would also be amended to include a statement that recognized board certifications will be posted on the NRC's Web page. Paragraph (c)(1)(ii)(B) would be amended to reflect that the work experience must include performing quality control procedures on instruments used to determine the activity of dosages, a change from requiring only the calibration of these instruments.

Section 35.290—Training for Imaging and Localization Studies

Paragraph (a) would be amended to modify the requirements that must be met as part of a specialty board certification process for the specialty board to be recognized by the Commission or an Agreement State for uses under § 35.290. A requirement would be added that candidates must pass an examination, administered by diplomates of the specialty board. The requirement for obtaining a preceptor statement would be removed from the requirements for recognition of specialty board certifications but would, instead, apply to each individual seeking recognition as an AU under § 35.200. Paragraph (a) would also be amended to include a statement that recognized board certifications will be posted on the NRC's Web page. Paragraph (c)(1)(ii)(B) would be amended to reflect that the work experience must include performing quality control procedures on instruments used to determine the

activity of dosages, a change from requiring only the calibration of these instruments.

Section 35.390—Training for Use of Unsealed Byproduct Material for Which a Written Directive Is Required

This section would be amended to modify the requirements that must be met as part of a specialty board certification process for the specialty board to be recognized by the Commission or an Agreement State for uses under § 35.390. Instead of requiring that the certification process include the same criteria as the alternate pathway, paragraph (a) would be amended to provide separate requirements for a specialty board's certification process. The training and experience required for the certification pathway would be changed to include, in § 35.390(a)(1), a requirement that individuals complete 3 years of residency training in a radiation therapy, nuclear medicine or a related medical specialty training program approved by the Residency Review Committee of the Accreditation Council for Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Post-Graduate Training of the American Osteopathic Association. Paragraph (a) would also be amended to include a statement that recognized board certifications will be posted on the NRC's Web page. The requirement for obtaining a preceptor statement would be removed from the requirements for recognition of specialty board certifications but would, instead, apply to each individual seeking recognition as an AU under § 35.390. The requirement for a preceptor statement would be moved from paragraph (b)(2) to a new paragraph (c). Paragraph (b)(1)(ii)(B) would be amended to reflect that the work experience must include performing quality control procedures on instruments used to determine the activity of dosages, a change from requiring only the calibration of these instruments. In addition, paragraphs (b)(1)(ii)(G)(*3*) and (*4*) would be amended to revise requirements for work experience involving parenteral administration of dosages, clarifying them to indicate that the experience is to be with cases for which written directives are required.

Section 35.392—Training for the Oral Administration of Sodium Iodide I–131 Requiring a Written Directive in Quantities Less Than or Equal to 1.22 Gigabecquerels (33 Millicuries)

Paragraph (a) would be amended to include a statement that recognized board certifications will be posted on the NRC's Web page. Paragraph (c)(2)(ii) would be amended to reflect that the work experience must include performing quality control procedures on instruments used to determine the activity of dosages, a change from requiring only the calibration of these instruments. The requirement for obtaining a preceptor statement would be removed from the requirements for recognition of specialty board certifications but would, instead, apply to each individual seeking recognition as an AU under § 35.392. The requirement for a preceptor statement would be moved from paragraph (c)(3) to a new paragraph (d).

Section 35.394—Training for the Oral Administration of Sodium Iodide I–131 Requiring a Written Directive in Quantities Greater Than 1.22 Gigabecquerels (33 Millicuries)

Paragraph (a) would be amended to include a statement that recognized board certifications will be posted on the NRC's Web page. Paragraph (c)(2)(ii) would be amended to reflect that the work experience must include performing quality control procedures on instruments used to determine the activity of dosages, a change from requiring only the calibration of these instruments. The requirement for obtaining a preceptor statement would be removed from the requirements for recognition of specialty board certifications but would, instead, apply to each individual seeking recognition as an AU under § 35.392. The requirement for a preceptor statement would be moved from paragraph (c)(3) to a new paragraph (d).

Section 35.490—Training for Use in Manual Brachytherapy Sources

This section would be amended to modify the requirements that must be met as part of a specialty board certification process for the specialty board to be recognized by the Commission or an Agreement State. Instead of requiring that the certification process include the same criteria as the alternate pathway, paragraph (a) would provide separate requirements for a specialty board's certification process. The training and experience required for the certification pathway would be changed to include, in § 35.490(a)(1), a requirement that individuals complete 3 years of residency training in a radiation oncology program approved by the Residency Review Committee of the Accreditation Council for Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Post-Graduate Training of the American Osteopathic Association. Paragraph (a) would also be amended to include a statement that recognized board certifications will be posted on the NRC's Web page. The requirement for obtaining a preceptor statement would be removed from the requirements for recognition of specialty board certifications but would, instead, apply to each individual seeking recognition as an AU under § 35.490. Additionally, paragraph (b)(2) would be amended to include the Royal College of Physicians and Surgeons of Canada in the listing of organizations that can provide approval of the formal training program.

Section 35.590—Training for Use of Sealed Sources for Diagnosis

Paragraph (a) would be amended to include a statement that recognized boards would be posted on the NRC's Web page. Paragraph (b)(5) would be redesignated as paragraph (c) and would apply to both the certification and the alternate pathways. This revision would separate the requirement for training in the use of the device for the uses requested from the requirement for 8 hours of classroom and laboratory training in basic radionuclide handling techniques.

Section 35.690—Training for Use of Remote Afterloader Units, Teletherapy Units, and Gamma Stereotactic Radiosurgery Units

This section would be amended to modify the requirements that must be met as part of a specialty board certification process for the specialty board to be recognized by the Commission or an Agreement State for uses under 35.600. Instead of requiring that the certification process include the same criteria as the alternate pathway, paragraph (a) would be amended to provide separate requirements for a specialty board's certification process. Paragraph (a) would also be amended to include a statement that recognized board certifications will be posted on the NRC's web page. The training and experience required for the certification pathway would be changed to include, in § 35.690(a)(1), a requirement that individuals complete 3 years of residency training in a radiation therapy program approved by the Residency Review Committee of the Accreditation Council for Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Post-Graduate Training of the American Osteopathic Association. The requirement for obtaining a preceptor statement would be removed from the requirements for recognition of specialty board certifications but would, instead,

apply to each individual seeking recognition as an AU under § 35.690. Additionally, for the alternate pathway, paragraph (b)(2) would be amended to include the Royal College of Physicians and Surgeons of Canada in the listing of organizations that can provide approval of the formal training program. The requirement for experience in ''radiation oncology'' in paragraph (b)(2) would be modified to allow for experience in ''radiation therapy.'' A new paragraph (c) would be added to require training in device operation, safety procedures, and clinical use for the type(s) of use for which approval as an AU is sought. Paragraph (c) would apply to all pathways.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this proposed rule would be a matter of compatibility between NRC and the Agreement States, thereby providing consistency among Agreement State and NRC requirements. The Compatibility Categories for the sections amended in this proposed rule would be the same as for the sections in the current regulations. The revisions to §§ 35.2, 35.10, 35.13, 35.14, 35.50, 35.51, 35.190, 35.290, 35.390, 35.392, 35.394, 35.490, 35.590, and 35.690 are classified as Compatibility Category B. A Compatibility Category ''B'' designation means the requirement has significant direct transboundary implications. Compatibility Category ''B'' designated Agreement State requirements should be essentially identical to those of NRC.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would modify the training and experience requirements for radiation safety officer, authorized medical physicists, authorized nuclear pharmacists or authorized users. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Finding of No Significant Environmental Impact: Environmental Assessment

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required. The environmental assessment is presented below.

Introduction

The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing the medical use of byproduct material to change its requirements for recognition of specialty boards whose certification may be used to demonstrate the adequacy of the training and experience of individuals to serve as radiation safety officer (RSOs), authorized medical physicists (AMPs), authorized nuclear pharmacists (ANPs) or authorized users (AUs). The proposed rule would also revise the requirements for demonstrating the adequacy of training and experience for pathways other than the board certification pathway. This rulemaking is necessary to address the training and experience issue for recognition of specialty board certifications.

The Proposed Action

The proposed action under consideration is an amendment to the Commission's regulations governing the medical use of byproduct materials (10 CFR part 35). The proposed action would change the requirements for recognition of specialty boards whose certification may be used to demonstrate the adequacy of the training and experience of individuals to serve as an RSO, AMP, ANP, or AU. The proposed action would also amend certain requirements for the training and experience of individuals who do not choose the board certification pathway.

During its revision of 10 CFR part 35, the Commission became aware that, as a result of the changes to its training and experience requirements, specialty boards recognized by the NRC under the former regulations no longer would be qualified for recognition, and that this could result in a shortage of authorized individuals. As a temporary measure to address this issue, the Commission reinserted Subpart J into the final rule which was published in the **Federal Register** on April 24, 2002 (67 FR 20249). Subpart J is effective for a 2-year transition period which will expire on October 24, 2004. The proposed action would address this issue relating to recognition of board certifications after expiration of the 2-year transition period.

Need for the Proposed Action

This rulemaking is needed to address the training and experience issue for recognition of certifications of specialty boards by the NRC for approval of individuals to serve as RSOs, AMPs, ANPs or AUs. Without this rulemaking, the issue of board recognition would not be addressed. Subpart J expires on October 24, 2004, and without this rulemaking, there could be a potential shortage of individuals authorized to perform medical procedures involving the use of byproduct material.

Alternatives to the Proposed Action

An alternative to the proposed action would be to take no action. Subpart J will expire on October 24, 2004. The no-action alternative is not favored because the issues related to training and experience, as they relate to NRC's recognition of specialty boards, would not be resolved and this could result in a shortage of RSOs, AMPs, ANPs and AUs.

Environmental Impacts of the Proposed Action

The NRC prepared an environmental assessment as part of the development of the part 35 final rule published in the **Federal Register** on April 24, 2002 (67 FR 20249). The conclusion from this environmental assessment was that the 10 CFR part 35 amendments would have no significant impact on the public and the environment. Specifically, pertaining to the training and experience requirements, the environmental assessment stated: ''The amendments to the training and experience requirements in 10 CFR part 35 focus on knowledge and experience that is integral to radiation safety. These changes are expected to have no significant impact on public health and safety, occupational health and safety, and the environment.'' The NRC finds that the conclusion is still valid for the proposed revisions to the training and experience requirements in 10 CFR part 35. The revisions currently under consideration also focus on the

knowledge and experience that is integral to radiation safety. The proposed amendments to 10 CFR part 35 are expected to have no significant impact on the public health and safety, occupational health and safety, and the environment.

Agencies and Persons Consulted and Sources Used

The environmental assessment for the final 10 CFR part 35 rulemaking, published in the **Federal Register** (67 FR 20249; April 24, 2002), was used in the preparation of this environmental assessment. The draft environmental assessment was sent to Agreement States and the Advisory Committee on the Medical Use of Isotopes for review and comment. The NRC staff has determined that the proposed action will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act (16 U.S.C. 1531 *et seq*). Likewise, the NRC staff has determined that the proposed action is not the type of activity that has potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act (16 U.S.C. 470 *et seq*).

Finding of No Significant Impact

Based on the foregoing environmental assessment, the NRC concludes that this rulemaking will not have a significant effect on the quality of the human environment. Therefore, the NRC has determined that an environmental impact statement is not necessary for this rulemaking.

The determination of this environmental assessment is that there will be no significant impact to the public from this action. However, the general public should note that the NRC seeks public participation. Comments on any aspect of the Environmental Assessment may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The NRC has sent a copy of this proposed rule to every State Liaison Officer and requested their comments on the environmental assessment.

Paperwork Reduction Act Statement

This rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The burden to the public for these information collections is estimated to average 1.4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden, to the Records and FOIA/Privacy Services Branch (T5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at *infocollects@nrc.gov;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0010 and 3150–0120), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the information collections or on the above issues should be submitted by January 8, 2004. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission.

The Commission requests public comment on the draft regulatory analysis. Comments on the analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading. The analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Public File Area O1 F21, Rockville, Maryland. Single copies of the draft regulatory analysis are available from Roger W. Broseus, Office of Nuclear Material Safety and Safeguards, telephone (301) 415–7608, e-mail *rwb@nrc.gov.*

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing the medical use of byproduct material to change its requirements for recognition of specialty boards whose certification may be used to demonstrate the adequacy of the training and experience of individuals to serve as radiation safety officers, authorized medical physicists, authorized nuclear pharmacists or authorized users. The proposed rule would also revise the requirements for demonstrating the adequacy of training and experience of individuals who do not choose pathways other than the board certification pathway. The regulatory flexibility analysis prepared for the final rule on part 35 (67 FR 20249; April 24, 2002) indicated that about 740 out of 1688 licensees could be considered small entities. The proposed rule should have no burden or economic impact on licensees because it does not add new requirements; it would provide a revision to an existing option.

Any small entity subject to this regulation that determines, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this opinion in a comment that indicates—

(a) The licensee's size and how the proposed regulation would result in a significant economic burden upon the licensee as compared to the economic burden on a larger licensee;

(b) How the proposed regulations could be modified to take into account the licensee's differing needs or capabilities;

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulations were modified as suggested by the licensee;

(d) How the proposed regulation, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individual or group; and

(e) How the proposed regulation, as modified, would still adequately protect public health and safety.

Backfit Analysis

The Commission has determined that the backfit rule does not apply to this proposed rule because these amendments would not involve any provision that would impose backfits as defined in 10 CFR Chapter 1. Therefore, a backfit analysis is not required for this proposed rule.

List of Subjects in 10 CFR Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 35.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

1. The authority citation for part 35 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 35.2, the definitions of ''authorized medical physicist,'' ''authorized nuclear pharmacist,'' ''authorized user,'' and ''radiation safety officer'' are amended by republishing the introductory text and revising paragraph (1) of each definition to read as follows:

§ 35.2 Definitions.

* * * * *

Authorized medical physicist means an individual who—

(1) Meets the requirements in §§ 35.51(a), 35.51(c), 35.51(d), and 35.59; or, before October 24, 2004, meets the requirements in §§ 35.961(a), or (b), and 35.59; or

* * * * *

Authorized nuclear pharmacist means a pharmacist who—

(1) Meets the requirements in §§ 35.55(a), 35.55(c) or 35.55(d)(2), 35.55(e), and 35.59; or, before October 24, 2004, meets the requirements in §§ 35.980(a) and 35.59; or

* * * * *

Authorized user means a physician, dentist, or podiatrist who—

(1) Meets the requirements in §§ 35.59 and 35.190(a), 35.290(a), 35.390(a) and (c), 35.392(a), 35.394(a), 35.490(a) and (c), 35.590(a), or 35.690(a), 35.690(c) and 35.690(d); or, before October 24, 2004, meets the requirements in §§ 35.910(a), 35.920(a), 35.930(a), 35.940(a), 35.950(a), 35.960(a) and 35.59; or

* * * * *

Radiation Safety Officer means an individual who—

(1) Meets the requirements in §§ 35.50(a), 35.50(c), 35.50(e), and 35.59; or 35.50(d), 35.50(e), and 35.59; or, before October 24, 2004, §§ 35.900(a) and 35.59; or

* * * * *

3. In § 35.10, paragraph (b) is revised to read as follows:

§ 35.10 Implementation.

* * * * *

(b) A licensee shall implement the training requirements in §§ 35.50(a), 35.50(c), 35.50(e), 35.51(a), 35.51(b), 35.51(c), 35.51(d), 35.55(a), 35.55(c), 35.59, 35.190(a), 35.190(c), 35.290(a), 35.290(c), 35.390(a), 35.390(b), 35.390(c), 35.392(a), 35.392(c), 35.394(a), 35.394(c), 35.490(a), 35.490(b), 35.490(c), 35.590(a), 35.590(b), 35.690(a), 35.690(b), 35.690(c), and 35.690(d) on or before ''[insert effective date of final rule]''.

* * * * *

4. In § 35.13, paragraphs (b)(1), (b)(2) and (b)(3) are revised to read as follows:

§ 35.13 License amendments.

(b) * * *

(1) For an authorized user, an individual who meets the requirements in §§ 35.190(a); 35.290(a); 35.390(a) and 35.390(c); 35.392(a); 35.394(a); 35.490(a) and 35.490(c); 35.590(a); 35.690(a), 35.690(c) and 35.690(d); 35.910(a); 35.920(a); 35.930(a); 35.932; 35.934; 35.940(a); 35.950(a); or 35.960(a) and 35.59;

(2) For an authorized nuclear pharmacist, an individual who meets the requirements in §§ 35.59 and—

(i) 35.55(a) and 35.55(c) or

(ii) 35.980(a);

(3) For an authorized medical physicist, an individual who meets the requirements in §§ 35.59 and—

(i) 35.51(a), 35.51(c) and 35.51(d) or

(ii) 35.961(a) or (b);

* * * * *

5. In § 35.14, paragraph (a) is revised to read as follows:

§ 35.14 Notifications.

(a) A licensee shall provide the Commission a copy of the board certification and the written certification(s) signed by a preceptor, the Commission or Agreement State license, the permit issued by a Commission master material licensee, the permit issued by a Commission or Agreement State licensee of broad scope, or the permit issued by a Commission master material license broad scope permittee for each individual no later than 30 days after the date that the licensee permits the individual to work as an authorized user, an authorized nuclear pharmacist, or an authorized medical physicist, under § 35.13 (b)(1) through (b)(4).

* * * * *

6. In § 35.50, paragraphs (a) and (c) are revised, paragraph (b)(2) is removed and reserved, and paragraphs (d) and (e) are added to read as follows:

§ 35.50 Training for Radiation Safety Officer.

* * * * *

(a) Is certified by a specialty board whose certification process has been recognized by the Commission or an Agreement State. (Specialty Boards whose certification processes have been recognized by the Commission or an Agreement State will be posted on the NRC's Web page.) To be recognized, a specialty board shall require all candidates for certification to:

(1) Hold a bachelor's or graduate degree from an accredited college or university in physical science or engineering or biological science with a minimum of 20 college credits in physical science;

(2) Have 5 or more years of professional experience in health physics (graduate training may be substituted for no more than 2 years of the required experience) including at least 3 years in applied health physics; and

(3) Pass an examination administered by diplomates of the specialty board, which evaluates knowledge and competence in radiation physics and instrumentation, radiation protection, mathematics pertaining to the use and measurement of radioactivity, radiation biology, and radiation dosimetry; or

(b) * * *

(2) [Reserved]

(c) Has obtained written certification, signed by a preceptor Radiation Safety Officer, that the individual has satisfactorily completed the requirements in paragraph (a) or (b) of this section and has achieved a level of radiation safety knowledge sufficient to function independently as a Radiation Safety Officer for a medical use licensee; or

(d)(1) Is an authorized user, authorized medical physicist, or

authorized nuclear pharmacist identified on the licensee's license and has experience with the radiation safety aspects of similar types of use of byproduct material for which the individual has Radiation Safety Officer responsibilities; or,

(2)(i) Is a medical physicist who has been certified by a specialty board whose certification process has been recognized by the Commission or an Agreement State under § 35.51(a) and has experience with the radiation safety aspects of similar types of use of byproduct material for which the individual has Radiation Safety Officer responsibilities; and

(ii) Has obtained written certification, signed by a preceptor Radiation Safety Officer, that the individual has satisfactorily completed the requirements in paragraph (a) or (b) of this section and has achieved a level of radiation safety knowledge sufficient to function independently as a Radiation Safety Officer for a medical use licensee; and

(e) Has training in the radiation safety, regulatory issues, and emergency procedures for the types of use for which a licensee seeks approval. This training requirement may be satisfied by completing training that is supervised by a radiation safety officer, authorized medical physicist, authorized nuclear pharmacist, or authorized user, as appropriate, who is authorized for the type(s) of use for which the licensee is seeking approval.

7. In § 35.51, paragraphs (a) and (b)(1) are revised, paragraph (b)(2) is removed and reserved, and paragraphs (c) and (d) are added to read as follows:

§ 35.51 Training for an authorized medical physicist.

* * * * *

(a) Is certified by a specialty board whose certification process has been recognized by the Commission or an Agreement State. (Specialty boards whose certification processes have been recognized by the Commission or an Agreement State will be posted on the NRC's Web page.) To be recognized, a specialty board shall require all candidates for certification to:

(1) Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

(2) Have 2 years of full-time practical training and/or supervised experience in medical physics—

(i) Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the Commission or an Agreement State, or

(ii) In clinical radiation facilities providing high energy, external beam therapy and brachytherapy services under the direction of physicians who meet the requirements for authorized users in §§ 35.490 or 35.690;

(3) Pass an examination, administered by diplomates of the specialty board, which assesses knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery; or

(b)(1) Holds a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university; and has completed 1 year of full-time training in medical physics and an additional year of full-time work experience under the supervision of an individual who meets the requirements for an authorized medical physicist for the type(s) of use for which the individual is seeking authorization. This training and work experience must be conducted in clinical radiation facilities that provide high energy, external beam therapy and brachytherapy services and must include:

(i) Performing sealed source leak tests and inventories;

(ii) Performing decay corrections;

(iii) Performing full calibration and periodic spot checks of external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(iv) Conducting radiation surveys around external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(2) [Reserved]

(c) Has obtained written certification that the individual has satisfactorily completed the requirements in paragraph (a) or (b)(1) of this section and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written certification must be signed by a preceptor authorized medical physicist who meets the requirements in § 35.51, or, before October 24, 2004, § 35.961, or equivalent Agreement State requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and

(d) Has training for the type(s) of use for which authorization is sought that includes hands-on device operation, safety procedures, clinical use, and the operation of a treatment planning system. This training requirement may be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist authorized for the type(s) of use for which the individual is seeking authorization.

8. In § 35.55, paragraph (a) is revised, paragraph (b)(2) is removed and reserved, and paragraph (c) is added to read as follows:

§ 35.55 Training for an authorized nuclear pharmacist.

* * * * *

(a) Is certified by a specialty board whose certification process has been recognized by the Commission or an Agreement State. (Specialty boards whose certification processes have been recognized by the Commission or an Agreement State will be posted on the NRC's web page.) To be recognized, a specialty board shall require all candidates for certification to:

(1) Have graduated from a pharmacy program accredited by the American Council on Pharmaceutical Education (ACPE) or have passed the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination;

(2) Hold a current, active license to practice pharmacy;

(3) Provide evidence of having acquired at least 4000 hours of training/experience in nuclear pharmacy practice. Academic training may be substituted for no more than 2000 hours of the required training and experience;

(4) Pass an examination in nuclear pharmacy administered by diplomates of the specialty board, which assesses knowledge and competency in procurement, compounding, quality assurance, dispensing, distribution, health and safety, radiation safety, provision of information and consultation, monitoring patient outcomes, research and development; or

(b) * * *

(2) [Reserved]

(c) Has obtained written certification, signed by a preceptor authorized nuclear pharmacist, that the individual has satisfactorily completed the requirements in paragraph (a) or (b) of this section and has achieved a level of competency sufficient to function independently as an authorized nuclear pharmacist.

§ 35.57 [Amended]

9. In § 35.57, replace both references to ''October 24, 2002'' with ''[insert effective date of final rule]''.

10. In § 35.190, paragraphs (a) and (c)(1)(ii)(B) are revised to read as follows:

§ 35.190 Training for uptake, dilution, and excretion studies.

* * * * *

(a) Meets the requirements in paragraph (c)(2) of this section and is certified by a medical specialty board whose certification process has been recognized by the Commission or an Agreement State. (Specialty boards whose certification processes have been recognized by the Commission or an Agreement State will be posted on the NRC's web page.) To be recognized, a specialty board shall require all candidates for certification to:

(1) Meet the requirements in paragraph (c)(1) of this section;

(2) Pass an examination, administered by diplomates of the specialty board, which assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(B) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

* * * * *

11. In § 35.290, paragraphs (a) and (c)(1)(ii)(B) are revised to read as follows:

§ 35.290 Training for imaging and localization studies.

* * * * *

(a) Meets the requirements in paragraph (c)(2) of this section and is certified by a medical specialty board whose certification process has been recognized by the Commission or an Agreement State. (Specialty boards whose certification processes have been recognized by the Commission or an Agreement State will be posted on the NRC's web page.) To be recognized, a specialty board shall require all candidates for certification to:

(1) Meet the requirements in paragraph (c)(1) of this section;

(2) Pass an examination, administered by diplomates of the specialty board, which assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(B) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

* * * * *

12. In § 35.390, paragraph (a), paragraphs (b)(1)(ii)(B), and (b)(1)(ii)(G)(*3*) and (*4*) are revised, paragraph (b)(2) is removed and reserved, and paragraph (c) is added to read as follows:

§ 35.390 Training for use of unsealed byproduct material for which a written directive is required.

* * * * *

(a) Is certified by a medical specialty board whose certification process has been recognized by the Commission or an Agreement State. (Specialty boards whose certification processes have been recognized by the Commission or an Agreement State will be posted on the NRC's web page.) To be recognized, a specialty board shall require all candidates for certification to:

(1) Successfully complete a minimum of 3 years of residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty that includes 700 hours of training and experience as described in paragraph (b)(1) of this section. Eligible training programs must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or Royal College of Physicians and Surgeons of Canada or the Committee on Post-Graduate Training of the American Osteopathic Association;

(2) Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, quality assurance, and clinical use of unsealed byproduct material; or

(b) * * *

(1) * * *

(ii) * * *

(B) Performing quality control procedures on instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;

* * * * *

(G) * * *

(*3*) Parenteral administration of any beta emitter or a photon-emitting radionuclide with a photon energy less than 150 keV, for which a written directive is required; and/or

(*4*) Parenteral administration of any other radionuclide for which a written directive is required; and

* * * * *

(2) [Reserved]

(c) Has obtained written certification that the individual has satisfactorily completed the requirements in paragraph (a) or (b)(1) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under § 35.300. The written certification must be signed by a preceptor authorized user who meets the requirements in § 35.390(a), § 35.390(b), or, before October 24, 2004, § 35.390, or equivalent Agreement State requirements. The preceptor authorized user, who meets the requirements in § 35.390(b), or, before October 24, 2004, § 35.930(b), must have experience in administering dosages in the same dosage category or categories (*i.e.*, § 35.390(b)(1)(ii)(G)(*1*), (*2*), (*3*), or (*4*)) as the individual requesting authorized user status.

* * * * *

13. In § 35.392, paragraphs (a) and (c)(2)(ii) are revised to read as follows:

§ 35.392 Training for the oral administration of sodium iodide I–131 requiring a written directive in quantities less than or equal to 1.22 Gigabecquerels (33 millicuries).

* * * * *

(a) Meets the requirements in paragraph (c)(3) of this section and is certified by a medical specialty board whose certification process includes all of the requirements in paragraphs (c)(1) and (c)(2) of this section and whose certification has been recognized by the Commission or an Agreement State.(Specialty boards whose certification processes have been recognized by the Commission or an Agreement State will be posted on the NRC's web page.) or

* * * * *

(c) * * *

(2) * * *

(ii) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

* * * * *

14. In § 35.394, paragraphs (a) and (c)(2)(ii) are revised to read as follows:

§ 35.394 Training for the oral administration of sodium iodide I–131 requiring a written directive in quantities greater than 1.22 Gigabecquerels (33 millicuries).

* * * * *

(a) Meets the requirements in paragraph (c)(3) of this section and is

certified by a medical specialty board whose certification process includes all of the requirements in paragraphs (c)(1) and (c)(2) of this section and whose certification has been recognized by the Commission or an Agreement State. (Specialty boards whose certification processes have been recognized by the Commission or an Agreement State will be posted on the NRC's web page.); or

* * * * *

(c) * * *

(2) * * *

(ii) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

* * * * *

15. In § 35.490, paragraphs (a) and (b)(2) are revised, paragraph (b)(3) is removed, and paragraph (c) is added to read as follows:

§ 35.490 Training for use of manual brachytherapy sources.

* * * * *

(a) Is certified by a medical specialty board whose certification process has been recognized by the Commission or an Agreement State. (Specialty boards whose certification processes have been recognized by the Commission or an Agreement State will be posted on the NRC's web page.) To be recognized, a specialty board shall require all candidates for certification to:

(1) Successfully complete a minimum of 3 years of residency training in a radiation oncology program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or Royal College of Physicians and Surgeons of Canada or the Committee on Post-Graduate Training of the American Osteopathic Association;

(2) Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of manual brachytherapy; or

(b) * * *

(2) Has completed 3 years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in § 35.490, or, before October 24, 2004, § 35.940, or equivalent Agreement State requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by paragraph (b)(1)(ii) of this section; and

(c) Has obtained written certification, signed by a preceptor authorized user who meets the requirements in § 35.490, or, before October 24, 2004, § 35.940, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in paragraphs (a) or (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized under § 35.400.

16. In § 35.590, paragraphs (a) and (b) are revised and paragraph (c) is added to read as follows:

§ 35.590 Training for use of sealed sources for diagnosis.

* * * * *

(a) Is certified by a specialty board whose certification process includes all of the requirements in paragraphs (b) and (c) of this section and whose certification has been recognized by the Commission or an Agreement State. (Specialty boards whose certification processes have been recognized by the Commission or an Agreement State will be posted on the NRC's Web page.); or

(b) Has completed 8 hours of classroom and laboratory training in basic radionuclide handling techniques specifically applicable to the use of the device. The training must include —

(1) Radiation physics and instrumentation;

(2) Radiation protection;

(3) Mathematics pertaining to the use and measurement of radioactivity;

(4) Radiation biology; and

(c) Has completed training in the use of the device for the uses requested.

17. In § 35.690, paragraphs (a) and (b)(2) are revised, paragraph (b)(3) is removed, and paragraphs (c) and (d) are added to read as follows:

§ 35.690 Training for use of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units.

* * * * *

(a) Is certified by a medical specialty board whose certification process has been recognized by the Commission or an Agreement State. (Specialty boards whose certification processes have been recognized by the Commission or an Agreement State will be posted on the NRC's Web page.) To be recognized, a specialty board shall require all candidates for certification to:

(1) Successfully complete a minimum of 3 years of residency training in a radiation therapy program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or Royal College of Physicians and Surgeons of Canada or the Committee on Post-Graduate Training of the American Osteopathic Association;

(2) Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of stereotactic radiosurgery, remote afterloaders and external beam therapy; or

(b) * * *

(2) Has completed 3 years of supervised clinical experience in radiation therapy, under an authorized user who meets the requirements in § 35.690, or, before October 24, 2004, § 35.960, or equivalent Agreement State requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by paragraph (b)(1)(ii) of this section; and

(c) Has obtained written certification that the individual has satisfactorily completed the requirements in paragraphs (a) or (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written certification must be signed by a preceptor authorized user who meets the requirements in § 35.690, or, before October 24, 2004, § 35.960, or equivalent Agreement State requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status; and

(d) Has received training in device operation, safety procedures, and clinical use for the type(s) of use for which authorization is sought. This training requirement may be satisfied by satisfactory completion of a training program provided by the vendor for new users or by receiving training supervised by an authorized user or authorized medical physicist, as appropriate, who is authorized for the type(s) of use for which the individual is seeking authorization.

Dated at Rockville, Maryland, this 2nd day of December, 2003.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–30358 Filed 12–8–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM270; Notice No. 25–03–08–SC]

Special Conditions: Boeing Model 747–100/200B/200F/200C/SR/SP/100B SUD/400/400D/400F Airplanes; Flammability Reduction System (Fuel Tank Inerting)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Boeing Model 747–100/200B/200F/200C/SR/SP/100B SUD/400/400D/400F series airplanes. These airplanes, as modified by Boeing Commercial Airplanes, will incorporate a new flammability reduction system that uses a nitrogen generation system to reduce the oxygen content in the center wing fuel tank so that exposure to a combustible mixture of fuel and air is substantially minimized. This system is intended to reduce the average flammability exposure of the fleet of airplanes with the system installed to a level equivalent to 3 percent of the airplane operating time. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the design and installation of this system. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to ensure an acceptable level of safety for the installation of the system and to define performance objectives that the system must achieve to be considered an acceptable means for minimizing the development of flammable vapors in the fuel tank installation.

DATES: Comments must be received on or before January 23, 2004.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM270, 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. NM270. 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: Mike Dostert, Propulsion and Mechanical Systems Branch, FAA, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone (425) 227–2132, facsimile (425) 227–1320, e-mail *mike.dostert@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 proposed special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

All comments received will be filed in the docket, as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed 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 7:30 a.m. and 4 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 proposed 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

Boeing Commercial Airplanes intends to modify Model 747 series airplanes to incorporate a new flammability reduction system that will inert the center fuel tanks with nitrogen-enriched air. Though the provisions of § 25.981, as amended by Amendment 25–102, will apply to this design change, these special conditions are being proposed to address novel design features.

Regulations used as the standard for certification of transport category airplanes prior to Amendment 25–102, effective June 6, 2001, were intended to prevent fuel tank explosions by eliminating possible ignition sources from inside the airplane fuel tanks. Service experience of airplanes certificated to the earlier standards shows that ignition source prevention alone has not been totally effective at preventing accidents. Commercial transport airplane fuel tank safety requirements have remained relatively unchanged throughout the evolution of piston-powered aircraft and later into the jet age. The fundamental premise for precluding fuel tank explosions has involved establishing that the design does not result in a condition that would cause an ignition source within the fuel tank ullage (tank vapor space). A basic assumption in this approach has been that the fuel tank could contain flammable vapors under a wide range of airplane operating conditions even though there were periods of time in which the vapor space would not support combustion.

Fuel Properties

The flammability temperature range of jet engine fuel vapors varies with the type of jet fuel, the ambient pressure in the tank, and the amount of dissolved oxygen that may be present in the tank due to vibration and sloshing of the fuel that occurs within the tank.

At sea level pressures and with no sloshing or vibration present, Jet A fuel, the most common commercial jet fuel in the United States, and Jet A1 used in most portions of the world, have flammability characteristics that tend to make the fuel vapor-air mixture too ''lean'' to ignite at temperatures below approximately 100°F, and too ''rich'' to ignite at temperatures above 175°F. This range of flammability (100°F to 175°F) is reduced to cooler temperatures as the airplane gains altitude due to the corresponding reduction of pressure. For example, at an altitude of 30,000 feet the flammability temperature range is approximately 60°F to 120°F.

The flammability range of Jet B (JP–4), another fuel approved for use on most commercial transport airplanes but not used as a primary fuel, is approximately 15°F to 75°F at sea level, and −20°F to 35°F at 30,000 feet. Because Jet B fuel flammable temperature ranges as a function of pressure altitude are more within normal temperatures at altitudes, airplane fuel tanks are flammable for a much larger portion of the flight.

Most commercial transports are approved for operation at altitudes in the range of 30,000 to 45,000 feet. The FAA has always assumed that airplanes

would be operated with flammable fuel vapors in their fuel tank ullage. Commercial transports operated in the United States, and in most overseas locales, use Jet A or Jet A–1 fuel, which typically limits exposure to operation in the flammability range to warmer days.

Fire Triangle

Three conditions must be present in a fuel tank to support combustion. These include the presence of a suitable amount of fuel vapor, the presence of sufficient oxygen, and the presence of an ignition source. This has been named the fire triangle. Each point of the triangle represents one of these conditions. Because of technological limitations in the past, the FAA philosophy regarding the prevention of fuel tank explosions to ensure airplane safety was to only preclude ignition sources within fuel tanks. This philosophy included application of fail-safe design requirements to fuel tank components (lightning design requirements, fuel tank wiring, fuel tank temperature limits, etc.) that are intended to preclude ignition sources from being present in fuel tanks even when component failures occur.

Need To Address Flammability

Three accidents have occurred in the last 13 years as the result of unknown ignition sources within the fuel tank in spite of past efforts, highlighting the difficulty in continuously preventing ignition from occurring within fuel tanks. In 1996 the National Transportation Safety Board (NTSB) issued recommendations to improve fuel tank safety that included prevention of ignition sources and addressing fuel tank flammability, *i.e.,* the other two points of the fire triangle.

The FAA initiated safety reviews of all larger transport airplane type certificates to review the fail-safe features of previously approved designs and also initiated research into the feasibility of amending the regulations to address fuel tank flammability. Results from the safety reviews indicated a significant number of single and combinations of failures that can result in ignition sources within the fuel tanks. The FAA has adopted rulemaking to require design and/or maintenance actions to address these issues; however, past experience indicates unforeseen design and maintenance errors can result in development of ignition sources. These findings show minimizing or preventing the formation of flammable vapors by addressing the flammability points of the fire triangle will enhance fuel tank safety. On April 3, 1997, the FAA published a notice in the **Federal Register** (62 FR 16014) that requested comments concerning the 1996 NTSB recommendations regarding reduced flammability. That notice provided significant discussion of the service history, background, and issues related to reducing flammability in transport airplane fuel tanks. Comments submitted to that notice indicated additional information was needed before the FAA could initiate rulemaking action to address all of the recommendations.

Past safety initiatives by the FAA and industry to reduce the likelihood of fuel tank explosions resulting from post crash ground fires have evaluated means to address other factors of the fire triangle. Previous attempts were made to develop commercially viable systems or features that would reduce or eliminate other aspects of the fire triangle (fuel or oxygen) such as fuel tank inerting or ullage space vapor ''scrubbing'' (ventilating the tank ullage with air to remove fuel vapor to prevent the accumulation of flammable concentrations of fuel vapor). Those initial attempts proved to be impractical for commercial transport airplanes due to the weight, complexity, and poor reliability of the systems, or undesirable secondary effects such as unacceptable atmospheric pollution.

Fuel Tank Harmonization Working Group

On January 23, 1998, the FAA published a notice in the **Federal Register** that established an Aviation Rulemaking Advisory Committee (ARAC) working group, the Fuel Tank Harmonization Working Group (FTHWG). The FAA tasked the FTHWG with providing a report to the FAA recommending regulatory text to address limiting fuel tank flammability in both new type certificates and the fleet of in service airplanes. The ARAC consists of interested parties, including the public, and provides a public process to advise the FAA concerning development of new regulations. [**Note:** The FAA formally established ARAC in 1991 (56 FR 2190, January 22, 1991), to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity.]

The FTHWG evaluated numerous possible means of reducing or eliminating hazards associated with explosive vapors in fuel tanks. On July 23, 1998, the ARAC submitted its report to the FAA. The full report is in the docket created for this ARAC working group (Docket No. FAA–1998–4183). This docket can be reviewed on the U.S. Department of Transportation electronic Document Management System on the Internet at *http://dms.dot.gov.*

The report provided a recommendation for the FAA to initiate rulemaking action to amend § 25.981, applicable to new type design airplanes, to include a requirement to limit the time transport airplane fuel tanks could operate with flammable vapors in the vapor space of the tank. The recommended regulatory text proposed, ''Limiting the development of flammable conditions in the fuel tanks, based on the intended fuel types, to less than 7 percent of the expected fleet operational time, or providing means to mitigate the effects of an ignition of fuel vapors within the fuel tanks such that any damage caused by an ignition will not prevent continued safe flight and landing.'' The report included a discussion of various options for showing compliance with this proposal, including managing heat input to the fuel tanks, installation of inerting systems or polyurethane fire suppressing foam, and suppressing an explosion if one occurred.

The level of flammability defined in the proposal was established based on a comparison of the safety record of center wing fuel tanks that, in certain airplanes, are heated by equipment located under the tank, and unheated fuel tanks located in the wing. The ARAC concluded that the safety record of fuel tanks located in the wings with a flammability exposure of 2 to 4 percent of the operational time was adequate and that if the same level could be achieved in center wing fuel tanks, the overall safety objective would be achieved. The thermal analyses documented in the report revealed that center wing fuel tanks that are heated by air conditioning equipment located beneath them contain flammable vapors, on a fleet average basis, in the range of 15 to 30 percent of the fleet operating time.

During the ARAC review, it was also determined that certain airplane types do not locate heat sources adjacent to the fuel tanks and have significant surface areas that allow cooling of the fuel tank by outside air. These airplanes provide significantly reduced flammability exposure, near the 2 to 4 percent value of the wing tanks. The group therefore determined that it would be feasible to design new airplanes such that fuel tank operation in the flammable range would be limited to nearly that of the wing fuel tanks. Findings from the ARAC report indicated that the primary method of compliance available at that time with the requirement proposed by the ARAC would likely be to control heat transfer

into and out of fuel tanks such that heating of the fuel would not occur. Design features such as locating the air conditioning equipment away from the fuel tanks, providing ventilation of the air conditioning bay to limit heating and to cool fuel tanks, and/or insulating the tanks from heat sources, would be practical means of complying with the regulation proposed by the ARAC.

In addition to its recommendation to revise § 25.981, the ARAC also recommended that the FAA continue to evaluate means for minimizing the development of flammable vapors within the fuel tanks to determine whether other alternatives, such as ground-based inerting of fuel tanks, could be shown to be cost effective.

To address the ARAC recommendations, the FAA continued with research and development activity to determine the feasibility of requiring inerting for both new and existing designs.

FAA Rulemaking Activity

Based in part on the ARAC recommendations to limit the flammability on new type designs, the FAA developed and published Amendment No. 25–102 in the **Federal Register** on May 7, 2001 (66 FR 23085). The amendment includes changes to § 25.981 that require minimization of fuel tank flammability to address both reduction in the time fuel tanks contain flammable vapors, (new § 25.981(c)), and additional changes regarding prevention of ignition sources in fuel tanks. The new § 25.981(c) is based on the FTHWG recommendation to achieve a safety level equivalent to that achieved by the fleet of transports with unheated aluminum wing tanks, between 2 to 4 percent flammability. The FAA stated in the preamble to Amendment 25–102 that the intent of the rule was to—

> * * * require that practical means, such as transferring heat from the fuel tank (*e.g.*, use of ventilation or cooling air), be incorporated into the airplane design if heat sources were placed in or near the fuel tanks that significantly increased the formation of flammable fuel vapors in the tank, or if the tank is located in an area of the airplane where little or no cooling occurs. The intent of the rule is to require that fuel tanks are not heated, and cool at a rate equivalent to that of a wing tank in the transport airplane being evaluated. This may require incorporating design features to reduce flammability, for example cooling and ventilation means or inerting for fuel tanks located in the center wing box, horizontal stabilizer, or auxiliary fuel tanks located in the cargo compartment.

Advisory circulars associated with Amendment 25–102 include AC 25.981–1B, ''Fuel Tank Ignition Source Prevention Guidelines,'' and AC 25.981–2, ''Fuel Tank Flammability Minimization.'' Like all advisory material, these advisory circulars describe an acceptable means, but not the only means, for demonstrating compliance with the regulations.

FAA Research

In addition to the notice published in the **Federal Register** on April 3, 1997, the FAA initiated research to provide a better understanding of the ignition process of commercial aviation fuel vapors and to explore new concepts for reducing or eliminating the presence of flammable fuel air mixtures within fuel tanks.

Fuel Tank Inerting

In the public comments received in response to the 1997 notice there was reference made to hollow fiber membrane technology that had been developed and was in use in other applications, such as the medical community, to separate oxygen from nitrogen in air. Air is made up of about 78 percent nitrogen and 21 percent oxygen, and the hollow fiber membranes act as a molecular sieve, using the size difference between the nitrogen and oxygen molecules to separate the nitrogen-enriched air (NEA) from the oxygen. In airplane applications NEA is produced when pressurized air from the airplane engines is forced through the hollow fibers. The NEA is then directed, at appropriate nitrogen concentrations, into the ullage space of fuel tanks and displaces the normal fuel vapor/air mixture in the tank.

Use of the hollow fiber technology allowed nitrogen to be separated from air which eliminated the need to carry and store the nitrogen in the airplane. Researchers were aware of the earlier system's shortcomings in the areas of weight, reliability, cost, and performance. Recent advances in the technology have resolved those concerns and eliminated the need for storing nitrogen on board the airplane.

Criteria for Inerting

Earlier fuel tank inerting designs produced for military applications were based on defining ''inert'' as a maximum oxygen concentration of 9 percent. This value was established by the military for protection of fuel tanks from battle damage. One major finding from the FAA's research and development efforts was the determination that the 9 percent maximum oxygen concentration level benchmark established to protect military airplanes from high-energy ignition sources encountered in battle was significantly lower than that needed to inert civilian transport airplane fuel tanks from ignition sources resulting from airplane system failures and malfunctions that have much lower energy. This FAA research established a maximum value of 12 percent as being adequate at sea level. The test results are currently available on FAA Web site: *http://www.fire.tc.faa.gov/pdf/tno2-79.pdf* and will be published in FAA Technical Note ''Limiting Oxygen Concentrations Required to Inert Jet Fuel Vapors Existing at Reduced Fuel Tank Pressures,'' report number DOT/FAA/AR–TN02/79. As a result of this research, the quantity of nitrogen-enriched air that is needed to inert commercial airplane fuel tanks was lessened so that an effective flammability reduction system can now be smaller and less complex than was originally assumed. The 12 percent value is based on the limited energy sources associated with an electrical arc that could be generated by airplane system failures on typical transport airplanes and does not include events such as explosives, turbulent flow flame propagation, or hostile fire.

As previously discussed, existing fuel tank system requirements (contained in earlier Civil Air Regulation (CAR) 4b and now in 14 Code of Federal Regulations (CFR) part 25) have focused solely on prevention of ignition sources. The flammability reduction system is intended to add an additional layer of safety by reducing the exposure to flammable vapors in the heated center wing tank, not necessarily eliminating them under all operating conditions. Consequently, ignition prevention measures will still be the principal layer of defense in fuel system safety, now augmented by substantially reducing the time that flammable vapors are present in higher flammability tanks. It is expected that by combining these two approaches, particularly for tanks with high flammability exposures, such as the heated center wing tank or tanks with limited cooling, risks for future fuel tank explosions can be substantially reduced.

Boeing Application for Certification of a Fuel Tank Inerting System

On November 15, 2002, Boeing Commercial Airplanes applied for a change to Type Certificate A20WE to modify Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F series airplanes to incorporate a new flammability reduction system that inerts the center fuel tanks with nitrogen-enriched air. The Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F series airplanes, approved under

Type Certificate No. A20WE, are four-engine transport airplanes with a passenger capacity up to 624 depending upon the submodel. These airplanes have an approximate maximum gross weight of 910,000 lbs with an operating range up to 7,700 miles.

Type Certification Basis

Under the provisions of § 21.101, Boeing Commercial Airplanes must show that the Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A20WE, 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 A20WE include 14 CFR part 25, dated February 1, 1965, as amended by Amendments 25–1 through 25–70, except for special conditions and exceptions noted in Type Certificate Data Sheet A20WE.

In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change. The FAA has determined that the FRS installation on the Boeing Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F series airplanes must also be shown to comply with § 25.981 at Amendment 25–102.

If the Administrator finds that the applicable airworthiness regulations (14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F series 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 Model 747–100/200B/200F/200C/SR/SP/100B/300/100B SUD/400/400D/400F series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the acoustical change requirements of § 21.93(b).

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 the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified 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

Boeing has applied for approval of a flammability reduction system (FRS) to minimize the development of flammable vapors in the center fuel tanks of Model 747–100/200B/200F/200C/SR/SP/100B SUD/400/400D/400F series airplanes. Boeing also plans to seek approval of this system on Boeing Model 737, 757, 767, and 777 airplanes.

Boeing has proposed to voluntarily comply with § 25.981(c), Amendment 25–102, which is normally only applicable to new type designs or type design changes affecting fuel tank flammability. The provisions of § 21.101 require Boeing to also comply with §§ 25.981(a) and (b), Amendment 25–102, for the changed aspects of the airplane by showing that the FRS does not introduce any additional potential sources of ignition into the fuel tanks.

The proposed FRS uses a nitrogen generation system (NGS) that comprises a bleed-air shutoff valve, ozone converter, heat exchanger, air conditioning pack air cooling flow shutoff valve, filter, air separation module, temperature regulating valve controller and sensor, high-flow descent control valve, float valve, and system ducting. The system will be located in the air conditioning pack bay below the center wing fuel tank. Engine bleed air from the existing engine pneumatic bleed source will flow through a control valve into an ozone converter and then through a heat exchanger, where it will be cooled using outside cooling air. The cooled air will flow through a filter into an air separation module (ASM) that will generate nitrogen-enriched air (NEA), which will be supplied to the center fuel tank, and also discharge oxygen-enriched air (OEA). The OEA from the ASM will be mixed with cooling air from the heat exchanger to dilute the oxygen concentration and then exhausted overboard. The FRS will also include modifications to the fuel vent system to minimize dilution of the nitrogen-enriched ullage in the center tank due to cross-venting characteristics of the existing center wing fuel tank vent design. Certain features of the FRS may introduce a hazard to the airplane if not properly addressed.

Boeing originally proposed that the system be operated only during flight and that the center tank would continue to be inert upon landing and remain inert during normal ground procedures. Boeing has more recently stated that the FRS may be operated on the ground.

Boeing has proposed that limited dispatch relief for operation with an inoperative NGS be allowed. Boeing has initially proposed a 10-day master minimum equipment list (MMEL) relief for the system. Boeing originally proposed that there be no cockpit or maintenance indication onboard for the NGS, and that periodic maintenance, using ground service equipment, be performed to verify system operation. More recently Boeing has stated that to meet system reliability and availability objectives, built-in test functions would be included and system status indication of some kind would be provided but the indication would not be provided in the cockpit. The reliability of the system is expected to be designed to achieve a mean time between failure (MTBF) of 5000 hours or better.

Discussion

The FAA policy for establishing the type design approval basis of the proposed FRS design will result in application of §§ 25.981(a) and (b), Amendment 25–102, for the proposed changes to the airplane that might increase the risk of ignition of fuel vapors. Boeing will therefore be required to substantiate that changes introduced by the FRS system will meet the ignition prevention requirements of §§ 25.981(a) and (b), Amendment 25–102 and other applicable regulations.

With respect to compliance with § 25.981(c), AC 25.981–2 provides guidance in addressing minimization of fuel tank flammability within a heated fuel tank, but there are no specific regulations that address the design and installation of an FRS that inerts the fuel tank. Since Amendment 25–102 was adopted, significant advancements in inerting technology have reduced the size and complexity of inerting systems. Developments in inerting technology have made it practical to significantly reduce fuel tank flammability below the levels required within the rule. However, due to factors such as the limited availability of bleed air and electrical power, it is not considered practical at this time to develop systems for retrofit into existing airplane designs that can maintain a non-flammable tank ullage in all fuel tanks or during all operating conditions. The FAA also

recognizes that fuel tank flammability reduction systems could be developed that would meet the flammability requirements of § 25.981(c), Amendment 25–102, but may not preclude fuel tanks from routinely being flammable under the specific operating conditions present when recent accidents occurred.

Definition of ''Inert''

The definition of ''inert'' within these proposed special conditions provides that all portions of the tank under evaluation, including the bulk average of individual compartments, are equal to or less than the 12 percent oxygen limit at sea level. This is necessary because fuel tanks that are compartmentalized may encounter localized oxygen concentrations in one or more compartments that exceed the 12 percent value. Currently there is not adequate data available to establish whether exceeding the 12 percent limit in one compartment of a fuel tank could create a hazard. For example, ignition of vapors in one compartment could result in a flame front within the compartment that travels to adjacent compartments and results in an ignition source that exceeds the ignition energy values used to establish the 12 percent limit. Therefore, ignition in other compartments of the tank may be possible. Technical discussions with the applicant indicate the pressure rise in a fuel tank that was at or near the 12 percent oxygen concentration level would likely be well below the value that would rupture a typical transport airplane fuel tank. While this may be possible to show, it is not within the scope of these proposed special conditions. Therefore, the effect of the definition of ''inert'' within these proposed special conditions is that the bulk average of each individual compartment or bay of the tank be evaluated and shown to meet the oxygen concentration limits specified in the definitions section of these proposed special conditions (12 percent or less at sea level) to be considered inert.

Determining Flammability

The methodology for determining fuel tank flammability defined for use in these proposed special conditions is based on that used by ARAC to compare the flammability of unheated aluminum wing fuel tanks to that of tanks that are heated by adjacent equipment. The ARAC evaluated the relative flammability of airplane fuel tanks using a statistical analysis commonly referred to as a ''Monte Carlo'' analysis that considered a number of factors affecting formation of flammable vapors in the fuel tanks. The Monte Carlo analysis calculates values for the parameter of interest by randomly selecting values for each of the uncertain variables from distribution tables. This calculation is conducted over and over to simulate a process where the variables are random within defined distributions. The results of a large number of flights can then be used to approximate the results of the real world exposure of a large fleet of airplanes.

Factors that are considered in the Monte Carlo analysis included in these special conditions include those affecting all airplane models in the transport airplane fleet such as: a statistical distribution of ground, overnight, and cruise air temperatures likely to be experienced worldwide, a statistical distribution of likely fuel types, and properties of those fuels, a definition of the conditions when the tank in question will be considered flammable, and those affecting specific airplane models such as climb and descent profiles, fuel management, heat transfer characteristics of the fuel tanks, statistical distribution of flight lengths (mission durations) expected for the airplane model worldwide, etc. To quantify the fleet exposure, the Monte Carlo analysis approach is applied to a statistically significant number (1,000,000) of flights where each of the factors described above is randomly selected. The flights are then selected to be representative of the fleet using the defined distributions of the three variables. For example, flight one may be a short mission on a cold day with an average flash point fuel, and flight two may be a long mission on an average day with a low flash point fuel, and on and on until 1,000,000 flights have been defined in this manner. For every one of the 1,000,000 flights, the time that the fuel temperature is above the flash point of the fuel is calculated and used as the parameter that established whether the fuel tank is flammable. Averaging the results for all 1,000,000 flights provides an average percentage of the flight time that any particular flight is considered to be flammable. While these special conditions do not require that the analysis be conducted for 1,000,000 flights, the accuracy of the Monte Carlo analysis improves as the number of flights increases. Therefore, to account for this improved accuracy Appendix 2 of the special conditions defines lower flammability limits if the applicant chooses to use fewer than 1,000,000 flights.

The determination of whether the fuel tank is flammable is based on the temperature of the fuel in the tank determined from the tank thermal model, the atmospheric pressure in the fuel tank, and properties of the fuel loaded for a given flight, which is randomly selected from a database consisting of worldwide data. The criteria in the model is based on the assumption that as these variables change, the concentration of vapors in the tank instantaneously stabilizes and that the fuel tank is at a uniform temperature. This model does not include consideration of the time lag for the vapor concentration to reach equilibrium, the condensation of fuel vapors from differences in temperature that occur in the fuel tanks, or the effect of mass loading (times when the fuel tank is at the unusable fuel level and there is insufficient fuel at a given temperature to form flammable vapors).

Definition of Transport Effects

The effects of mass loading and the effects of fuel vaporization and condensation with time and temperature changes, referred to as ''transport effects'' in these proposed special conditions, are excluded from consideration in the Monte Carlo model used for demonstrating compliance with these proposed special conditions. These effects have been excluded because they were not considered in the original ARAC analysis, which was based on a relative measure of flammability. For example, the 3 percent flammability value established by the ARAC as the benchmark for fuel tank safety for wing fuel tanks did not include the effects of cooling of the wing tank surfaces and the associated condensation of vapors from the tank ullage. If this effect had been included in the wing tank flammability calculation, it would have resulted in a significantly lower wing tank flammability benchmark value. The ARAC analysis also did not consider the effects of mass loading which would significantly lower the calculated flammability value for fuel tanks that are routinely emptied, *e.g.*, center wing tanks. The FAA and JAA have determined that using the ARAC methodology provides a suitable basis for determining the adequacy of an FRS system.

Flammability Limit

The FAA, in conjunction with the Joint Airworthiness Authorities (JAA) and Transport Canada, has developed criteria within these proposed special conditions that require overall fuel tank flammability to be limited to 3 percent of the fleet average operating time. This overall average flammability limit consists of times when the system

performance cannot maintain an inert tank ullage, primarily during descent when the change in ambient pressures draws air into the fuel tanks and those times when the FRS is inoperative due to failures of the system and dispatch with the system inoperative.

Specific Risk Flammability Limit

These proposed special conditions also include a requirement to limit fuel tank flammability to 3 percent during ground operations, takeoff, and climb phases of flight to address the specific risk associated with operation during warmer day conditions when accidents have occurred. The specific risk requirement is intended to establish minimum system performance levels and therefore the 3 percent flammability limit excludes reliability related contributions, which are addressed in the average flammability assessment. The specific risk requirement may be met by conducting a separate Monte Carlo analysis for each of the specific phases of flight during warmer day conditions defined in the special conditions, without including the times when the FRS is not available because of failures of the system or dispatch with the FRS inoperative.

Inerting System Indications

Fleet average flammability exposure involves several elements, including—

- The time the FRS is working properly and inerts the tank or when the tank is not flammable;
- The time when the FRS is working properly but fails to inert the tank or part of the tank, because of mission variation or other effects;
- The time the FRS is not functioning properly and the operator is unaware of the failure; and
- The time the FRS is not functioning properly and the operator is aware of the failure and is operating the airplane for a limited time under MEL relief.

The applicant may propose that MMEL relief is provided for aircraft operation with the FRS unavailable; however, it is considered a safety system that should be operational to the maximum extent practical. Therefore, these proposed special conditions include reliability and reporting requirements to enhance system reliability so that dispatch of airplanes with the FRS inoperative would be very infrequent. Cockpit indication of the system function that is accessible to the flightcrew is not an explicit requirement, but may be required if the results of the Monte Carlo analysis show the system cannot otherwise meet the flammability and reliability requirements defined in these proposed special conditions. Flight test demonstration and analysis will be required to demonstrate that the performance of the inerting system is effective in inerting the tank during those portions of ground and the flight operations where inerting is needed to meet the flammability requirements of these proposed special conditions.

Various means may be used to ensure system reliability and performance. These may include: system integrity monitoring and indication, redundancy of components, and maintenance actions. A combination of maintenance indication and/or maintenance check procedures will be required to limit exposure to latent failures within the system, or high inherent reliability is needed to assure the system will meet the fuel tank flammability requirements. The inerting system proposed by the applicant does not incorporate redundant features and includes a number of components essential for proper system operation. Past experience has shown inherent reliability of this type of system would be difficult to achieve. Therefore, if system maintenance indication is not provided for features of the system essential for proper system operation, system functional checks will be required for these features. At a minimum, proper function of essential features of the system should be validated once per day by maintenance review of indications or functional checks, possibly prior to the first flight of the day. The determination of a proper interval and procedure will follow completion of the certification testing and demonstration of the system's reliability and performance prior to certification.

Any features or maintenance actions needed to achieve the minimum reliability of the FRS will result in fuel system airworthiness limitations as defined in § 25.981(b). Boeing will be required to include in the instructions for continued airworthiness (ICA) the replacement times, inspection intervals, inspection procedures, and the fuel system limitations required by § 25.981(b). Overall system performance and reliability must achieve a fleet average flammability that meets the requirements of these special conditions. If the system reliability falls to a point where the fleet flammability exposure exceeds these requirements, Boeing will be required to define appropriate corrective actions, to be approved by the FAA, that will bring the exposure back down to the acceptable level.

Boeing has proposed that the FRS be eligible for a 10-day MMEL dispatch interval. The approved interval will be established by the Flight Operations Evaluation Board (FOEB) based on data submitted by the applicant to the FAA. The MMEL dispatch interval is one of the factors affecting system reliability analyses that must be considered early in the design of the FRS, prior to FAA approval of the MMEL. Boeing has requested that the authorities agree to a MMEL inoperative dispatch interval to be used for design of the system. Data presented by Boeing indicates that certain systems on the airplane are routinely repaired prior to the maximum allowable interval. These proposed special conditions require an MMEL dispatch inoperative interval of 60 hours to be used in the analysis as representative of the mean time for which an inoperative condition may occur for the 10-day MMEL maximum interval requested, and that Boeing include actual dispatch inoperative interval data in the quarterly reports required by these special conditions. Boeing may request to use an alternative interval in the reliability analysis. Use of a value less than 60 hours would be a factor considered by the FOEB in establishing the maximum MMEL dispatch limit. The reporting requirement will provide data necessary to validate that the reliability of the FRS achieved in service meets the levels used in the analysis.

Appropriate maintenance and operational limitations with the FRS inoperative may also be required and noted in the MMEL. The MMEL limitations and any operational procedures should be established based on results of the Monte Carlo assessment, including possible effects of the risk associated with portions of the fleet that operate in warmer climates where the fuel tanks are flammable a significant portion of the operational time when not inert. While the system reliability analysis may show that even with an MMEL allowing very long inoperative intervals, it is possible to achieve an overall average fleet exposure equal to or less than that of a typical unheated aluminum wing tank, the intent of the rule is to minimize flammability and the shortest practical MMEL relief interval should be proposed. To ensure limited airplane operation with the system inoperative and to meet the reliability requirements of these proposed special conditions, appropriate level messages that are needed to comply with any dispatch limitations of the MMEL must be provided.

Confined Space Hazard Markings

Introduction of the FRS will result in NEA within the fuel tanks and the possibility of NEA in compartments adjacent to the fuel tanks if leakage from the tank or NEA supply lines were to occur. Lack of oxygen in these areas could be hazardous to maintenance personnel, the passengers, or flightcrew. These proposed special conditions introduce requirements to address this issue.

Affect of FRS on Auxiliary Fuel Tank System Supplemental Type Certificates

Boeing plans to offer a service bulletin that will install the FRS on existing in-service airplanes. Some in-service airplanes have auxiliary fuel tank systems installed that interface with the center wing tank. The Boeing FRS design is intended to provide inerting of the fuel tank volume of the 747 and does not include consideration of the auxiliary tank installations. Installation of the FRS on existing airplanes with auxiliary fuel tank systems may therefore require additional modifications to the auxiliary fuel tank system to prevent development of a condition that may cause the tank to exceed the 12 percent oxygen limit. The FAA will address these issues during development and approval of the service bulletin for the FRS.

Disposal of Oxygen-Enriched Air

The FRS produces both nitrogen-enriched air (NEA) and oxygen-enriched air (OEA). The OEA generated by the FRS could result in a fire hazard if not disposed of properly. The OEA produced in the proposed design is diluted with air from a heat exchanger, which is intended to reduce the OEA concentration to non-hazardous levels. Special requirements are included in these proposed special conditions to address potential leakage of OEA due to failures and safe disposal of the OEA during normal operation.

To ensure that an acceptable level of safety is achieved for the modified airplanes using a system that inerts heated fuel tanks with nitrogen-enriched air, special conditions (per § 21.16) are needed to address the unusual design features of a flammability reduction system. 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.

Applicability

As discussed above, these proposed special conditions are applicable to the Boeing Model 747–100/200B/200F/200C/SR/SP/100B SUD/400/400D/400F series airplanes. Should the type certificate be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified 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.

Conclusion

This action affects only certain novel or unusual design features on Boeing Model 747–100/200B/200F/200C/SR/SP/100B SUD/400/400D/400F series airplanes. 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.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

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 Boeing Model 747–100/200B/200F/200C/ SR/SP/100B SUD/400/400D/400F series airplanes, modified by Boeing Commercial Airplanes, to include a flammability reduction system (FRS) that uses a nitrogen generation system to inert the center wing tank with nitrogen-enriched air (NEA).

Compliance with these proposed special conditions does not relieve the applicant from compliance with the existing certification requirements.

I. Definitions.

(a) *Flammable.* With respect to a fluid or gas, flammable means susceptible to igniting readily or to exploding (14 CFR part 1, Definitions). A non-flammable ullage is one where the gas mixture is too lean or too rich to burn and/or is inert per the definition below. For the purposes of these special conditions, a fuel tank is considered flammable when the bulk fuel temperature within any compartment of the tank is within the flammable range for the fuel type being used.

(b) *Flash Point.* The flash point of a flammable fluid is defined as the lowest temperature at which the application of a flame to a heated sample causes the vapor to ignite momentarily, or ''flash.'' The test for jet fuel is defined in the ASTM specification, D56, ''Standard Test Method for Flash Point by Tag Close Cup Tester.''

(c) *Ignition Energy.* The minimum amount of energy required to ignite fuel vapors. The inert oxygen concentration levels, described below in the definition for inert, were established using approximately a 0.5 Joule spark.

(d) *Inert.* For the purpose of these special conditions, the tank is considered inert when the bulk oxygen concentration within each compartment of the tank is 12 percent or less at sea level up to 10,000 feet, then linearly increasing from 12 percent at 10,000 feet to 14.5 percent at 40,000 feet.

(e) *Inerting.* A process where a noncombustible gas is introduced into the ullage of a fuel tank so that the ullage becomes inert.

(f) *Monte Carlo Analysis.* An analytical tool that provides a means to assess the degree of flammability exposure time for a fuel tank. See Appendices 1 and 2 of these special conditions for specific requirements for conducting the Monte Carlo analysis.

(g) *Operational Time.* For the purpose of these special conditions, the time from the start of preparing the airplane for flight (that is, starting and connecting the auxiliary or ground power unit to the aircraft electrical system) through securing all power sources following flight termination.

(h) *Ullage, or Ullage Space.* The volume within the tank not occupied by liquid fuel at the time interval under evaluation.

(i) *Hazardous atmosphere:* An atmosphere that may expose employees to the risk of death, incapacitation, impairment of ability to self-rescue (that is, escape unaided from a space), injury, or acute illness.

II. System Performance and Reliability

The FRS, for the airplane model under evaluation, must comply with the performance and reliability requirements as follows:

(a) The applicant must submit a Monte Carlo analysis, as defined in Appendices 1 and 2 of these special conditions that—

(1) Demonstrates that the overall fleet flammability exposure of each fuel tank with an FRS installed is equal to or less than 3 percent of operational time; and

(2) Demonstrates that neither the performance (when the FRS is operational) nor reliability (including all periods when the FRS is inoperative) contributions to the 3 percent overall fleet flammability exposure of a tank with an FRS installed are more than 1.8

percent (this will establish appropriate maintenance inspection procedures and intervals as required in paragraph III(a) of these special conditions).

(b) The applicant must submit a Monte Carlo analysis that demonstrates that the FRS, when functional, reduces the overall fleet flammability exposure of each fuel tank with an FRS installed for warm day ground and climb phases to a level equal to or less than 3 percent of operational time in each of these phases for the following conditions—

(1) The analysis must use the subset of 80° F and warmer days from the Monte Carlo analyses done for overall performance; and

(2) The flammability exposure must be calculated by comparing the time during ground and climb phases for which the tank was flammable and not inert, with the total time for the ground and climb phases.

(c) The applicant must provide data from ground testing, and flight testing that—

(1) Validate the inputs to the Monte Carlo analysis needed to meet paragraphs II(a), (b), and (c) of these special conditions; and

(2) Substantiate that the NEA distribution is effective at inerting all portions of the tank where the inerting system is needed to show compliance with these paragraphs.

(d) The applicant must validate that the FRS meets the requirements of paragraphs II(a), (b), and (c) of these special conditions with any combination of engine model, engine thrust rating, fuel type, and relevant pneumatic system configuration approved for the airplane.

(e) Sufficient accessibility for maintenance personnel, or the flightcrew, must be provided to FRS status indications that are necessary to meet the reliability requirements of paragraph II(a) of these special conditions.

(f) The access doors and panels to the fuel tanks (including any tanks that communicate with an inerted tank via a vent system), and to any other enclosed areas that could contain NEA in the event of a system failure, must be permanently stenciled, marked, or placarded as appropriate to warn maintenance crews of the presence of a potentially hazardous atmosphere.

(g) Oxygen-enriched air produced by the nitrogen generation system must not create a hazard during normal operating conditions. It must be established that no single failure or malfunction or probable combination of failures will jeopardize the safe operation of the airplane.

III. Maintenance

(a) Airworthiness Limitations must be identified for all maintenance and/or inspection tasks required to identify failures of components within the FRS that are needed to meet paragraphs II(a), (b), and (c) of these special conditions.

(b) The applicant must provide the maintenance procedures that will be necessary and present a design review that identifies any hazardous aspects to be considered during maintenance of the FRS that will be included in the instructions for continued airworthiness (ICA) or appropriate maintenance documents.

(c) To ensure that the implications of component failures affecting the FRS are adequately assessed on an on-going basis, the applicant must—

(1) Demonstrate effective means to ensure collection of FRS reliability data. The means must provide data affecting FRS availablity, such as component failures, and the FRS inoperative intervals due to dispatch under the MMEL;

(2) Provide a report to the FAA on a quarterly basis for the first five years of service introduction. After that period, continued quarterly reporting may be replaced with other reliability tracking methods found acceptable to the FAA or eliminated if it is established that the reliability of the FRS meets, and will continue to meet, the exposure requirements of paragraphs II(a) and II(b) of these special conditions;

(3) Provide a report to the validating authorities for a period of at least two years following introduction to service; and

(4) Develop service instructions or revise the applicable airplane manual, per a schedule agreed upon by the FAA, to correct any failures of the FRS that occur in service that could increase the fleet flammability exposure of the tank to more than 3 percent.

Appendix 1

Monte Carlo Analysis

(a) A Monte Carlo analysis must be conducted for the fuel tank under evaluation to determine fleet average flammability exposure for the airplane and fuel type under evaluation. An analysis for a fuel tank is defined in Appendix 2 of these special conditions and must be used as the basis for development of the Monte Carlo analysis to satisfy these special conditions. Parameters used in the Monte Carlo analysis must include:

(1) FRS Performance—as defined by system performance.

(2) Cruise Altitude—as defined by airplane performance.

(3) Cruise Ambient Temperature—as defined in Appendix 2 of these special conditions.

(4) Overnight Temperature Drop—as defined in Appendix 2 of these special conditions.

(5) Flash Point—as defined in Appendix 2 of these special conditions.

(6) Fuel Burn—as defined by airplane performance.

(7) Fuel Load—as defined by airplane performance.

(8) Fuel Transfer—as defined by airplane performance.

(9) Fueling—as defined by airplane performance.

(10) Ground Temperature—as defined in Appendix 2 of these special conditions.

(11) Mach Number—as defined by airplane performance.

(12) Mission Distribution—the applicant must either provide their own data with substantiation or use what is defined in Appendix 2 of these special conditions for mission distribution.

(13) Oxygen Evolution—as defined by airplane performance or as defined in Appendix 2 of these special conditions.

(14) Range—as defined by airplane performance.

(15) Tank Thermal Characteristics—as defined by airplane performance.

(16) Descent Profile Distribution—the applicant must either provide its own fleet representative distribution with substantiation or use a fixed 2500 feet per minute descent rate.

(b) The assumptions for the analysis must include—

(1) Predicted system performance;

(2) Vent losses due to crosswind effects and airplane performance;

(3) Periods when the system is operating properly but fails to inert the tank;

(4) Expected system reliability; and

(5) The MMEL/MEL dispatch inoperative period assumed in the reliability analysis, (60 flight hours must be used for a 10-day MMEL dispatch limit unless an alternative period has been approved by the FAA), including action to be taken when dispatching with the FRS inoperative (*Note:* The actual MMEL dispatch inoperative period data must be included in the engineering reporting requirement of paragraph III(c)(1) of these special conditions);

(6) Possible periods of system inoperability due to latent or known failures, including airplane system shut-downs and failures that could cause the FRS to shut down or become inoperative; and

(7) Affects of failures of the FRS that could increase the flammability of the fuel tank.

(c) The variation assumed in the analysis on each of the parameters (as identified under paragraph (a) of this appendix) that affect flammability must be stated and substantiating data must be included.

Appendix 2

I. Monte Carlo Model

The FAA has developed a Monte Carlo model that can be used to calculate fleet average flammability exposure for a fuel tank in an airplane. The program requires the user to enter the airplane performance data specific to the airplane model being evaluated, such as maximum range, cruise mach number, typical step climb altitudes,

tank thermal characteristics specified as exponential heating/cooling time constants, and equilibrium temperatures for various fuel tank conditions. Single flights may be studied, or a multi-flight Monte Carlo analysis may be run. This model is intended to provide comparison trends and not absolute numbers. The general methodology for conducting a Monte Carlo model is described in AC 25.981–2.

The FAA has developed a specific model for calculating fleet average flammability exposure using the Monte Carlo methodology. The FAA model, or one with modifications approved by the FAA, must be used as the means of compliance with these special conditions. The accepted model can be downloaded from the Web site *http://qps.airweb.faa.gov/sfar88flamex*. On this Web site, the model is located under the page ''Flam Ex Resources,'' and is titled ''Monte Carlo Model Version 6a.'' The ''6a'' represents Version 6A. Only version 6A or later of this model can be used. The following procedures, input variables, and data tables must be used in the analysis if the applicant develops a unique model to determine fleet average flammability exposure for a specific airplane type.

II. Monte Carlo Variables and Data Tables

Fleet average flammability exposure is the percent of the mission time the fuel ullage is flammable for a fleet of an airplane type operating over the range of actual or expected missions and in a world-wide range of environmental conditions and fuel properties. Variables used to calculate fleet flammability exposure must include atmosphere, mission length (as defined in Special Condition I(g), Definitions, as Operational Time), fuel flash point, thermal characteristics of the fuel tank, overnight temperature drop, and oxygen evolution from the fuel into the ullage. Transport effects, including mass loading, flammability lag time, and condensation of vapors due to cold surfaces, are not to be allowed as parameters in the analysis.

Atmosphere

In order to predict flammability along a given flight, the variation of ground ambient temperatures, cruise ambient temperatures, and a method to compute the transition from ground to cruise and back again must be used. The variation of the ground and cruise temperatures and the flash point of the fuel can be defined by a Gaussian curve, given by the 50 percent value and a ± 1-sigma value.

The ground and cruise temperatures are linked by a set of assumptions on the atmosphere. The temperature versus altitude follows a standard lapse rate from the ground temperature until the cruise temperature is reached. Above this altitude, the temperature is fixed at the cruise temperature. This gives a variation in the tropopause altitude. For cold days, an inversion is applied up to 10,000 feet, and then the standard lapse rate is applied.

The analysis must be able to execute a number of flights, and for each flight a separate random number must be generated for each of the three parameters (*i.e.*, ground ambient temperature, cruise ambient temperature, and fuel flash point) using the Gaussian distribution defined in Table 1. The applicant can verify the output values from the Gaussian distribution using Table 2. Table 2 is based on typical use of Jet A type fuel. If an airplane is approved for use of lower flash point fuels such as JP–4, Russian, and Chinese fuels, and it is expected to be used for more than 1 percent of the fleet operating time, then the Monte Carlo analysis must include fuel property variation acceptable to the FAA for the approved fuels.

TABLE 1.—GAUSSIAN DISTRIBUTION FOR GROUND AMBIENT, CRUISE AMBIENT, AND FLASH POINT

Parameter	Temperature in Deg F		
	Ground amb.	Cruise amb.	Flash point (FP)
Mean Temp	59.95	−70	120
neg 1 std dev	20.14	8	8
pos 1 std dev	17.28	.....	.....

TABLE 2.—VERIFICATION OF TABLE 1

% probability of temps & flash point being below the listed values	Ground amb. Deg F	Cruise amb. Deg F	Flash point Deg F	Ground amb. Deg C	Cruise amb. Deg C	Flash Point (FP) Deg C
1	13.1	−88.6	101.4	−10.5	−67.0	38.5
5	26.8	−83.2	106.8	−2.9	−64.0	41.6
10	34.1	−80.3	109.7	1.2	−62.4	43.2
15	39.1	−78.3	111.7	3.9	−61.3	44.3
20	43.0	−76.7	113.3	6.1	−60.4	45.1
25	46.4	−75.4	114.6	8.0	−59.7	45.9
30	49.4	−74.2	115.8	9.7	−59.0	46.6
35	52.2	−73.1	116.9	11.2	−58.4	47.2
40	54.8	−72.0	118.0	12.7	−57.8	47.8
45	57.4	−71.0	119.0	14.1	−57.2	48.3
50	59.9	−70.0	120.0	15.5	−56.7	48.9
55	62.1	−69.0	121.0	16.7	−56.1	49.4
60	64.3	−68.0	122.0	18.0	−55.5	50.0
65	66.6	−66.9	123.1	19.2	−55.0	50.6
70	69.0	−65.8	124.2	20.6	−54.3	51.2
75	71.6	−64.6	125.4	22.0	−53.7	51.9
80	74.5	−63.3	126.7	23.6	−52.9	52.6
85	77.9	−61.7	128.3	25.5	−52.1	53.5
90	82.1	−59.7	130.3	27.8	−51.0	54.6
95	88.4	−56.8	133.2	31.3	−49.4	56.2
99	100.1	−51.4	138.6	37.9	−46.3	59.2

Flight Mission Distribution

The mission length is determined from an equation that takes the maximum mission length for the airplane and creates multiple flight lengths based on typical airline usage.

The mission length is also used to define the time on the ground prior to takeoff, and the type of flight profile to be followed. Table 3 must be used to define the mission distribution, unless the applicant has more appropriate data for the specific airplane model under evaluation, together with substantiation for the data. A linear interpolation may be used between the table values.

TABLE 3.—MISSION DISTRIBUTION

Airplane Maximum Range—Nautical Miles (NM)

Range (NM)		Distribution of missions (%)									
From	To	1000	2000	3000	4000	5000	6000	7000	8000	9000	10000
0	200	11.7	7.5	6.2	5.5	4.7	4.0	3.4	3.0	2.6	2.3
200	400	27.3	19.9	17.0	15.2	13.2	11.4	9.7	8.5	7.5	6.7
400	600	46.3	40.0	35.7	32.6	28.5	24.9	21.2	18.7	16.4	14.8
600	800	10.3	11.6	11.0	10.2	9.1	8.0	6.9	6.1	5.4	4.8
800	1000	4.4	8.5	8.6	8.2	7.4	6.6	5.7	5.0	4.5	4.0
1000	1200	0.0	4.8	5.3	5.3	4.8	4.3	3.8	3.3	3.0	2.7
1200	1400	0.0	3.6	4.4	4.5	4.2	3.8	3.3	3.0	2.7	2.4
1400	1600	0.0	2.2	3.3	3.5	3.3	3.1	2.7	2.4	2.2	2.0
1600	1800	0.0	1.2	2.3	2.6	2.5	2.4	2.1	1.9	1.7	1.6
1800	2000	0.0	0.7	2.2	2.6	2.6	2.5	2.2	2.0	1.8	1.7
2000	2200	0.0	0.0	1.6	2.1	2.2	2.1	1.9	1.7	1.6	1.4
2200	2400	0.0	0.0	1.1	1.6	1.7	1.7	1.6	1.4	1.3	1.2
2400	2600	0.0	0.0	0.7	1.2	1.4	1.4	1.3	1.2	1.1	1.0
2600	2800	0.0	0.0	0.4	0.9	1.0	1.1	1.0	0.9	0.9	0.8
2800	3000	0.0	0.0	0.2	0.6	0.7	0.8	0.7	0.7	0.6	0.6
3000	3200	0.0	0.0	0.0	0.6	0.8	0.8	0.8	0.8	0.7	0.7
3200	3400	0.0	0.0	0.0	0.7	1.1	1.2	1.2	1.1	1.1	1.0
3400	3600	0.0	0.0	0.0	0.7	1.3	1.6	1.6	1.5	1.5	1.4
3600	3800	0.0	0.0	0.0	0.9	2.2	2.7	2.8	2.7	2.6	2.5
3800	4000	0.0	0.0	0.0	0.5	2.0	2.6	2.8	2.8	2.7	2.6
4000	4200	0.0	0.0	0.0	0.0	2.1	3.0	3.2	3.3	3.2	3.1
4200	4400	0.0	0.0	0.0	0.0	1.4	2.2	2.5	2.6	2.6	2.5
4400	4600	0.0	0.0	0.0	0.0	1.0	2.0	2.3	2.5	2.5	2.4
4600	4800	0.0	0.0	0.0	0.0	0.6	1.5	1.8	2.0	2.0	2.0
4800	5000	0.0	0.0	0.0	0.0	0.2	1.0	1.4	1.5	1.6	1.5
5000	5200	0.0	0.0	0.0	0.0	0.0	0.8	1.1	1.3	1.3	1.3
5200	5400	0.0	0.0	0.0	0.0	0.0	0.8	1.2	1.5	1.6	1.6
5400	5600	0.0	0.0	0.0	0.0	0.0	0.9	1.7	2.1	2.2	2.3
5600	5800	0.0	0.0	0.0	0.0	0.0	0.6	1.6	2.2	2.4	2.5
5800	6000	0.0	0.0	0.0	0.0	0.0	0.2	1.8	2.4	2.8	2.9
6000	6200	0.0	0.0	0.0	0.0	0.0	0.0	1.7	2.6	3.1	3.3
6200	6400	0.0	0.0	0.0	0.0	0.0	0.0	1.4	2.4	2.9	3.1
6400	6600	0.0	0.0	0.0	0.0	0.0	0.0	0.9	1.8	2.2	2.5
6600	6800	0.0	0.0	0.0	0.0	0.0	0.0	0.5	1.2	1.6	1.9
6800	7000	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.8	1.1	1.3
7000	7200	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.4	0.7	0.8
7200	7400	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.3	0.5	0.7
7400	7600	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.5	0.6
7600	7800	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.5	0.7
7800	8000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.6	0.8
8000	8200	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.5	0.8
8200	8400	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.5	1.0
8400	8600	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.6	1.3
8600	8800	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.4	1.1
8800	9000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.8
9000	9200	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.5
9200	9400	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2
9400	9600	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1
9600	9800	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1
9800	10000	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1

Fuel Tank Thermal Characteristics

The applicant must account for the thermal conditions of the fuel tank both on the ground and in flight. The Monte Carlo model, available on the Web site listed above, defines the ground condition using an equilibrium delta temperature (relative to the ambient temperature) that the tank will reach given a long enough time, with any heat inputs from airplane sources. Values are also input to define two exponential time constants (one for a near empty tank and one for a near full tank) for the ground condition. These time constants define the time for the fuel in the fuel tank to heat or cool in response to heat input. The fuel is assumed to heat or cool according to a normal exponential transition, governed by the temperature difference between the current temperature and the equilibrium temperature, given by ambient temperature plus delta temperature. Input values for this data can be obtained from validated thermal models of the tank based on ground and flight test data. The inputs for the inflight condition are similar but are used for inflight analysis.

Fuel management techniques are unique to each manufacturer's design and variations in

fuel load within the tank for given points in the flight must be accounted for in the model. The model uses a ''tank full'' time, specified in minutes, that defines the time before touchdown when the fuel tank is still full. For a center wing tank used first, this number would be the maximum flight time, and the tank would start to empty at takeoff. For a main tank used last, the tank will remain full for a shorter time before touch down, and would be ''empty'' at touch down (i.e., tank empty at 0 minutes before touch down). In the case of a main tank with reserves, the term empty means at reserve level rather than totally empty. The thermal data for tank empty would also be for reserve level.

The model also uses a ''tank empty'' time to define the time when the tank is emptying, and the program uses a linear interpolation between the exponential time constants for full and empty during the time the tank is emptying. For a tank that is only used for long-range flights, the tank would be full only on very long-range missions and would be empty a long time before touch down. For short flights, it would be empty for the whole flight. For a main tank that carried reserve fuel, it would be full for a long time and would only be down to empty at touch down. In this case, empty would really be at reserve level, and the thermal constants at empty should be those for the reserve level.

The applicant, whether using the available model or using another analysis tool, must propose means to validate thermal time constants and equilibrium temperatures to be used in the analysis. The applicant may propose using a more detailed thermal definition, such as changing time constants as a function of fuel load, provided the details and substantiation information are acceptable and the Monte Carlo model program changes are validated.

Overnight Temperature Drop

An overnight temperature drop must be considered in the Monte Carlo analysis as it may affect the oxygen concentration level in the fuel tank. The overnight temperature drop for these special conditions will be defined using:

- A landing temperature that is a random value based on a Gaussian distribution; and
- An overnight temperature drop that is a random value based on a Gaussian distribution.

For any flight that will end with an overnight ground period (one flight per day out of an average of x flights per day, depending on utilization of the particular airplane model being evaluated), the landing outside air temperature (OAT) is to be chosen as a random value from the following Gaussian curve:

TABLE 4.—LANDING OAT

Parameter	Landing temperature °F
Mean Temp	58.68
neg 1 std dev	20.55
pos 1 std dev	13.21

The outside ambient air temperature (OAT) drop for that night is to be chosen as a random value from the following Gaussian curve:

TABLE 5.—OAT DROP

Parameter	OAT drop temperature °F
Mean Temp	12.0
1 std dev	6.0

Oxygen Evolution

Fuel contains dissolved gases, and in the case of oxygen and nitrogen absorbed from the air, the oxygen level in the fuel can exceed 30 percent, instead of the normal 21 percent oxygen in air. Some of these gases will be released from the fuel during the reduction of ambient pressure experienced in the climb and cruise phases of flight. The applicant must consider the effects of air evolution from the fuel on the level of oxygen in the tank ullage during ground and flight operations and address these effects on the overall performance of the FRS. The applicant must provide the air evolution rate for the fuel tank under evaluation, along with substantiation data.

Number of Flights Required in Analysis

In order for the Monte Carlo analysis to be valid for showing compliance with the flammability requirements of these special conditions, the applicant must run the analysis for an appropriate number of flights to ensure that the flammability exposure for the fuel tank under evaluation meets the criteria defined in Table 6.

TABLE 6.—FLAMMABILITY LIMIT

Number of flights in Monte Carlo analysis	Maximum acceptable fuel tank flammability (%)
1,000	2.73
5,000	2.88
10,000	2.91
100,000	2.98
1,000,000	3.00

Issued in Renton, Washington, on November 28, 2003.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16534; Airspace Docket No. 03–ASO–19]

Proposed Establishment of Class D and Class E4 Airspace; Olive Branch, MS Proposed Amendment of Class E5 Airspace; Memphis, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D and Class E4 airspace at Olive Branch, MS, and amend Class E5 airspace at Memphis, TN. A Federal contract tower with a weather reporting system is being constructed at the Olive Branch Airport. Therefore, the airport will meet the criteria for establishment of Class D and Class E4 airspace. Class D surface area airspace and Class E4 airspace designated as an extension to Class D airspace is required when the control tower is open to contain existing Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action would establish Class D airspace extending upward from the surface to and including 2,900 feet MSL within a 4-mile radius of the Olive Branch Airport and Class E airspace extensions that are 5 miles wide and extend 7 miles northeast and south of the airport. A regional evaluation has determined the existing Class E5 airspace area for Memphis, TN, which includes the Olive Branch Airport, should be amended to contain the Nondirectional Radio Beacon (NDB) Or Global Positioning System (GPS) Runway (RWY) 18 and RWY 36 SIAPs. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the procedure turn airspace area.

DATES: Comments must be received on or before January 8, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16534/ Airspace Docket No. 03–ASO–19, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets

Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

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 and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Commnets to Docket No. FAA–2003–16534/Airspace Docket No. 03–ASO–19.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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 Superintendent of Documents Web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace and Class E4 airspace at Olive Branch, MS, and amend Class E5 airspace at Memphis, TN. Class D airspace designations for airspace areas extending upward from the surface of the earth, Class E airspace designations for airspace areas designated as an extension to a Class D airspace area and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraphs 5000, 6004 and 6005 respectively, of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

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. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. 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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO MS D Olive Branch, MS [NEW]

Olive Branch Airport, MS
(Lat. 34°58′44″ N, long. 89°47′13″ W)

That airspace extending upward from the surface to and including 2,900 feet MSL with a 4-mile radius of Olive Branch Airport; excluding that airspace within the Memphis Class B airspace area. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E4 Airspace Areas Designated as an Extension to a Class D Airspace Area

* * * * *

ASO MS E Olive Branch, MS [NEW]

Olive Branch Airport, MS
(Lat. 34°58′44″ N, long. 89°47′13″ W)
Olive Branch NDB
(Lat. 34°58′47″ N, long. 89°47′20″ W)

That airspace extending upward from the surface within 2.5 miles each side of the Olive Branch NDB 017° and 170° bearings, extending from the 4-mile radius to 7 miles northeast and south of the NDB. This Class E4 airspace area is effective during the specific days and times established in advance by a Notice of Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth

* * * * *

ASO TN E5 Memphis, TN [REVISED]

Memphis International Airport, TN
Lat. 35°02′33″ N, long 89°58′36″ W
Olive Branch Airport
Lat. 34°58′44″ N, long. 89°47′13″ W
West Memphis Municipal Airport
Lat. 35°08′06″ W, long. 90°14′04″ W
General DeWitt Spain Airport
Lat. 35°12′02″ N, long. 90°03′14″ W
Elvis NDB
Lat. 35°03′41″ N, long. 90°04′18″ W
West Memphis NDB
Lat. 35°08′22″ N, long. 90°13′57″ W

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Memphis International Airport, and within 4 miles north and 8 miles south of the 271° bearing from the Elvis NDB extending from the 8-mile radius to 16 miles west of the Elvis NDB, and within a 7.5-mile radius of Olive Branch Airport, and within 4 miles west and 8 miles east of the 017° bearing and 4 miles west and 8 miles east of the 170° bearing from the Olive Branch NDB extending from the 7.5-mile radius to 16 miles northeast and south of the airport, and within a 6.5-mile radius of West Memphis Municipal Airport, and within 4 miles east and 8 miles west of the 197° from the West Memphis NDB extending from the 6.5-mile radius to 16 miles south of the West Memphis NDB, and within 4 miles east and 8 miles west of the 353° bearing from the West Memphis NDB extending from the 6.5-mile radius to 16 miles north of the West Memphis NDB, and within 6.4-mile radius of General DeWitt Spain Airport; excluding that airspace within the Millington, TN, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on November 26, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–30457 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16415; Airspace Docket No. 03–AEA–16]

Establishment of Class E Airspace; Calverton, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Calverton Executive Airpark Airport (CTO), Calverton, NY. The development of Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) to serve flights operating into Calverton Executive Airpark Airport under Instrument Flight Rules (IFR) makes this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before January 8, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16415/ Airspace Docket No. 03–AEA–16 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

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, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16415/Airspace Docket No. 03–AEA–16''. The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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 Superintendent of Documents Web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice of by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace area at Calverton, NY. The development of SIAPs to serve flights operating IFR into Calverton Executive Airpark Airport makes this action necessary. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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 would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic

impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L dated September 2, 2003 and effective September 16, 2003, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AEA NY E5, Calverton, NY [NEW]

Calverton Executive Airpark Airport
(Lat. 40°54′54″ N., long 72°47′31″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Calverton Executive Airpark Airport, excluding that portion that coincides with the Shirley, NY and Westhampton Beach, NY Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on November 19, 2003.

John G. McCartney,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–30460 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2003–16091; Airspace Docket No. ASD 03–AGL–12]

RIN 2120–AA66

Proposed Establishment of Federal Airway V–19; OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking, (NPRM).

SUMMARY: This action proposes to establish Federal Airway 19 (V–19) northeast of the Cincinnati, OH, Very High Frequency Omni-directional Range/Tactical Air Navigation (VORTAC). This action would reduce congestion on V–5 between Cincinnati, OH, and Columbus, OH, and enhance the management of aircraft operations over the Cincinnati, OH, area.

DATES: Comments must be received on or before January 23, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. 2003–16091 and Airspace Docket No. 03–AGL–12, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Rohring, 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–2003–16091 and Airspace Docket No. 03–AGL–12) 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 notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2003–16091 and Airspace Docket No. 03–AGL–12.'' 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 notice 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 NPRMs

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 Superintendent of Document's Web page at *http://www.gpoaccess.gov/fr/index.html.*

Persons interested in being placed on a mailing list for future NPRMs 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.

Background

A review of aircraft operations in the Cincinnati terminal area has identified a need to reduce congestion on V–5 between Columbus, OH and Cincinnati, OH. This congestion is the result of en route aircraft and other aircraft arriving at the Cincinnati/Northern Kentucky International Airport (CVG), while both navigating on V–5. The FAA believes that establishing a new Federal Airway (V–19) to the south of V–5 would relieve the congestion and enhance the management of aircraft operations by providing an alternate route between Cincinnati, OH and Columbus, OH.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 (part 71) to establish V–19 in the Cincinnati, OH, area. Specifically, this action proposes to establish V–19 between Cincinnati, OH and Columbus, OH, to the south of V–5 and to the north of the Buckeye Military Operations Area. Establishment of this new airway would reduce congestion on V–5 and enhance the management of aircraft operations over the Cincinnati, OH, area.

Federal airways are published in paragraph 6010(a) of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Federal airway listed in this document would be published subsequently in the Order.

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 Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–19 (New)

From Cincinnati, OH; INT Cincinnati 063°T (067°M) and Appleton, OH, 229°T (235°M) radials; Appleton.

* * * * *

Issued in Washington, DC, on December 2, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–30450 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

32 CFR Part 312

Office of the Inspector General; Privacy Act; Implementation

AGENCY: Office of the Inspector General, DoD.

ACTION: Proposed rule.

SUMMARY: The Office of the Inspector General, DoD (OIG, DoD) is proposing to exempt the system of records CIG–21, entitled ''Congressional Correspondence Tracking System'' from 5 U.S.C. 552a(j)(2), (k)(1) through (k)(7). The exemption is needed because during the course of a Congressional inquiry, exempt materials from other systems of records may in turn become part of the case records in the system. To the extent that copies of exempt records from those ''other'' systems of records are entered into the Privacy Act case records, the Inspector General, DoD, hereby claims the same exemptions for the records from those ''other'' systems that are entered into this system, as claimed for the original primary systems of records of which they are a part. In addition, two administrative changes are also being made.

DATES: Comments must be received on or before February 9, 2004, to be considered by this agency.

ADDRESSES: Send comments to Office of the Inspector General, Department of Defense, 400 Army Navy Drive, Room 223, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Mr. Darryl R. Aaron at (703) 604–9785.

SUPPLEMENTARY INFORMATION

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and 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 this Executive Order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have a significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Office of the Inspector General and that the information collected within the Office of the Inspector General is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 312

Privacy.

Accordingly, 32 CFR part 312 is proposed to be amended to read as follows:

PART 312—OFFICE OF THE INSPECTOR GENERAL (OIG) PRIVACY PROGRAM

1. The authority citation for 32 CFR part 312 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 312.8, paragraph (a) is revised to read as follows:

§ 312.8 OIG review of request for amendment.

(a) A written acknowledgement of the receipt of a request for amendment of a

record will be provided to the requester within 20 working days, unless final action regarding approval or denial will constitute acknowledgement.

* * * * *

3. Section 312.12, paragraph (b) is revised and paragraph (i) is added to read as follows:

§ 312.12 Exemptions.

* * * * *

(b) The Inspector General of the Department of Defense claims an exemption for the following record systems under the provisions of 5 U.S.C. 552a(j) and (k)(1)–(k)(7) from certain indicated subsections of the Privacy Act of 1974. The exemptions may be invoked and exercised on a case-by-case basis by the Deputy Inspector General for Investigations or the Director, Communications and Congressional Liaison Office, and the Chief, Freedom of Information/Privacy Act Office which serve as the Systems Program Managers. Exemptions will be exercised only when necessary for a specific, significant and legitimate reason connected with the purpose of the records system.

* * * * *

(i) *System Identifier:* CIG–21.

(1) *System name:* Congressional Correspondence Tracking System.

(2) *Exemption:* During the processing of a Congressional inquiry, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those ''other'' systems of records are entered into this system, the Inspector General, DoD, claims the same exemptions for the records from those ''other'' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(3) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(4) *Reasons:* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

Dated: November 20, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–30396 Filed 12–8–03; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

[Air Force Instruction 37–132]

Privacy Act; Implementation

AGENCY: Department of the Air Force, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force is proposing to add an exemption rule for the system of records F071 JTF A, entitled ''Computer Network Crime Case System''. The (j)(2) and (k)(2) exemptions increase the value of the system of records for law enforcement purposes.

DATES: Comments must be received on or before February 9, 2004, to be considered by this agency.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043 or DSN 329–4043.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and 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 this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

It has been certified that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been certified that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been certified that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 806b

Privacy.

Accordingly, 32 CFR part 806b is proposed to be amended to read as follows:

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Appendix C to part 806b is amended by adding paragraph (a)(7) to read as follows:

Appendix C to Part 806b—General and Specific Exemptions

a. General exemptions. * * *

(7) *System identifier and name:* F071 JTF A, Computer Network Crime Case System.

(i) *Exemption:* (A) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency, which performs as its principle function any activity pertaining to the enforcement of criminal laws. Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(j)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g).

(B) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source.

Note: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(ii) *Authority:* 5 U.S.C. 552a(j)(2) and (k)(2).

(iii) *Reasons:* (A) From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede criminal law enforcement.

(B) From subsection (c)(4) and (d), because notification would alert a subject to the fact that an open investigation on that individual is taking place, and might weaken the on-going investigation, reveal investigative techniques, and place confidential informants in jeopardy.

(C) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity that may relate to the jurisdiction of other cooperating agencies.

(D) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal and/or civil investigation.

(E) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal and/or civil investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(F) From subsections (e)(4)(G), (H), and (I) because this system of records is exempt from the access provisions of subsection (d).

(G) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(H) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(I) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(J) From subsection (g) because this system of records should be exempt to the extent that the civil remedies relate to provisions of 5 U.S.C. 552a from which this rule exempts the system.

Dated: November 20, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–30398 Filed 12–8–03; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 199–1199; FRL–7592–4]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri pertaining to an update to a St. Louis city SIP-approved ordinance, and permit. The effect of this action is to ensure that the SIP is current and consistent with the revised St. Louis city ordinance and permit and are thus Federally enforceable.

DATES: Comments on this proposed action must be received in writing by January 8, 2004.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Electronic comments should be sent either to *kaiser.wayne@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: Wayne Kaiser at (913) 551–7603, or by e-mail at *kaiser.wayne@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in

commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: November 18, 2003.

William W. Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 03–30040 Filed 12–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD152–3105b ; FRL–7596–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Emissions of Volatile Organic Compounds From Consumer Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland for the purpose of establishing a regulation to control volatile organic compounds from consumer products. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by January 8, 2004.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@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 the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, Maryland's Control of Emissions of Volatile Organic Compounds from Consumer Products, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number MD152–3105 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov,* attention: MD152–3105. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov,* then select ''Environmental Protection Agency'' at the top of the page 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.

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

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the

version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Considerations When Preparing Comments to EPA

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

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

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: November 28, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03–30510 Filed 12–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ 63–263, FRL–7596–7]

Approval and Promulgation of Implementation Plans; New Jersey Emission Statement Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State Implementation Plan (SIP) revision submitted by the State of New Jersey on January 23, 2003 for the purpose of enhancing an existing Emission Statement Program for stationary sources in New Jersey. The SIP revision consists of amendments to the New Jersey Administrative Code (N.J.A.C.) Title 27, Chapter 27, Subchapter 21 Emission Statements.

The SIP revision was submitted by New Jersey to satisfy the Clean Air Act requirements for stationary sources to report annually to the State on their emissions of volatile organic compounds (VOC), oxides of nitrogen (NO_X) and carbon monoxide (CO), in order for the State to make this data available to EPA and the public.

The rule enhances the reporting requirements of VOC and NO_X and expands the reporting requirement based on specified emission thresholds to include CO, sulfur dioxides (SO_2), total suspended particulate matter (TSP), particulate matter measuring 2.5 microns or less ($PM_{2.5}$), particulate matter measuring 10 microns or less (PM_{10}), ammonia (NH_3), lead (Pb), hazardous air pollutants (HAPS), and carbon dioxide (CO_2) and methane (CH_4). The intended effect is to provide improved information to plan for and attain the air quality standards.

DATES: Comments must be received on or before January 8, 2004.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007–1866. Electronic comments could be sent either to *Werner.Raymond@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, then select ''Environmental Protection Agency'' at the top of the page and use the ''go'' button. Please follow the on-line instructions for submitting comments.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

New Jersey Department of Environmental Protection and Energy, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Raymond K. Forde, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3716, *forde.raymond@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What Is Required by the Clean Air Act and How Does It Apply to New Jersey?

Emission Statements (Annual Reporting of VOC and NO_X)

The air quality planning and SIP requirements for ozone nonattainment and transport areas are established in subparts I and II of part D of title I of the Clean Air Act, as amended in 1990 (the Act). EPA has published a ''General Preamble'' and ''Appendices to the General Preamble'' (see 57 FR 13498 (April 16, 1992), and 57 FR 18070 (April 28, 1992)) describing how EPA intends to review SIPs submitted under Title I of the Act.

EPA has also issued a draft guidance document entitled, ''Guidance on the Implementation of an Emission Statement Program'' (July 1992), describing the requirements for the Emission Statement Program discussed in this rulemaking.

Section 182(a) of the Act establishes requirements for stationary sources of air pollution to prepare and submit to the state statements each year showing

actual emissions of VOCs and NO_X. Further, states with ozone nonattainment areas are required to submit a revision to their SIPs by November 15, 1992, establishing this Emission Statement Program.

Facilities are required to submit their first emission statement to a state within three years of promulgation of the Act and annually thereafter. If either VOC or NO_X is emitted at or above the minimum reporting level that is established in a state Emission Statement Program, the other pollutant (NO_X or VOC) from the same facility should be included in the emission statement, even if the pollutant is emitted at levels below the minimum reporting level.

Section 182(a)(3)(B)(ii) of the Act allows states to waive, with EPA approval, the requirement for an emission statement for classes or categories of sources with less than 25 tons per year of actual plant-wide NO_X and VOC emissions in nonattainment areas if the class or category is included in the base year and periodic inventories and emissions are calculated using emission factors established by EPA (such as those found in EPA publication AP–42) or other methods acceptable to EPA.

Consolidated Emission Reporting Rule (Annual Reporting for All Criteria Pollutants)

In order to consolidate reporting requirements by the states to EPA, on June 10, 2002 (see FR 39602), EPA published the final Consolidated Emissions Reporting rule (CERR). The purpose of the CERR is to simplify the states' annual reporting of criteria pollutants for which the National Ambient Air Quality Standards (NAAQS) have been established and their precursors (VOC, NO_X, SO_2, PM_{10}, $PM_{2.5}$, CO, NH_3, Pb) to EPA, offer options for data collection and exchange, and unify reporting dates for various categories of criteria pollutant emission inventories. The CERR requires states to report to EPA emissions of NO_X, CO, VOC, Pb, SO_2, PM_{10}, annually for industrial point sources (based on specific emission thresholds) based on calendar year (CY) 2001 and due June 1, 2003 and continuing every year thereafter (*i.e.*, CY 2002 emission inventory due June 1, 2004, CY 2003 emission inventory due June 1, 2005, * * * etc.). One important element of the CERR is a requirement that states collect $PM_{2.5}$ and ammonia (NH_3) emissions data from industrial facilities. Reporting of $PM_{2.5}$ and NH_3 from point sources becomes effective June 2004, for emissions that occurred during calendar year 2002.

New Jersey's Emission Statement rule, which requires facilities to report information for the criteria pollutants and the associated precursors mentioned above, will now enable the State to satisfy the federal CERR requirements for major sources.

Hazardous Air Pollutants (Periodic Reporting of Hazardous Air Pollutants)

In addition to the emission inventory provisions related to NAAQS pollutants, EPA has requested that the states report HAP emissions from anthropogenic sources for the National Toxics Inventory. The National Toxics Inventory (NTI) is an emission inventory developed every three years (1993, 1996, 1999, etc.) by EPA. The NTI is a complete national inventory of stationary and mobile sources that emit hazardous air pollutants (HAPs).

The NTI contains emission estimates for large stationary sources (point), small stationary sources (non-point), and mobile sources. Point sources in the NTI include major and area source categories as defined in section 112 of the Clean Air Act. Non-point source categories in the NTI include area sources that are not included in the point sources and other stationary source categories. Individual emission estimates are developed for point sources, while aggregate emission estimates at the county level are developed and recorded for non-point stationary and mobile sources. The NTI also identifies facilities and non-point source categories that are associated with MACT categories.

Need for NTI Inventory

Title V of the Act requires the Administrator to perform an oversight role with respect to state issued permits, including permits issued to major sources of HAP emissions. In order to determine whether that program is being appropriately and lawfully administrated by the states with respect to major HAP sources, a HAP emission inventory is necessary. States are developing programs to regulate HAPs and State Title V programs must include permits for all HAP sources emitting major quantities of HAPs (10 tons of one HAP or 25 tons of multiple HAPs per year). Thus, the EPA believes including HAPs in the point source inventory is appropriate and necessary.

Section 112(n)(1)(A) of the Act requires EPA to report to Congress on the hazards to public health reasonably anticipated to occur as a result of emissions from electric utility steam generating units. Section 112(n)(1)(B) requires EPA to provide a report to Congress that considers the rate and mass of HAP emissions and the health and environmental effects of these emissions. Section 112(c)(6) requires a list of categories and subcategories of HAP sources subject to standards that account for not less than 90 percent of the aggregate emission of each pollutant. Although these new requirements do not include specific provisions requiring the compilation of HAP emissions inventories, they do introduce the need for such inventories in order to carry out the mandated statutes.

Section 112(k)(3) of the Act mandates that EPA develop a strategy to control emissions of HAPs from area sources in urban areas, and that the strategy achieves a reduction in the incidence of cancer attributable to exposure to HAPs emitted by stationary sources of not less than 75 percent, considering control of emissions from all stationary sources, as well as a substantial reduction in public health risks posed by HAPs from area sources. These mandated risk reductions are to be achieved by taking into account all emission control measures implemented by the Administrator or by the states under this or any other laws. A reliable HAP emission inventory covering all stationary sources of HAPs, including point and area sources, will be important in developing the mandated strategy and demonstrating that the strategy achieves the mandated risk reductions. It would be virtually impossible for EPA to identify and estimate HAP-specific emission reductions from all the federal and State rules that might result in HAP emission reductions. Therefore, EPA believes development of the strategy and assessment of progress in achieving the strategic goals requires the development and periodic update of a HAP emission inventory.

As presented in the July 19, 1999 **Federal Register** action on the National Air Toxics Program: The Integrated Urban Strategy (64 FR 38706), a designed approach has been developed that depends upon a reliable and periodically updated HAP emission inventory as a critical element in the assessments that support the development and evaluation of our urban strategy.

New Jersey's Emission Statement rule, which requires facilities to report information for the hazardous air pollutants, will now help the State to satisfy the HAPs reporting requirements for major sources.

II. What Was Included in New Jersey's Submittal?

New Jersey's Submittal

On January 23, 2003, New Jersey submitted a SIP revision for ozone and CO which included an adopted Emission Statement Regulation. The regulation amends New Jersey Administrative Code Title 7, Chapter 27, Subchapter 21 Emission Statements and Subchapter 22 Operating Permits, and Title 7, Chapter 27A, Subchapter 3 Civil Administrative Penalties and Requests for Adjudicatory Hearings. The amendments were adopted on January 23, 2003, by the New Jersey Department of Environmental Protection (NJDEP) and became effective on February 18, 2003.

EPA's Findings

EPA has determined that an acceptable Emission Statement Program must have several components. Specifically, a state must submit it as a revision to its SIP, and the Emission Statement Program must meet the minimum requirements for reporting as outlined in EPA's, ''Guidance on the Implementation of an Emission Statement Program'' (July 1992). The program must include, at a minimum, provisions specifying source applicability, definitions, compliance, and specific source reporting requirements.

EPA's detailed review of New Jersey's Emission Statement Program is contained in a technical support document available from the source for further information identified at the beginning of this proposal.

Applicability

In ozone nonattainment areas, facilities which emit VOC or NO_X in amounts of 25 tons per year or more must submit an emission statement. The entire State of New Jersey is designated nonattainment of the NAAQS for ozone. New Jersey's regulation appropriately requires facilities anywhere in the State actually emitting or having the potential to emit 10 tons per year or more of VOC or 25 tons per year or more of NO_X to submit an annual emission statement.

New Jersey's regulation requires sources which have the potential to emit 100 tons per year or more of CO, SO_2, TSP, $PM_{2.5}$, PM_{10}, NH_3 or 5 tons per year or more of Pb to submit annual emission statements.

New Jersey's rule has special provisions which require sources which have the potential to emit VOC greater than 10 tons per year but less than 25 tons per year of VOC, or less than the applicable reporting thresholds for the other criteria pollutants mentioned earlier to report annual emission statements for VOC, NO_X, CO and 36 HAPs.

New Jersey's regulations include special provisions that require sources which have the potential to emit 25 tons per year or more of VOC, or, the potential to emit equal to or higher than the specific emission thresholds for the other criteria pollutants mentioned earlier to submit annual emission statements for VOC, NO_X, CO, SO_2, TSP, Pb, PM_{10}, $PM_{2.5}$, NH_3, CO_2 and CH_4 and 36 HAPs.

EPA has determined that New Jersey has addressed the emission statement applicability provisions in a manner that is acceptable to EPA. In addition, New Jersey's emission statement rule will assist the State in satisfying the annual reporting requirements for the federal CERR, help the State to develop a HAPS emission inventory for use in National Air Toxics Assessment.

Definitions

The key definitions that New Jersey included in its Emission Statement Regulation are consistent with the EPA guidance.

Compliance

All measures and other elements in the SIP must be enforceable by the State and EPA. SIP provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

The State of New Jersey has a program in its SIP that will ensure that the requirements of section 182(a)(3)(B) are adequately enforced. In addition, New Jersey has established penalties to be assessed for each reporting violation.

New Jersey's statute and regulations includes the authority to issue compliance orders with appropriate penalties and injunctive relief for sources failing to comply. EPA has determined that New Jersey has an adequate enforcement program in place to satisfy the compliance requirements of an Emission Statement Program.

Reporting Requirements

In accordance with EPA requirements, New Jersey requires the necessary source-supplied data elements from facilities. The survey forms that New Jersey provides to facilities for use in reporting emission statement data are not EPA forms but require the necessary data.

The State's Emission Statement program requires facilities to report on the following pollutants to assist the State in air quality planning needs: hydrochloric acid, hydrazine, methylene chloride, tetrachloroethylene, 1,1,1 trichloroethane, CO_2 and methane. While EPA recognizes the value of this information, EPA will not take enforcement action should a facility not submit this information to the State in an emission statement because these substances do not contribute to violation of the NAAQS.

It should be noted the State's SIP revision request also contains Subchapter 22 Operating Permits and Title 7, Chapter 27A, Subchapter 3 Civil Administrative Penalties and Requests for Adjudicatory Hearings. In this action EPA is officially acting on NJAC Title 7, Chapter 27, Subchapter 21 Emission Statements. However, EPA will not be acting on NJAC Title 7, Subchapter 22 Operating Permits and Title 7, Chapter 27A, Subchapter 3 Civil Administrative Penalties and Requests for Adjudicatory Hearings and will not be incorporating these amendments by reference into the SIP. Title 7, Subchapter 22 involves a separate program under EPA's Title V program. Title 7, Chapter 27A, Subchapter 3 involves enforcement and civil penalties, EPA has its own enforcement provisions separate from the State program.

III. General Information

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

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under Region 2 Docket Number NJ 63–263. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, New York, New York 10007–1866. EPA requests that if at all possible, you contact the contact listed in the For Further Information Contact section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal Holidays.

2. *Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency.*

New Jersey Department of Environmental Protection and Energy, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

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

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking Region 2 Docket Number NJ 63–263'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *Werner.Raymond@epa.gov,* please include the text ''Public comment on proposed rulemaking Region 2 Docket Number NJ 63–263'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then click on the button ''TO SEARCH FOR REGULATIONS CLICK HERE'', and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

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

2. *By Mail.* Send your comments to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866. Please include the text ''Public comment on proposed rulemaking Region 2 Docket Number NJ 63–263'' in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal Holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

IV. What Is EPA's Conclusion?

EPA has concluded that the New Jersey program contains the necessary applicability, compliance and reporting provisions necessary to meet the requirements for an Emission Statement Program. EPA is proposing to approve Subchapter 21, Emission Statements, as part of the SIP.

V. Statutory and Executive Order Reviews

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 a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This 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 SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This 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.*).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: November 28, 2003.

Kathleen C. Callahan,

Acting Regional Administrator, Region 2.

[FR Doc. 03–30514 Filed 12–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7597–6]

Hazardous Waste Management Program: Final Authorization of State Hazardous Waste Management Program Revisions for State of Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA (also ''the Agency '' in this preamble) is proposing to grant final authorization to the State of Louisiana Department of Environmental Quality (LDEQ) for its hazardous waste program revisions, specifically, revisions needed to meet the Resource Conservation and Recovery Act (RCRA), Clusters X, XI and XII which contains Federal rules promulgated from July 1, 1999, to June 30, 2002. In the ''Rules and Regulations'' section of this **Federal Register** , EPA is authorizing the revisions as an immediate final rule without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If EPA receives adverse written comments, a second **Federal Register** document will be published before the time the immediate final rule takes effect. The second document may withdraw the immediate final rule or identify the issues raised, respond to the comments and affirm that the immediate final rule will take effect as scheduled. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before January 8, 2004.

ADDRESSES: Mail written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, State and Oversight Section (6PD–G), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Louisiana during normal business hours at the following locations: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444 ; or Louisiana Department of Environmental Quality, 602 N. Fifth Street, Baton Rouge, Louisiana 70884–2178, (225) 219–3559.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: November 25, 2003.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 03–30512 Filed 12–8–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 53

WC Docket No. 03–228; DA 03–3742]

Section 272(b)(1)'s ''Operate Independently'' Requirement for Section 272 Affiliates

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the deadline for filing comments and reply comments in an ongoing Commission rulemaking proceeding seeking comment on whether the Commission should modify the rules adopted to implement section 272(b)(1)'s ''operate independently'' requirement for section 272 affiliates.

DATES: Comments are due December 10, 2003, and reply comments are due December 22, 2003.

FOR FURTHER INFORMATION CONTACT: Christi Shewman, Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, (202) 418–1686.

SUPPLEMENTARY INFORMATION: On November 21, 2003, the Commission

released a public notice issuing an extension of time for parties to file comments and reply comments in response to a November 4, 2003, Notice of Proposed Rulemaking (NPRM) seeking comment on whether the Commission should modify the rules adopted to implement section 272(b)(1)'s ''operate independently'' requirement. A summary of the Commission's NPRM was published in the **Federal Register** on November 21, 2003, triggering the cycle for comments and reply comments on the NPRM, 68 FR 65665, November 21, 2003. Due to the intervening Thanksgiving holiday during the comment cycle, the Commission grants, on its own motion, a limited extension of the deadline for filing comments and reply comments in this proceeding.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30441 Filed 12–8–03; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 68, No. 236

Tuesday, December 9, 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.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (portions of which will be open to the public) in Washington, DC, at the Office of Professional Responsibility on January 8 and 9, 2004.

DATES: Thursday, January 8, 2004, from 9 a.m. to 5 p.m., and Friday, January 9, 2004, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in Suite 4200E, Conference Room, Fourth Floor, East Tower, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 202–694–1858.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Suite 4200E, Conference Room, Fourth Floor, East Tower, Franklin Court Building, 1099 14th Street, NW., Washington, DC, on Thursday, January 8, 2004, from 9 a.m. to 5 p.m., and Friday, January 9, 2004, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the November 2003 Pension (EA–2A) Joint Board Examination in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the May 2004 Basic (EA–1) Examination and the May 2004 Pension (EA–2B) Examination will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the November 2003 Joint Board examination fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1 p.m. on January 9 and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements should notify the Executive Director in writing prior to the meeting in order to aid in scheduling the time available and must submit the written text, or at a minimum, an outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. All other persons planning to attend the public session must also notify the Executive Director in writing to obtain building entry. Notifications of intent to make an oral statement or to attend must be faxed, no later than December 31, 2003, to 202–694–1876, Attn: Executive Director. Any interested person also may file a written statement for consideration by the Joint Board and the Committee by sending it to the Executive Director: Joint Board for the Enrollment of Actuaries, c/o Internal Revenue Service, Attn: Executive Director SE:OPR, 1111 Constitution Avenue, NW., Washington, DC 20224.

Dated: December 2, 2003.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 03–30523 Filed 12–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Shawnee National Forest, Illinois: Hiker/Equestrian Trails Designation Project (Phase 1)

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service Shawnee National Forest intends to prepare an environmental impact statement to disclose the environmental consequences of designating additional miles of National Forest hiker/equestrian system trails within four watersheds on the Forest—Lusk Creek, Upper Bay Creek, Eagle Creek, and Big Grand Pierre Creek—and restricting equestrian use within these watersheds to the system trails.

DATES: Comments concerning the scope of the analysis must be received by January 30, 2004. The draft environmental impact statement is expected to be published in May, 2004 and the final environmental impact statement is expected in September, 2004.

ADDRESSES: Send written comments to Matt Lechner, NEPA Coordinator, Attention: Trails Designation, Shawnee National Forest, 50 Highway 145 South, Harrisburg, IL 62946. Send comments electronically to: *mailroom_r9_shawnee@fs.fed.us;* indicate ''Trail Designation'' on the subject line.

FOR FURTHER INFORMATION CONTACT: Tim Pohlman, Recreation Program Manager, or Richard Blume-Weaver, Planning Staff Officer, at (618) 253–7114, 1–800–MYWOODS, or e-mail *tpohlman@fs.fed.us* with a copy to *rblume-weaver@fs.fed.us.*

Maps of the trails proposed for designation are available for review at the Forest Supervisor's Office, 50 Highway 145 South, Harrisburg, Illinois; the Vienna-Elizabethtown Ranger District Station, 602 N. 1st St., Vienna, and the Elizabethtown Work Center, Elizabethtown, Illinois; the Jonesboro-Murphysboro Ranger District Station, 521 N. Main St., Jonesboro, and the Murphysboro Work Center, 2221 Walnut, Murphysboro, Illinois; the public libraries in Benton, Carbondale, Golconda, Harrisburg, Jonesboro,

Marion, Metropolis, Murphysboro, Shawneetown, and West Frankfort; and the Southern Illinois University Library, Carbondale. Maps and other information are also available for review on the Shawnee National Forest's Web site: *http://www.fs.fed.us/r9/shawnee.* Click on ''Trail Designation Project'' under ''Current Management News.''

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Shawnee National Forest's 1992 Amended Land and Resource Management Plan (Forest Plan) anticipated an increasing demand for trails on the Forest. In addition to identifying a potential trail-corridor system, the Forest Plan allowed equestrians the use of then-existing user-developed trails and the freedom to ride cross-country in most areas of the Forest. In the years since publication of the Forest Plan, public demand for trails has grown without any additions to the Forest's designated trail system. The existing designated trail system does not adequately meet the need for public access to many scenic attractions, nor does it provide equestrians a loop-trail experience. Numerous user-developed trails have been formed outside of the designated trail system; but agency policy prevents the Forest from managing these trails with trail-maintenance funds.

The Shawnee National Forest is ready at this time for a decision on the designation of additional system trails in order to provide recreational users a longer, well-marked, well-maintained trail system and to reduce resource damage from non-designated, unmanaged, user-developed trails. Since the majority of equestrian use occurs in four neighboring watersheds that contain many popular attractions—about 30 percent of the Forest—the first phase of trail designation is focused in these watersheds. The Forest Service intends to conduct further analyses in the remainder of the Forest following implementation of the decision that results from this environmental impact statement.

Proposed Action

The Shawnee National Forest proposes to: (1) Identify a number of miles of trail to add to the Forest's designated trail system within the watersheds of Lusk Creek, Upper Bay Creek, Big Grande Pierre Creek and Eagle Creek, with the additional miles drawn primarily from existing user-developed trails reconstructed and relocated as necessary to avoid resource impacts; (2) construct additional trailheads to provide access to the trail system; (3) amend the Forest Plan to restrict equestrian use in these four watersheds to system trails and roads; and (4) amend as required the trail-density standards in the Forest Plan.

Possible Alternatives

Possible alternatives for evaluation in the environmental impact statement include taking no action, designating trails in the four watersheds within the constraints of the Forest Plan's trail-density standards, and designating all trail-routes identified during a series of public workshops on the trails master-planning process.

Responsible Official: Allen Nicholas, Forest Supervisor, Shawnee National Forest, 50 Highway 145 South, Harrisburg, IL 62946.

Nature of Decision To Be Made

The responsible official will decide whether or not to designate more trails on the Shawnee National Forest, whether or not to construct additional trailheads, whether or not to amend the Forest Plan to restrict equestrian use in the four watersheds to designated trails and roads, and whether or not to amend the trail-density standards specified in the Forest Plan.

Scoping Process

The Shawnee National Forest proposes to scope for information by contacting persons and organizations on the Forest's mailing list and publishing a notice in the newspaper of record. The Forest will accept comments at the above-stated addresses on the scope of the proposed action and alternatives until January 30, 2004.

Two informational public open houses will be held to answer questions regarding the proposed action and to receive scoping comments. The first will be 4 p.m. to 7 p.m. on Tuesday, January 20, 2004 in the Knights of Columbus Hall, 100 Columbus Drive, Marion, Illinois (next to the church on the west side of Russell Street, three blocks south of U.S. Highway 13), and the second will be 4 p.m. to 7 p.m. on Wednesday, January 21, 2004 in the Commons Area of the Vienna High School, 601 N. 1st Street, Vienna, Illinois (across the street from the Vienna Ranger Station).

Preliminary Issues

The Forest Service has identified from previous public comments several preliminary issues related to the proposed action: (1) Designation and construction and/or improvement of additional system trails may cause increased erosion and soil compaction and adversely affect water quality; (2) Increasing trail-density standards may adversely affect wilderness and natural area attributes; (3) Use of additional trails may exceed the physical carrying-capacity of the affected watersheds; and (4) Designation of additional system trails may not provide quality recreational experiences.

Comments Requested

This notice of intent initiates the scoping process that guides the development of the environmental impact statement. In order to ensure adequate identification and discussion in the environmental impact statement of all relevant issues and alternatives, the Forest Service seeks comments related specifically to the proposed action and alternatives. We are especially interested in information that might identify a specific undesired result of implementing the proposed action. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have the right to appeal subsequent decisions under 36 CFR parts 215 and 217.

Those who comment during the scoping period will be listed to receive a copy of the draft environmental impact statement. In order to conserve resources, the Shawnee National Forest encourages all recipients to view and/or download the draft environmental impact statement from the Shawnee National Forest Web site or accept a copy of the document on a CD. If you are unable to utilize the Web site or a CD, please specify in your comment submittal that you prefer to receive a paper copy of the draft environmental impact statement.

Additionally, pursuant to 7 CFR 1.27(d), any persons may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that under FOIA confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality and, should the request be denied, return the submission and notify the requester that the comments may be resubmitted with or without name and address within 90 days.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, that it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statement must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. [*City of Angoon* v. *Hodel*, 803 F.2d 1016,1 022 (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 45-day 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 environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the name and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(**Authority:** 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, section 21)

Dated: December 2, 2003.

Huston A. Nicholas,

Forest Supervisor.

[FR Doc. 03–30439 Filed 12–8–03; 8:45 am]

BILLING CODE CMTL–08–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on January 15, 2004, from 3:30 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Lake County Board of Supervisor's Chambers at 255 North Forbes Street, Lakeport, CA.

FOR FURTHER INFORMATION CONTACT: Debbie McIntosh, Committee Coordinator, USDA, Mendocino National Forest, Upper Lake Ranger District, 10025 Elk Mountain Road, Upper Lake, CA 95485. (707) 275–2361: E-mail *dmcintosh@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Roll Call/Establish Quorum; (2) Overview of November Sacramento RAC Meeting; (3) Finalize business for 2003; (4) Title II funds available for Projects for 2004; (5) Discuss Project Cost Accounting USFS/ County of Lake; (6) Set Next Meeting Date; (7) Public Comment Period; Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: December 2, 2003.

Blaine P. Baker,

Designated Federal Officer.

[FR Doc. 03–30410 Filed 12–8–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service (RHS), Department of Agriculture (USDA).

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the Rural Community Development Initiative (RCDI) grant program.

DATES: Comments on this notice must be received by February 9, 2004 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Beth Jones, Senior Loan Specialist, Community Programs Direct Loan and Grant Processing and Servicing Branch, RHS, USDA, 1400 Independence Ave., SW., Mail Stop 0787, Washington, DC 20250–0787, Telephone (202) 720–1498, E-mail *beth.jones@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative.

OMB Number: 0575–0180.

Expiration Date of Approval: May 31, 2004.

Type of Request: Extension of a currently approved information collection.

Abstract: RHS, an Agency within the USDA Rural Development mission area, will administer the RCDI grant program through their Community Facilities Division. The intent of the RCDI grant program is to develop the capacity and ability of rural area recipients to undertake projects through a program of financial and technical assistance provided by qualified intermediary organizations. The eligible recipients are nonprofit organizations, low-income rural communities, or Federally recognized tribes. The intermediary may be a qualified private, nonprofit, or public (including tribal) organization. The intermediary is the applicant. The intermediary must have been organized a minimum of 3 years at the time of application. The intermediary will be required to provide matching funds, in the form of cash or committed funding, in an amount at least equal to the RCDI grant.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.72 hours per response.

Respondents: Intermediaries and recipients.

Estimated Number of Respondents: 146.

Estimated Number of Responses per Respondent: 2.48.

Estimated Number of Responses: 8.

Estimated Total Annual Burden on Respondents: 2,026.

Copies of this information collection can be obtained from Brigitte Sumter, Regulations and Paperwork Management Branch, at (202) 692–0042.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Brigitte Sumter, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 24, 2003.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 03–30437 Filed 12–8–03; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maine Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Maine Advisory Committee will convene at 11 a.m. and adjourn at 12 p.m., Friday, December 12, 2003. The purpose of the conference call is to discuss forum panel format/topics and potential panelists to invite for a community forum on post-9/11 civil rights issues in Maine.

This conference call is available to the public through the following call-in number: 1–888–659–1081, access code: 20610279. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code number.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Aonghas St-Hilaire of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116), by 4 p.m. on Thursday, December 11, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 23, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–30433 Filed 12–4–03; 11:19 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 29–2003]

Wacker Chemical Corporation—Application for Subzone Status; Extension of Comment Period

The comment period for the application for subzone status at the Wacker Chemical Corporation in Adrian, Michigan, submitted by the Greater Detroit Foreign-Trade Zone, Inc. (68 FR 38009, 6/26/03), is being extended again, to December 22, 2003 to allow interested parties additional time in which to comment. Rebuttal comments may be submitted during the subsequent 15 day period, until January 6, 2004. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

Dated: December 3, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–30491 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1306]

Grant of Authority; Establishment of a Foreign-Trade Zone; Koochiching County, MN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Koochiching Economic Development Authority (the Grantee), a Minnesota public corporation, has made application to the Board (FTZ Docket 22–2003, filed 4/30/03), requesting the establishment of a foreign-trade zone at sites in Koochiching County, Minnesota, within the International Falls-Ranier Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (68 FR 23952, 5/6/03); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 259, at the sites described in the application, and subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 28th day of November, 2003.

Foreign-Trade Zones Board.

Donald I. Evans,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–30492 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–891]

Notice of Initiation of Antidumping Duty Investigation: Hand Trucks and Certain Parts Thereof from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of an Antidumping Duty Investigation.

EFFECTIVE DATE: December 9, 2003.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman, Stephen Cho or Daniel J. Alexy at (202) 482–3534, (202) 482–3798, or (202) 482–1540 respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

INITIATION OF INVESTIGATION:

The Petition

On November 13, 2003, the Department of Commerce (''the Department'') received a petition filed in proper form by Gleason Industrial Products, Inc. On November 18, 2003, the Department received an amendment to the petition filed in proper form by Gleason Industrial Products, Inc. On November 19, 2003, the Department sent a supplemental questionnaire to Gleason Industrial Products, Inc. and received a response on November 25, 2003. On December 1, 2003, Gleason Industrial Products, Inc. filed an amendment to the petition to include Precision Products Inc. as a co-petitioner (''the petitioners'').[1] On December 2, 2003, the Department received a letter from the China Chamber of Commerce for Import & Export of Machinery & Electronics on behalf of their members who produce hand trucks in China claiming that the petitioners do not meet the industry support requirement of section 732(c)(4)(A) of the Tariff Act of 1930, as amended (''the Act''). On December 3, 2003, Gleason Industrial Products, Inc. submitted a response to the China Chamber of Commerce's allegations. Also on December 3, 2003, the Department received a letter from the United Food & Commercial Workers International Union in support of the petition on behalf of their members, some of whom work in Gleason Industrial Products, Inc.'s manufacturing facilities.

In accordance with section 732(b)(1) of the Act, the petitioners allege that imports of hand trucks and certain parts thereof (''hand trucks'') from the People's Republic of China (''the PRC'') are, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that imports from the PRC are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department to initiate. *See infra*, ''Determination of Industry Support for the Petition.''

Scope of Investigation

For the purpose of this investigation, the product covered consists of hand trucks manufactured from any material, whether assembled or unassembled, complete or incomplete, suitable for any use, and certain parts thereof, namely the vertical frame, the handling area and the projecting edges or toe plate, and any combination thereof.

A complete or fully assembled hand truck is a hand-propelled barrow consisting of a vertically disposed frame having a handle or more than one handle at or near the upper section of the vertical frame; at least two wheels at or near the lower section of the vertical frame; and a horizontal projecting edge or edges, or toe plate, perpendicular or angled to the vertical frame, at or near the lower section of the vertical frame. The projecting edge or edges, or toe plate, slides under a load for purposes of lifting and/or moving the load.

That the vertical frame can be converted from a vertical setting to a horizontal setting, then operated in that horizontal setting as a platform, is not a basis for exclusion of the hand truck from the scope of this petition. That the vertical frame, handling area, wheels, projecting edges or other parts of the hand truck can be collapsed or folded is not a basis for exclusion of the hand truck from the scope of the petition. That other wheels may be connected to the vertical frame, handling area, projecting edges, or other parts of the hand truck, in addition to the two or more wheels located at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition. Finally, that the hand truck may exhibit physical characteristics in addition to the vertical frame, the handling area, the projecting edges or toe plate, and the two wheels at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition.

Examples of names commonly used to reference hand trucks are hand truck, convertible hand truck, appliance hand truck, cylinder hand truck, bag truck, dolly, or hand trolley. They are typically imported under heading 8716.80.50.10 of the Harmonized Tariff Schedule of the United States (''HTSUS''), although they may also be imported under heading 8716.80.50.90. Specific parts of a hand truck, namely the vertical frame, the handling area and the projecting edges or toe plate, or any combination thereof, are typically imported under heading 8716.90.5060 of the HTSUS. Although the HTSUS subheadings are provided for convenience and for the purposes of U.S. Customs and Border Protection, the Department's written description of the scope is dispositive.

Excluded from the scope are small two-wheel or four-wheel utility carts specifically designed for carrying loads like personal bags or luggage in which the frame is made from telescoping tubular material measuring less than 5/8 inch in diameter; hand trucks that use motorized operations either to move the hand truck from one location to the next or to assist in the lifting of items placed on the hand truck; vertical carriers designed specifically to transport golf bags; and wheels and tires used in the manufacture of hand trucks.

As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

[1] Gleason Industrial Products, Inc. and Precision Products Inc. are both members of the Gleason Group companies. Gleason Industrial Products, Inc. manufactures and sells hand trucks. Precision Products Inc. also manufactures hand trucks, but sells all its hand trucks through Gleason Industrial Products, Inc.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product referred to in the petition is the single domestic like product defined in the ''Scope of Investigation'' section above. The Department has no basis on the record to find this definition of the domestic like product to be inaccurate. The Department, therefore, has adopted this domestic like product definition.

In their initial petition and subsequent submissions, the petitioners state that they comprise more than 50 percent of U.S. hand truck production. Based on all available information, we agree that the petitioners comprise more than 50 percent of the domestic hand truck production and accordingly, determine that the petition has been filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* Initiation Checklist dated December 3, 2003 (public version on file in the Central Records Unit of the Department of Commerce, Room B-099) (''*Initiation Checklist*'').

Period of Investigation

The anticipated period of investigation (''POI'') is April 1, 2003, through September 30, 2003.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation. The sources of data relating to export price (''EP''), normal value (''NV''), and factors of production (''FOP'') are discussed in greater detail in the *Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Regarding an investigation involving a non-market economy (''NME'') country, the Department presumes, based on the extent of central government control in an NME, that a single dumping margin, should there be one, is appropriate for all NME exporters in the given country. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of a country's NME status and the granting of separate rates to individual exporters. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–87 (May 2, 1994).

Export Price

The petitioners based the export price on price quotes from a Chinese producer of hand trucks to unaffiliated purchasers in the United States within the POI as reported in Exhibit 19 of the November 13, 2003 petition. The petitioners claim that the two price quotes obtained were for two models of hand trucks that are among the most prevalent of the models imported from China. Accordingly, we found that the gross unit prices provided by the petitioners represent information that reasonably reflected prices to the United States. Therefore, we relied on the gross unit prices provided in the petition. The prices were quoted FOB Qingdao, the PRC, and the petitioners were conservative because they did not deduct Chinese inland freight from the quoted prices.

Normal Value

The petitioners assert that the PRC is an NME country, and note that in all previous investigations the Department has determined that the PRC is an NME. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000). The PRC will be treated as an NME unless and until its NME status is revoked. *See* section 771(18)(C)(i) of the Act. Because the PRC's status as an NME remains in effect, the petitioners estimated the dumping margin using an NME methodology.

The petitioners assert that India is the most appropriate surrogate country for the PRC, claiming that India is: 1) at a level of economic development comparable to the PRC in terms of per capita gross national product, and 2) a significant producer of comparable merchandise. The petitioners provided recent U.S. import statistics of hand trucks from India and a report by a researcher in India hired by the petitioners to study the hand truck industry. The report shows that there is significant production of hand trucks in India. Based on the information provided by the petitioners, we believe that the petitioners' use of India as a surrogate country is appropriate for the purpose of initiating this investigation.

The petitioners estimated the quantities of inputs required to produce hand trucks in the PRC based on the petitioners' own experience and their extensive analysis of the two representative hand trucks they acquired from the PRC. Based on the

[2] *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642-44 (Ct. Int'l Trade 1988).

information provided by the petitioners, we believe that the petitioners' FOP methodology represents information reasonably available to the petitioners and is appropriate for purposes of initiating this investigation.

In accordance with section 773(c)(4) of the Act, the petitioners valued FOP, where possible, on reasonably available, public surrogate data from India. The petitioners valued all direct materials (with the exception of ball bearings and tires), packing materials, and scrap based on Indian import values, as published in the 2002 *Monthly Statistics of Foreign Trade of India*. These values were inflated to the current POI using the Indian wholesale price index (''WPI'') as reported in the International Monetary Fund's *International Financial Statistics* (''IFS''), and converted to U.S. dollars using the U.S. Federal Reserve exchange rates for India.

Concerning ball bearings and tires for the hand truck, the petitioners valued these inputs using price quotes they obtained from India for ball bearings and tires as surrogate values for the ball bearings and tires for the hand truck. The Department accepted these values as being representative of hand truck ball bearings and tires.

The petitioners valued direct and packing labor using the regression-based wage rate for the PRC provided by the Department, in accordance with section 351.408(c)(3) of the Department's regulations. The petitioners based the amount of energy used on its own experience. Electricity was valued using the Indian Tata Energy Research Institute *Energy Data Directory and Yearbook (2000/2001)*, and adjusted for inflation to reflect a POI value using the Reserve Bank of India *RBI Bulletin*. Natural gas was valued from an article at *www.indiaonline.com*, and adjusted for inflation based on the Indian WPI.

The petitioners calculated financial ratios using four public financial statements of Indian producers of hand trucks. The Department did not find adequate evidence that one of the Indian firms, Excellent Engineering & Allied Services Private Limited, is a producer of hand trucks because: (1) it is not included in the list of producers of hand trucks submitted by the Indian researcher; (2) its financial statements do not indicate that it is a manufacturer of hand trucks; (3) its direct material costs are lower than the other companies; and (4) its financial statements refer to raw materials as ''trading materials.'' Therefore, we have removed this company's financial ratios from the calculation of normal value. Based on the information provided by the petitioners, we believe that the surrogate values represent information readily available to the petitioners and are acceptable for purposes of initiating this investigation.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of hand trucks from the PRC are being, or are likely to be, sold at less than fair value. As a result of a comparison of EP to NV, based on our recalculations described above, the estimated dumping margins range from 314.97 percent to 401.21 percent.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of imports of the subject merchandise sold at less than fair value.

The petitioners contend that the industry's injured condition is evidenced by the loss of sale opportunities, depressed and/or suppressed domestic prices, reduced market share, and reduced profitability. The allegations of injury and causation are supported by relevant evidence including affidavits of company officials, U.S. Census Bureau import statistics, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See Initiation Checklist.*

Initiation of Antidumping Investigation

Based upon our examination of the petition on hand trucks, we have found that it meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of hand trucks from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of the PRC.

ITC Notification

We have notified the ITC of our initiation as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine no later than December 29, 2003, whether there is a reasonable indication that imports of hand trucks from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: December 3, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30489 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-412–803]

Notice of Final Results of Antidumping Duty Changed Circumstances Review: Industrial Nitrocellulose from the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Changed Circumstances Review.

SUMMARY: On October 16, 2003, the Department of Commerce (the Department) published a notice of preliminary results of its changed circumstances review of the antidumping duty order on industrial nitrocellulose (INC) from the United Kingdom in which we preliminarily determined that Troon Investments Limited (TIL) is the successor-in-interest to Imperial Chemical Industries, PLC (ICI).[1] *See Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Industrial Nitrocellulose from the United Kingdom*, 68 FR 59584, 59585 (October 16, 2003) (*Preliminary Results*). We gave interested parties, TIL and Green Tree Chemical Technologies, Inc. (Green Tree), the sole U.S. producer of INC and the petitioner in this proceeding, the

[1] Note: TIL purchased ICI's INC business on December 31, 2002.

opportunity to comment on the *Preliminary Results*. We received no comments from either Green Tree or TIL on the Department's *Preliminary Results*. Therefore, the Department is adopting its preliminary finding that TIL is the successor-in-interest to ICI in these final results.

EFFECTIVE DATE: December 9, 2003.

FOR FURTHER INFORMATION CONTACT: Michele Mire or Howard Smith, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4711 and (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1990, the Department published in the **Federal Register** (55 FR 28270) the antidumping duty order on INC from the United Kingdom. On March 28, 2003, TIL requested that the Department conduct a changed circumstances review of the antidumping duty order on INC from the United Kingdom, claiming that it is the successor-in-interest to ICI, and, as such, it is entitled to receive the same antidumping treatment accorded to ICI. On April 11, 2003, Green Tree notified the Department that it opposed TIL's request to be considered the successor-in-interest to ICI. On July 18, 2003, and August 14, 2003, at the request of the Department, TIL submitted additional information and documentation pertaining to its changed circumstances request. Notwithstanding Green Tree's objection to finding TIL to be the successor-in-interest to ICI, record evidence indicates that, with the exception of the managing director of the INC business, TIL has made no material changes to the management, production facilities, suppliers of raw materials, or customers of ICI's former INC business. Further, while Green Tree expressed concern over a possible difference between the cost of capital for TIL and ICI, the record indicates that many of the significant factors that affect costs have not changed. Finally, although there has been a change in the legal entity performing U.S. selling functions under TIL, the record indicates that there have been no significant changes in the sales process or pricing of INC. *See Preliminary Results* at 59585. On October 16, 2003, the Department published its preliminary results in the **Federal Register**, finding TIL to be the successor-in-interest to ICI for purposes of determining antidumping liability. *See Preliminary Results*. We invited interested parties to comment on these findings. On October 31, 2003, and November 5, 2003, Green Tree and TIL, respectively, submitted letters in which they notified the Department that they would not file comments on the *Preliminary Results*.

Scope of Review

Imports covered by this review are shipments of INC from the United Kingdom. INC is a dry, white amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. INC is used as a film-

former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

INC is currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item number 3912.20.0000. While the HTSUS classification is provided for convenience and customs purposes, the written description remains dispositive as to the scope of the product coverage.

Final Results of Changed Circumstances Review

Because we received no comments from interested parties on the *Preliminary Results*, and for the reasons stated in the *Preliminary Results*, we find the record supports TIL to be the successor-in-interest to ICI for antidumping duty cash deposit purposes. We will instruct Customs and Border Protection to suspend shipments of subject merchandise made by TIL at ICI's cash deposit rate (*i.e.*, 3.06 percent) effective upon publication of this notice. This cash deposit rate shall remain in effect until publication of the next administrative review in which TIL participates.

We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and section 351.216 of the Department's regulations.

Dated: December 1, 2003.

James S. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30490 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Steel Import Licensing and Surge Monitoring

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of Steel Import Licensing and Surge Monitoring program.

SUMMARY: Pursuant to the Presidential Proclamation to Provide for the Termination of Action Taken with Regard to Imports of Steel Products, issued December 4, 2003, the Department of Commerce will continue the Steel Import Licensing and Surge Monitoring program established effective February 1, 2003 (19 CFR part 360).

DATES: This notice is effective December 4, 2003.

FOR FURTHER INFORMATION CONTACT: Julie Al-Saadawi: telephone (202) 482–1930; fax (202) 501–1377; e-mail *steel_license@ita.doc.gov.* The information contained in this notice is also posted on the import licensing Web site (*http://ia.ita.doc.gov/steel/license/*).

SUPPLEMENTARY INFORMATION: On March 5, 2002, the President issued Proclamation 7529, implementing safeguard measures with respect to certain imported steel products pursuant to sections 201 and 203 of the 1974 Trade Act, 19 U.S.C. 2251, 2253 (67 FR 10553). In an accompanying Memorandum, the President instructed the Secretary of the Treasury and the Secretary of Commerce to establish a system of import licensing to facilitate the monitoring of imports of these steel products, and directed the Secretary of Commerce to publish regulations in the **Federal Register** establishing such a system of import licensing (67 FR 10593, 10596). Pursuant to this direction, Import Administration published proposed regulations establishing a system of import licensing on July 18, 2002 (67 FR 47338), and promulgated final regulations on December 31, 2002, effective February 1, 2003 (67 FR 79845).

On December 4, 2003, the President issued a proclamation terminating the safeguard measures and directing the Secretary of Commerce to continue the steel import licensing system established effective February 1, 2003, until the earlier of March 21, 2005, or such time as the Secretary of Commerce establishes a replacement program.

19 CFR 360.105, promulgated December 31, 2002, and effective February 1, 2003, provided as follows: ''The licensing program will be in effect for the duration of the safeguard measures only. Licenses will be required on all subject imports entered during this period. The licenses will be valid for 10 business days after the expiration of the safeguard measures to allow for the final filing of required Customs documentation. Information collected under this system will not be kept longer than the period of time legally required beyond the expiration of these remedies.'' Section 105, which is itself not a termination provision, referred to the initial period (three years and one day) for which the safeguard measures were proclaimed by the President (Proclamation 7529, section 9), after which they would expire in the absence of further action by the President. The duration of the licensing program is not affected by the early termination of such measures. The President retains authority to implement such other actions, including but not limited to the licensing program, as he deems appropriate and feasible pursuant to 19 U.S.C. 2253, without regard to the early termination of the safeguard measures.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30571 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120103D]

Magnuson-Stevens Act Provisions; Atlantic Highly Migratory Species; Exempted Fishing and Scientific Research Permits

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

ACTION: Issuance of 2004 Exempted Fishing and Scientific Research Permits; request for comments.

SUMMARY: NMFS announces the intent to issue Exempted Fishing Permits (EFPs) and Scientific Research Permits (SRPs) for the collection of Atlantic highly migratory species (HMS). These EFPs/SRPs would authorize collections of a limited number of tunas, swordfish, billfishes, and sharks from Federal waters in the Atlantic Ocean and Gulf of Mexico for the purposes of scientific data collection and public display. Generally, the EFPs/SRPs will be valid through December 31, 2004. NMFS also announces the intent to consider issuing EFPs upon receiving applications from U.S. fishermen whose vessels fish for Atlantic HMS while operating under chartering arrangements within the Exclusive Economic Zone (EEZ) of other nations to ensure consistency with another country's regulations without violating U.S. regulations.

DATES: Written comments on these collection, research and fishing activities will be considered by NMFS in issuing such EFPs/SRPs if received on or before December 24, 2003.

ADDRESSES: Send comments to Christopher Rogers, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. EFP/SRP applications and copies of the regulations under which EFPs/SRPs are issued may also be requested from this address. Comments also may be sent via facsimile (fax) to (301)713–1917. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Heather Stirratt or Sari Kiraly, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: EFPs and SRPs are requested and issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and/or the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). Regulations at 50 CFR 600.745 and 50 CFR 635.32 govern scientific research activity, exempted fishing, and exempted educational activity with respect to Atlantic HMS.

Issuance of EFPs and/or SRPs may be necessary because possession of certain shark species is prohibited, possession of billfishes on board commercial fishing vessels is prohibited, and because the commercial fisheries for bluefin tuna, swordfish and large coastal sharks may be closed for extended periods, during which collection of live animals and/or biological samples would otherwise be prohibited. In addition, NMFS regulations at 50 CFR 635.32 regarding implantation or attachment of archival tags in Atlantic HMS require prior authorization and a report on implantation activities.

NMFS seeks public comment on its intention to issue EFPs for the purpose of collecting biological samples under at-sea fisheries observer programs. NMFS intends to issue EFPs to any NMFS or NMFS-approved observer to bring onboard and possess, for scientific research purposes, biological sampling, measurement, etc., any Atlantic swordfish, Atlantic shark, or Atlantic billfish, provided the fish is a recaptured tagged fish, dead prior to being brought onboard, or specifically authorized for sampling by the Director of the Office of Sustainable Fisheries at the request of the Southeast Fisheries Science Center or Northeast Fisheries Science Center. On average, several hundred swordfish and sharks are collected by at-sea observers under such EFPs in any given year.

Collection of bluefin tuna may be authorized for scientific research, age and growth, genetic, and spawning studies. In 2003, five permits for bluefin tuna archival tagging and research were issued. In addition, NMFS issued 12 EFPs allowing commercial pelagic longline fishing vessels to assist NOAA scientists in conducting sea turtle bycatch reduction experiments in the Northeast Distant Waters (NED) of the Grand Banks.

NMFS is also seeking public comment on its intention to issue EFPs for the collection of restricted species of sharks for the purpose of public display. In the Final Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (HMS FMP), NMFS established a public display and research quota of 60 metric tons wet weight for this purpose. NMFS has preliminarily determined that, based on average weight of sharks landed, approximately 3,000 sharks could be taken with this current quota. The actual number of sharks that would be taken depends on the species and size of the sharks. NMFS believes that harvesting this amount for public display will have a minimal impact on the stock. In 2003, seven EFPs, which authorized the collection of 352 sharks for display purposes, were issued. The total number reported as actually taken will not be known until early 2004. However, of the 402 sharks authorized for collection in seven EFPs issued during 2002, only 37 sharks were reported taken.

Generally, the authorized collections or exemptions would involve activities otherwise prohibited by regulations implementing the HMS FMP and Amendment 1 to the Atlantic Billfish Fishery Management Plan. The EFPs, if issued, may authorize recipients to fish for and possess tunas, billfishes, swordfish, and sharks outside the applicable Federal commercial seasons, size limits and retention limits, or to fish for and possess prohibited species.

NMFS has undertaken a restructuring of the exempted fishing application and reporting procedures for Atlantic HMS. To that effect, on November 10, 2003, NMFS published a final rule (68 FR

63738) that modifies the existing regulations, with the intent of improving accountability of these fishing activities, particularly those conducted to collect sharks for public display and those undertaken for scientific research. This rule will be effective December 10, 2003.

Specifically, the final rule contains the following provisions: (1) EFP holders must notify the local NMFS Office for Law Enforcement at least 24 hours prior to departure for all fishing trips conducted to collect HMS for the purpose of public display; (2) all live HMS retained for the purpose of public display must be tagged while still on board the fishing vessel with either a conventional dart tag or a microchip Passive Integrated Transponder (PIT) tag, both of which will be supplied by NMFS; (3) if warranted, NMFS may specify conditions for conducting fishing activities to collect HMS for public display in order to minimize mortalities of either targeted or bycatch species; (4) NMFS reserves the right to place an at-sea observer on board an authorized HMS collection vessel; (5) EFP and SRP holders must report all HMS collection activities regardless of whether they occur inside or outside the EEZ; (6) negative reports must be submitted for months when no HMS are collected; (7) applicants for EFP and SRP renewals must include with the application the previous year's year-end report and any delinquent reports for permits issued in prior years, in order to obtain the new permit; and (8) prohibitions concerning the submission of false information and violations of the terms and conditions of EFPs and SRPs. Although unrelated to these provisions, the rule also addresses EFPs for the pelagic longline directed swordfish fishery, in that EFPs would no longer be required for vessels to delay offloading of swordfish when an approved vessel monitoring system (VMS) is operating on board the vessel.

Comments are also requested for the issuance of EFPs to vessels fishing for HMS while operating under chartering arrangements within the EEZ of other nations. These EFPs would allow a U.S. fishing vessel to fish so as to be consistent with another country's regulations without violating U.S. regulations, and would ensure that such vessels report to the proper authorities. To date, however, NMFS has not received requests for such EFPs.

Also in November 2003, NMFS published the Final Amendment 1 to the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks. While the Amendment focuses primarily on shark management measures, the issuance of EFPs and SRPs is addressed in that a separate display permitting system for HMS is to be developed apart from EFPs and SRPs issued for other purposes. This is an administrative change only, and current quotas as well as application and reporting requirements remain as established under the existing system. This provision may be implemented in a final rule that will likely be published in mid December 2003.

Final decisions on the issuance of any EFPs/SRPs will depend on the submission of all required information about the proposed activities, NMFS' review of public comments received on this notice, consistency with conclusions in the Final Environmental Impact Statement (EIS) contained in the Final HMS FMP (64 FR 13575; March 19, 1999), Environmental Assessments (EAs) or EISs, and any consultations with any appropriate Regional Fishery Management Councils, states, or Federal agencies. NMFS does not anticipate any environmental impacts from the issuance of these EFPs other than impacts already assessed in the Final HMS FMP.

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated:December 3, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–30487 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 073103B]

Marine Mammals; File No. 881–1710

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Alaska SeaLife Center (ASLC), 301 Railway Avenue, Seward, AK 99664, (Shannon Atkinson, Ph.D., Principal Investigator) has been issued a permit to take harbor seals (Phoca vitulina) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On May 7, 2003, notice was published in the **Federal Register** (68 FR 24443) that a request for a scientific research permit to take the species identified above had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

This permit authorizes collection of eight weaned harbor seals from the wild over a two to three year period in the Gulf of Alaska for long-term holding and research at the ASLC. A maximum of 30 capture attempts will occur per year, and during each capture attempt, up to 20 seals may incidentally be caught in nets and released, and up to 100 seals may be incidentally disturbed at the haul-out sites. Weaned female pups captured will be sampled in the wild as follows: sedation or anesthesia; body mass, morphometrics, and 3D photogrammetry; blood, blubber, whisker, and skin samples; body composition; flipper tagging and microchip implant; ultrasound; fecal and urine collection; skin and mucosal swabs; endoscopy; and disease screening.

Once at the ASLC the following will be performed on the harbor seals: monthly health assessments (as described in sampling above); hormone challenge experiments; weights and measurements; blood sampling; fecal and urine sampling; blubber ultrasound; bio-electrical impedance; total blood volume determination; deuterium oxide administration; feeding trials; mucosal swabs, saliva collection, examination of external genitalia; blubber biopsies; video, photographic, radiographic, digital, and thermal imaging; and anesthesia and sedation as deemed necessary by the attending veterinarian.

This study investigates the importance of lipids in the diets of harbor seals and the long-term effects of high and low lipid diets on the growth, development, maturity, and health of seals. The permit has been issued for a five-year period.

Dated: December 2, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–30488 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Cambodia

December 4, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Memorandum of Understanding of December 29, 2001, between the Governments of the United States and Cambodia amends and extends the bilateral textile agreement of January 20, 1999 to cover the period January 1, 2004 through December 31, 2004.

These limits will be revised when Cambodia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Cambodia.

In the letter published below, the Chairman of CITA directs the Commissioner of the Bureau of Customs and Border Protection to establish the 2004 limits, which include a fourteen (14) percent increase to all of Cambodia's quotas under the Labor Standards provision described in **Federal Register** notice 64 FR 60428, published on November 5, 1999.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the availability of the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 4, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Memorandum of Understanding, dated December 29, 2001, between the Governments of the United States and Cambodia, you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Cambodia and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
331/631	2,364,645 dozen pairs.
334/634	259,348 dozen.
335/635	99,163 dozen.
338/339	4,080,920 dozen.
340/640	1,144,183 dozen.
345	143,403 dozen.
347/348/647/648	4,576,732 dozen.
352/652	915,347 dozen.
435	22,444 dozen.
438	107,834 dozen.
445/446	131,797 dozen.
638/639	1,373,019 dozen.
645/646	381,394 dozen.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (*see* directive dated December 4, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits will be revised when Cambodia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Cambodia.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E3–00485 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

December 3, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://www.otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

These limits do not apply to goods entered under the Outward Processing Program, as defined in the notice and letter to the Commissioner of Customs, published in the **Federal Register** on December 14, 1999 (*see* 64 FR 69746).

Any shipment for entry under the Outward Processing Program which is not accompanied by valid certification in accordance with the provisions established in the notice and letter to the Commissioner of Customs, published in the **Federal Register** on December 14, 1999 (*see* 64 FR 69743), shall be denied entry. However, the Government of Macedonia may authorize the entry and charges to the appropriate specific limits by the issuance of a valid visa. *Also see* 63 FR 17156, published on April 8, 1998.

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 68 FR 1599, published on January 13, 2004). Information regarding the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 3, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month limit
433	23,414 dozen.
434	11,707 dozen.
435	31,955 dozen.
443	196,914 numbers.
448	70,241 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (*see* directive dated October 9, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits do not apply to goods entered under the Outward Processing Program, as defined in the letter to the Commissioner of Customs, dated December 8, 1999 (*see* 64 FR 69746).

Any shipment for entry under the Outward Processing Program which is not accompanied by a valid certification in accordance with the provisions established in the letter to the Commissioner of Customs, dated December 9, 1999 (*see* 64 FR 69743), shall be denied entry. However, the Government of Macedonia may authorize the entry and charges to the appropriate specific limits by the issuance of a valid visa. *Also see* directive dated April 2, 1998, (63 FR 17156). Any shipment which is declared for entry under the Outward Processing Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E3–00486 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

December 3, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended and extended, and Memorandum of Understanding (MOU) dated July 13, 2000 between the Governments of the United States and Nepal establish limits for the period January 1, 2004 through December 31, 2004.

These limits will be revised when Nepal becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Nepal.

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the 2004

CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 3, 2003.

Commissioner,
Bureau of Customs and Border Protection,
Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; the Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended and extended; and the Memorandum of Understanding dated July 13, 2000 between the Governments of the United States and Nepal, you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Nepal and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
336/636	365,462 dozen.
340	479,856 dozen.
341	1,333,220 dozen.
342/642	418,806 dozen.
347/348	1,080,848 dozen.
363	9,773,596 numbers.
369–S [1]	1,106,886 kilograms.
640	241,509 dozen.
641	544,541 dozen.

[1] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Nepal.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated October 8, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits will be revised when Nepal becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Nepal.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E3–00487 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

December 3, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at *http://www.customs.gov.* For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Pakistan and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits.

Carryforward that has been applied to the 2003 limits is being deducted from the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the availability of the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 3, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Pakistan and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following limits:

Category	Twelve-month restraint limit
Specific limits	
219	15,753,418 square meters.
226/313	209,446,767 square meters.
237	766,188 dozen.
239pt. [1]	3,308,962 kilograms.
314	11,457,029 square meters.
315	132,367,690 square meters.
317/617	61,568,153 square meters.
331pt./631pt. [2]	1,154,600 dozen pairs.
334/634	520,435 dozen.
335/635	803,709 dozen.
336/636	919,428 dozen.
338	7,440,057 dozen.
339	2,604,418 dozen.
340/640	1,225,903 dozen of which not more than 459,713 dozen shall be in Categories 340–D/640–D [3].
341/641	1,586,011 dozen.
342/642	682,604 dozen.
347/348	1,443,013 dozen.
351/651	704,893 dozen.
352/652	1,532,378 dozen.

Category	Twelve-month restraint limit
359–C/659–C [4]	2,758,281 kilograms.
360	9,323,231 numbers.
361	10,840,965 numbers.
363	69,203,441 numbers.
369–S [5]	1,328,942 kilograms.
613/614	41,472,382 square meters.
615	44,119,547 square meters.
625/626/627/628/629	135,692,020 square meters of which not more than 67,846,012 square meters shall be in Category 625; not more than 67,846,012 square meters shall be in Category 626; not more than 67,846,012 square meters shall be in Category 627; not more than 14,037,107 square meters shall be in Category 628; and not more than 67,846,012 square meters shall be in Category 629.
638/639	906,896 dozen.
647/648	1,719,441 dozen.
666–P [6]	1,255,461 kilograms.
666–S [7]	6,646,555 kilograms.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[3] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[4] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[5] Category 369–S: only HTS number 6307.10.2005.

[6] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[7] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated November 1, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–30481 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Poland

December 3, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Poland and exported during the period January 1, 2004 through December 31, 2004 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the limits for the 2004 period.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2004). Information regarding the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 3, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Poland and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
335	367,798 dozen.
338/339	3,960,929 dozen.
410	2,993,198 square meters.
433	21,137 dozen.

Category	Twelve-month restraint limit
434	11,529 dozen.
435	15,086 dozen.
443	251,429 numbers.
611	11,321,188 square meters.
645/646	579,994 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated November 1, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–30482 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Qatar

December 3, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov.* For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Qatar and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the limits for the 2004 period.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 3, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Qatar and exported during the twelve-month period beginning on January 1, 2004 through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	806,934 dozen.
341/641	372,431 dozen.
347/348	918,663 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated November 1, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–30483 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Russia

December 3, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing a limit.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov.* For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement, effected by exchange of notes dated August 13, 1996 and September 9, 1996, as amended on February 26, 2001, and April 30, 2001, between the Governments of the United States and the Russian Federation establishes a limit for wool textile products in Category 435 for the period January 1, 2004 through December 31, 2004.

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the limit for the period January 1, 2004 through December 31, 2004.

This limit may be revised if Russia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Russia.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the availability of the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 3, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement, effected by exchange of notes dated August 13, 1996 and September 9, 1996, as amended on February 26, 2001, and April 30, 2001, between the Governments of the United States and the Russian Federation, you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 435, produced or manufactured in Russia and exported during the period beginning on January 1, 2004 and extending through December 31, 2004, in excess of 58,583, dozen. [1]

[1] The limit set forth above is subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Russian Federation.

Products in the above category exported during 2003 shall be charged to the applicable category limit for that year (see directive dated November 1, 2002) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

This limit may be revised if Russia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Russia.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–30484 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Oman

December 3, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov.* For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Oman and exported during the period January 1, 2004 through December 31, 2004 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish limits for the 2004 period.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 3, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Oman and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
334/634	190,357 dozen.
335/635	402,819 dozen.
338/339	835,850 dozen.
340/640	402,819 dozen.
341/641	302,113 dozen.
347/348	1,440,076 dozen.
647/648	569,494 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the

ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated November 1, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E3–00488 Filed 12–8–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Supplemental Record of Decision to Conduct Target Launches From Kodiak Launch Complex in Support of the Ground-Based Midcourse Defense Extended Test Range

AGENCIES: Department of Defense, Missile Defense Agency (MDA); Federal Aviation Administration (FAA), Office of the Associate Administrator for Commercial Space Transportation.

ACTION: Notice; Record of Decision (ROD).

SUMMARY: The MDA is issuing this Supplemental ROD to conduct target launches from the Kodiak Launch Complex (KLC) to support the Ground-Based Midcourse Defense (GMD) Extended Test Range (ETR).

FOR INFORMATION CONTACT: For further information on the GMD ETR Environmental Impact Statement (EIS) or this ROD contact Ms. Julia Hudson-Elliot, U.S. Army Space and Missile Defense Command, Attn: SMDC–EN–V, P.O. Box 1500, Huntsville, Alabama 35807–3801.

Public reading copies of the GMD ETR Final EIS, the ROD, and the supplemental ROD are available for review at the public libraries within the communities near proposed activities listed below, and on the MDA Internet site: *http://www.acq.osd.mil./bmdo/.*

- Anchorage Municipal Library, 3600 Denali St., Anchorage, AK 99503
- Kodiak City Library, 319 Lower Mill Bay Rd., Kodiak, AK 99615
- Mountain View Branch Library, 150 S. Bragaw St., Anchorage, AK 99508

SUPPLEMENTARY INFORMATION:

MDA Decision

This ROD selects the remaining portions of the activities proposed in Alternative 2 of the EIS regarding KLC. Those activities include the capability to conduct dual target launches from KLC.

Background

The MDA prepared the GMD ETR EIS to analyze potential impacts on the environment posed by proposed operationally realistic testing in the ETR.

On August 13, 2003, the MDA issued a ROD based on analysis contained in the GMD ETR EIS, **Federal Register**, August 26, 2003 (Volume 68, Number 165), Page 51251–56. The MDA Director considered the information contained within the GMD ETR EIS as well as cost, mission requirements, and other factors in deciding to establish a GMD extended test range capability, to provide for the construction and operation of a Sea-Based-Band Radar (SBX), and to select the location of the SBX Primary Support Base (PSB). That ROD selected portions of Alternative 2, as examined in the EIS, that included the capability to conduct single and dual launches of interceptor and target missiles from the Ronald Reagan Ballistic Missile Defense Test Site (RTS) and Vandenberg Air Force Base (AFB).

At the time when the ROD was signed, the FAA was contemplating re-licensing activities at KLC. Accordingly, MDA deferred the KLC portion of Alternative 2 to ensure FAA re-licensing posed no additional issues. On September 12, 2003, the FAA issued a new license for KLC activities. MDA is now issuing this supplemental ROD regarding the deferred KLC portion of Alternative 2.

NEPA Process

The GMD ETR EIS was prepared pursuant to the Council on Environmental Quality (CEQ) regulation implementing the National Environmental Policy Act (NEPA) (40 CFR parts 1500–1508), DoD Instruction 4715.9, and applicable service environmental regulations that implement these laws and regulations.

The Notice of Intent (NOI) to prepare an EIS for the GMD ETR was published in the **Federal Register** on March 28, 2003, initiating the public scoping process. Public scoping meetings were held from April to December 2002 in eight communities perceived to be affected by the proposed GMD ETR. The Notice of Availability (NOA) of the GMD ETR Draft EIS was published in the **Federal Register** on February 7, 2003. This initiated a public review and comment period for the Draft EIS. Seven public hearings were held in February and March 2003. Comments on the Draft EIS were considered in the preparation of the Final EIS. The NOA for the Final EIS was published in the **Federal Register** on July 15, 2003, initiating an additional 30-day review period. A ROD was signed on August 13, 2003, selecting Alternative 2 described in the EIS, while deferring a decision on the KLC portion of Alternative 2. The ROD is the culmination of the NEPA process.

Alternatives Considered

During the EIS process, alternatives to the proposed action were considered including the No-Action Alternative. Alternatives were organized around potential additional interceptor launch sites to complement the current test scenarios with interceptor launches from RTS. Interceptor missiles would be launched from KLC under Alternative 1, from Vandenberg AFB under Alternative 2, and from both locations under Alternative 3. For details of the alternatives considered, refer to **Federal Register,** August 26, 2003 (Volume 68, Number 165), pages 51251–51256.

Environmental Impacts of Alternatives

The GMD ETR EIS analyzed the environment in terms of 14 resource areas: Air quality, airspace, biological resources, cultural resources, geology and soils, hazardous materials and hazardous waste, health and safety, land use, noise, socioeconomic, transportation, utilities, visual and aesthetic resources, and water resources. Subsistence resources were also considered for potential sites in Alaska. Environmental Justice was addressed separately. Each resource area was discussed at each location as applicable. The potential for cumulative impacts was also evaluated in the EIS.

The impacts of the various alternatives are summarized in depth in Tables ES–1 A, ES1B, and Tables ES 2 through ES II in the Fianl ETR EIS (available on the MDA Internet site: *http://www.acq.osd.mi./bmdo/*). The following is a short summary of the potential impacts of the alternatives at KLC, including the NO-Action Alternative:

Kodiak Launch Complex

a. *Air Quality.* Under the No-Action Alternative, single target and commercial launches would continue.

Under Alternative 2 (the Selected Alternative), a minimal increase in air emissions from dual target launches, support facilities construction, and operation of mobile telemetry will not affect the region's current attainment status. The results of modeling a dual Peacekeeper target launch to determine exhaust emissions of aluminum oxide, hydrogen chloride, and carbon monoxide show that the level of hydrogen chloride will be below the 1-hour Air Force standard, but will exceed the peak hydrogen chloride standard for a short duration. Other emissions were determined to be within National Ambient Air Quality Standards (NAAQS) and Alaska Ambient Air Quality Standards (AAQS). A single Peacekeeper target launch would be within NAAQS, Alaska AAQS, and U.S. Air Force standards. Significant air quality impacts due to target launches are not anticipated. Under Alternative 1, the impacts would be the same as Alternative 2 with the addition of GBI silo construction and GBI launches. The results of modeling to determine exhaust emissions of aluminum oxide, hydrogen chloride, and carbon monoxide show that concentrations produced by dual launches of a Ground-Based Interceptor would remain within NAAQS, Alaska AAQS, and U.S. Air Force standards Significant air quality impacts due to Ground-Based Interceptor (GBI) launches are not anticipated. Alternative 3 would have the same impacts as Alternative 1.

b. *Biological Resources.* Under the No-Action Alternative, temporary effects to vegetation from emissions, discoloration, and foliage loss and temporary, short-term startle effects from noise to wildlife and birds would be possible during testing. Although a remote possibility, individual animals close to the water's surface could be hit by debris. Under Alternative 2 (the Selected Alternative), loss of small amounts of mainly upland vegetation will occur due to construction. Fence lines will be altered to avoid impacts to wetlands. Testing impacts will be similar to those noted in the No Action Alternative. Mobile sensors necessary to support GMD ETR activities will be located on existing disturbed areas with minimal effect to biological resources. Under Alternative 1, the impacts would be the same as Alternative 2, plus additional acreage would be disturbed from GBI silo construction and the addition of dual GBI launches. Alternative 3 would have the same impacts as Alternative 1.

c. *Hazardous Materials and Hazardous Waste.* Under the No-Action Alternative, continued handling and use of limited quantities of hazardous and toxic materials related to pre-launch, launch, and post-launch activities would generate small quantities of hazardous waste. Under Alternative 2 (Selected Alternative), the single and dual target launch activities and support facilities construction will use small quantities of hazardous materials, which will result in the generation of some hazardous and non-hazardous waste that will be similar to current operations. All hazardous materials and waste will be handled in accordance with applicable state and federal regulations. No impact from short-term operation of mobile sensors at existing gravel pad areas are expected. Under Alternative 1, the impacts would be the same as Alternative 2, plus additional construction for IGBI silos and the addition of dual GBI launches. Hazardous materials and hazardous waste handling and potential impacts from the addition of GBI construction and launches would be similar to Alternative 2. Alternative 3 would have the similar impacts as Alternative 1.

d. *Health and Safety.* Under the No-Action Alternative, planning and execution of target and commercial launches would continue. Ground and Launch Hazard Areas, Notices to Airmen, Notices to Mariners, and program Safety plans would protect workers and the general public. Under Alternative 2 (Selected Alternative) planning and execution of single and dual target launches will include establishing Ground and Launch Hazard Areas, issuing Notices to Airmen and Notices to Mariners, and adherences to program Safety plans. These actions will be in compliance with federal, state, and local health and safety requirements and regulations, as well as Department of Defense and KLC Safety Policy and will result in no significant impacts to health and safety. Due to the same precautions taken above, Alternative 1 and 3 would also result in no significant impacts to health and safety.

e. *Land Use.* Under the No-Action Alternative, publication of availability of KLC's beaches and coastline would continue. Under Alternative 2 (Selected Alternative), minimal impacts will occur as a result of site preparation and new construction. This activity will limit the use of a small portion of the overall land available for livestock grazing. Only temporary closures during the transportation of missile components to the launch facilities and up to a full day closure on launch days will occur for the Pasagshak Point Road at the KLC site boundary. Under Alternative 1, the proposed activities would result in impacts similar to Alternative 2, and would not significantly impact the availability of recreational opportunities. Impacts under Alternative 3 would be the same as Alternative 1.

f. *Water Resources.* Under the No-Action Alternative, missile launches would continue to disperse exhaust emission products over a large area. These emissions would not cause a significant water quality impact, and water quality monitoring would continue on an as-needed basis. Under Alternative 2 (Selected Alternative), there is a minor potential for short-term increase in erosion and turbidity of surface waters during construction. Missile launches will disperse exhaust emission products over a large area. These emissions will not cause a significant water quality impact. Water quality monitoring will continue on an as-needed basis. Under Alternative 1, the impacts would be similar as Alternative 2, plus additional construction for GBI silos and the addition of dual GBI launches. Potential impacts from the addition of GBI construction and launches would be similar to Alternative 2. Alternative 3 would have the similar impacts as Alternative 1.

F. Mitigation Measures and Monitoring

The applicable mitigation measures specified for each of the sites selected will be implemented as part of the GMD ETR action. A Mitigation Monitoring Plan has been developed to assist in tracking and implementing these mitigation measures. With the implementation of the mitigation measures, all practicable means to avoid or minimize environmental harm from establishing the GMD ETR considered in this ROD have adopted.

G. Environmentally Preferred Alternative

The environmentally preferred alternative in the EIS is the No-Action Alternative (not proceeding with the GMD ETR), since there would be no new construction or operation of GMD elements at any of the potential sites. Continuation of current site operations at these locations would result in few additional environmental impacts.

Among the three alternatives in the EIS, Alternative 2 is the environmentally preferred action to establish and operate the GMD ETR. The activities proposed in Alternative 2 for KLC will require less construction and ground disturbance than the other alternatives.

Conclusion

In accordance with NEPA, Lieutenant General Kadish considered the information contained within the GMD ETR EIS as well as cost, mission requirements and other factors in deciding to establish and extended GMD test range capability at KLC.

He previously chose Alternative 2, and deferred the portion of Alternative 2 regarding activities at KLC until the FAA re-licensing activity occurred. After his review of this action, he is satisfied that all concerns have been addressed, and is accordingly issuing this supplemental ROD regarding KLC.

Dated: December 3, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–30395 Filed 12–8–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0115]

Federal Acquisition Regulation; Submission for OMB Review; Notification of Ownership Changes

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a reinstatement to OMB clearance (9000–0115).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning notification of ownership changes. A request for public comments was published in the **Federal Register** at 68 FR 48602 on August 14, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 8, 2004.

ADDRESSES: Submit comments, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Edward Loeb, Policy Advisor, Office of Acquisition Policy, GSA, (202) 501–0650.

SUPPLEMENTARY INFORMATION:

A. Purpose

Allowable costs of assets are limited in the event of change in ownership of a contractor. Contractors are required to provide the Government adequate and timely notice of this event per the FAR clause at 52.215–19, Notification of Ownership Changes.

B. Annual Reporting Burden

Respondents: 100.

Responses Per Respondent: 1.

Total Responses: 100.

Hours Per Response: 125.

Total Burden Hours: 125.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0115, Notification of Ownership Changes, in all correspondence.

Dated: December 2, 2003.

Ralph J. Destefano,

Acting Director, Acquisition Policy Division.

[FR Doc. 03–30343 Filed 12–8–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0034]

Federal Acquisition Regulation; Submission for OMB Review; Examination of Records by Comptroller General and Contract Audit

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a reinstatement to OMB clearance (9000–0034).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning examination of records by comptroller general/audit-negotiation now retitled examination of records by comptroller general and contract audit. A request for public comments was published in the **Federal Register** at 68 FR 47913 on August 12, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 8, 2004.

ADDRESSES: Submit comments, including suggestions for reducing this burden, to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Edward Loeb, Policy Advisor, Office of Acquisition Policy, GSA, (202) 501–0650.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Audit and Records-Negotiation clause, 52.215–2; Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items clause, 52.212–5(d); and Audit and Records-Sealed Bidding clause, 52.214–26, implement the requirements of 10 U.S.C. 2313, 41 U.S.C. 254, and 10 U.S.C. 2306. The statutory requirements are that the Comptroller General and/or agency shall have access to, and the right to, examine certain books, documents and records of the contractor for a period of 3 years after final payment. The record retention periods required of the contractor in the clauses are for compliance with the aforementioned statutory requirements. The information must be retained so that audits necessary for contract surveillance, verification of contract pricing, and reimbursement of contractor costs can be performed.

B. Annual Reporting Burden

Respondents: 19,142.
Responses Per Respondent: 20.
Total Responses: 382,840.
Hours Per Response: 0.167.
Total Burden Hours: 63,934.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0034, Examination of Records by Comptroller General and Contract Audit in all correspondence.

Dated: December 2, 2003.

Ralph J. Destefano,

Acting Director, Acquisition Policy Division.

[FR Doc. 03–30344 Filed 12–8–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0157]

Federal Acquisition Regulation; Submission for OMB Review; Consolidated Form for Selection of Architect-Engineer Contracts (SF 330)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0157).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning consolidated form for selection of architect-engineer and contracts (SF 330). A request for public comments was published at 68 FR 55375 on September 25, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 8, 2004.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Cecelia Davis, Acquisition Policy Division, GSA (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 330, Part I is used by all Executive agencies to obtain information from architect-engineer firms interested in a particular project. The information on the form is reviewed by a selection panel composed of professional people and assists the panel in selecting the most qualified architect-engineer firm to perform the specific project. The form is designed to provide a uniform method for architect-engineer firms to submit information on experience, personnel, capabilities of the architect-engineer firm to perform along with information on the consultants they expect to collaborate with on the specific project.

Standard Form 330, Part II is used by all Executive agencies to obtain general uniform information about a firm's experience in architect-engineering projects. Architect-engineer firms are encouraged to update the form annually. The information obtained on this form is used to determine if a firm should be solicited for architect-engineer projects.

B. Annual Reporting Burden

Respondents: 5,000.
Responses Per Respondent: 4.
Total Responses: 20,000.
Hours Per Response: 29.
Total Burden Hours: 580,000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0157, Consolidated Form for Selection of Architect-Engineer Contracts (SF 330), in all correspondence.

Dated: December 3, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–30469 Filed 12–8–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Inspector General; Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, DoD.

ACTION: Notice to add a System of Records.

SUMMARY: The Office of the Inspector General, DoD is proposing to add an exempt system of records to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

The exemption is needed because during the course of processing a Congressional inquiry, exempt materials from other systems of records may become part of the records in this system. To the extent that copies of exempt records from those ''other'' systems of records are entered into the Congressional case records, the Office of the Inspector General, DoD, hereby claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the original primary systems of records, which they are a part.

Therefore, the Inspector General, DoD is proposing to exempt the system of records CIG–21, entitled, ''Congressional Correspondence Tracking System'' from 5 U.S.C. 552a(j)(2), (k)(1) through (k)(7).

DATES: This proposed action is effective without further notice on January 8, 2004 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Office of the Inspector General, Department of Defense, 400 Army Navy Drive, Room 223, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Mr. Darryl R. Aaron at (703) 604–9785.

SUPPLEMENTARY INFORMATION: The Inspector General, DoD, systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 17, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 20 , 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

CIG–21

SYSTEM NAME:

Congressional Correspondence Tracking System.

SYSTEM LOCATION:

Office of Communications and Congressional Liaison, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who contacts a member of Congress requesting that the member solicit information from the Office of the Inspector General of the Department of Defense (OIG DoD) on their behalf.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and related records from and to members of Congress pertaining to requests for congressional assistance in resolving problems. Records contain representative's name, constituent's name, subject matter, and case control number. The records may also contain the constituent's Social Security Number, home address, home telephone number, or related personal information provided by the representative making the inquiry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978 (Pub. L. 95–452), as amended; DoD Directive 5106.1, Inspector General of the Department of Defense; OIG Regulation 5545.1, Participation in Congressional Activities; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain a record of all Congressional inquiries and the OIG, DoD response, and to conduct the necessary research so as to provide information responsive to Congressional inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' set forth at the beginning of the OIG compilation of system of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records are stored in file folders, safes, computerized index listings and electronic storage media on local area network.

RETRIEVABILITY:

Retrieved by constituent's name, representative's name, or by case control number(s).

SAFEGUARDS:

Records are secured in a locked or guarded building and locked cabinets during non-duty hours. Paper records are stored in file cabinets located in an office suite, accessible only to OIG DoD personnel who must use the records to perform their duties.

Computer systems in which records reside are protected through the use of assigned user identification(s) and multiple levels of passwords restricting access.

RETENTION AND DISPOSAL:

Records are permanent. Retire to the Washington National Records Center. Transfer to National Archives in two-year blocks when most recent record is 8 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Communications and Congressional Liaison, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Office of Communications and Congressional Liaison, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written requests should contain the individual's full name, all former names and alias under which the file may be maintained and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written requests to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written requests should contain the individual's full name, all former names and alias under which the file may be maintained and signature.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The files are composed of correspondence or memoranda from Members of Congress or their staffs.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of processing a Congressional inquiry, exempt materials from other systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those ''other'' systems of records are entered into this system of records, the Office of the Inspector General, DoD hereby claims the same exemptions for the records from those ''other'' systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with

requirements of 5 U.S.C. 553 (b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 312. For additional information contact the system manager.

[FR Doc. 03–30397 Filed 12–8–03; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Air Force is proposing to add a system of records notice to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed system of records will be exempt to increase its value for law enforcement purposes.

DATES: The actions will be effective on January 8, 2004 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force FOIA/Privacy Manager, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne P. Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, was submitted on November 17, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 20, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F071 JTF A

SYSTEM NAME:

Computer Network Crime Case System.

SYSTEM LOCATION:

Law Enforcement and Counterintelligence Center, Joint Task Force—Computer Network Operations, 701 South Courthouse Road, Arlington, VA 22204–2164.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty, retired or former military personnel; current, retired and former civilian employees; dependents of military personnel; and other Department of Defense employees and contractors, both current and former; United States citizens in the United States and abroad; legal aliens; and foreign nationals residing in the U.S. and abroad, who are suspected of violating some law, regulation or directive related to computer network crimes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of investigation, statements of individuals, correspondence, and other informational material pertaining to specific law enforcement and counterintelligence investigations of alleged violations of laws, regulations or directives related to computer network crimes. Name(s) or aliases of the subject, group affiliation (if any), civilian or military status, trusted status, and whether or not the individual is a juvenile.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; E.O. 10450, Security Requirements for Government Employment; The Inspector General Act of 1978 (Pub. L. 95–452), as amended, and DoD Directive 5106.1 (32 CFR part 376); E.O. 13213, Critical Infrastructure Protection in the Information Age; DoD Instruction O–8530.2 Support to Computer Network Defense; DoD Directive 5240.2, DoD Counterintelligence; DoD Directive 5200.27, Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense.

PURPOSE(S):

To identify and assist in prevention and control of computer network crime and related computer network activity within DoD; aid in attribution of criminal activity; and assist in the development of DoD's network defensive posture.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Central Intelligence Agency, the Federal Bureau of Investigation, and other counterintelligence/intelligence agencies in matters pertaining to hostile intelligence and terrorist activities directed against the U.S., its installations, or personnel.

To Department of Justice officials to determine if judicial or administrative action is warranted.

To the U.S. Immigration and Naturalization Service in criminal matters, or matters pertaining to hostile intelligence and terrorist activities directed against the U.S., its allies, its installations, or personnel.

To defense and trial counsels for use in judicial and administrative actions.

To the U.S. Secret Service in conjunction with the protection of the President, Vice President, and other designated high-ranking officials.

To the Department of State and U.S. embassies overseas to provide criminal information affecting U.S. diplomatic relations with foreign nations.

To foreign law enforcement agencies where information sharing agreements exist in criminal matters, or matters pertaining to hostile intelligence and terrorist activities directed against the U.S., its allies, its installations, or personnel.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computers and computer output products.

RETRIEVABILITY:

Records are retrieved by name or alias, group affiliation (if any), organization and case number, and/or ''key-word'' searches based on case information.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in an approved automation system, with ''password'' protection. Records are controlled by personnel screening and are located in an office environment protected by a security alarm system.

RETENTION AND DISPOSAL:

Records are reviewed annually for retention or disposal and are destroyed/deleted when no longer needed, unless the record has been identified as a matter of permanent record with historical value. Permanent records are retained until eligible for transfer to the National Archives and Records Administration. Records identified for disposal are destroyed by erasing, deleting, degaussing, or over-writing the database; hard copy residue is destroyed by shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Law Enforcement and Counterintelligence Center Records Manager, Law Enforcement and Counterintelligence Center, Joint Task Force—Computer Network Operations, 701 South Courthouse Road, Arlington, VA, 22204–2164.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Law Enforcement Counterintelligence Center Records Manager, Law Enforcement and Counterintelligence Center, Joint Task Force—Computer Network Operations, 701 South Courthouse Road, Arlington, VA 22204–2164.

The requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Law Enforcement and Counterintelligence Center Records Manager, Law Enforcement and Counterintelligence Center, Joint Task Force—Computer Network Operations, 701 South Courthouse Road, Arlington, VA 22204–2164.

The requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From DoD and Military Department records; Federal Agency records; foreign law enforcement agencies, security, intelligence, investigatory, or administrative authorities; state, county, and municipal records; employment records of public schools, colleges, universities, technical and trade schools; hospital records; real estate agencies; credit bureaus; financial institutions which maintain credit information on individuals such as loan and mortgage companies, credit unions, banks, etc.; transportation companies (airlines, railroad, etc.); other private records sources deemed necessary in order to complete an investigation; miscellaneous records such as: telephone directories, city directories; Who's Who in America; Who's Who in Commerce and Industry; Who Knows What, a listing of experts in various fields; American Medical Directory; Martindale-Hubbell Law Directory; U.S. Postal Guide; Insurance Directory; Dunn and Bradstreet; and the U.S. Navy BIDEX (Biographical Index); any other type of miscellaneous records deemed necessary to complete the investigation or inquiry; the interview of individuals who have knowledge of the subject's background and activities; the interview of witnesses, victims, confidential sources, and or other individuals deemed necessary to complete the investigation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency that performs as its principle function any activity pertaining to the enforcement of criminal laws.

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. 03–30399 Filed 12–8–03; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Air Force is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 8, 2004 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 20, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F044 AF SG E

SYSTEM NAME:

Medical Record System (August 29, 2003, 68 FR 51998).

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'While on active duty, the Health Record of a U.S. military member is maintained at the medical unit at which the person receives treatment. On separation or retirement, records are forwarded to the Department of Veterans Affairs, Records Management Center in St. Louis, MO or to the appropriate Veterans Affairs Regional Office if a Veterans Affairs claim has been filed. Records of non-active duty personnel may be hand carried or mailed to the next military medical facility at which treatment will be received or the records are retained at the treating facility until 2 years after the end of the calendar year of the last date of treatment and then retired to the National Personnel Record Center (NPRC) or other designated depository, such as, but not limited to, Medical Director, American Red Cross, Washington, DC 20006 for Red Cross personnel. At NPRC all inpatient, outpatient, and APV records are retained for 50 years after date of last document. In addition, military records sent to the DVA after 1 May 1994 are maintained for 50 years after date of last document.'

* * * * *

F044 AF SG E

SYSTEM NAME:

Medical Record System.

SYSTEM LOCATION:

Headquarters, United States Air Force, Surgeon General (HQ USAF/SG), medical centers, hospitals and clinics, medical aid stations, National Personnel Record Centers, Air National Guard activities, and Air Force Reserve units. Official mailing addresses are published as an appendix to the Air Force compilation of systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons treated in an Air Force medical facility and active duty members for whom primary care is provided.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inpatient, outpatient, and ambulatory procedure visit (APV) records of care received in Air Force medical facilities. Documentation includes, but is not limited to, patient's medical history; physical examination; treatment received; supporting documentation such as laboratory and x-ray reports; cover sheets and summaries of hospitalization; diagnoses; procedures or surgery performed; administrative forms which concern medical conditions such as Line of Duty Determinations; physical profiles, and medical recommendations for flying duty. Secondary files are maintained such as patient registers, nominal indices, x-ray and laboratory files, indices and registers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 55, Medical and Dental Care; 10 U.S.C. 8013, Secretary of the Air Force; and E.O. 9397 (SSN).

PURPOSE(S):

Used to document, plan, and coordinate the health care of patients; aid in preventative health and communicable disease control programs; determine eligibility and suitability for benefits for various programs; adjudicate claims; evaluate care rendered; teach, compile statistical data, and conduct research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from the inpatient, outpatient, or APV medical records of retirees and dependents may be disclosed to third party payers in accordance with 10 U.S.C. 1095 as amended by Public Law 99–272, for the purpose of collecting reasonable inpatient/outpatient/APV hospital care costs incurred on behalf of retirees or dependents. Records are used and reviewed by health care providers in the performance of their duties. Health care providers include military and civilian providers assigned to the medical facility where care is being provided. Students participating in a training affiliation program with a USAF medical facility may also use and review records as part of their training program. In addition, records may be disclosed to:

(1) Officials and employees of the Department of Veterans Affairs in the performance of their official duties relating to the adjudication of veterans claims and in providing medical care to members of the Air Force.

(2) Officials and employees of other departments and agencies of the Executive Branch of government upon request in the performance of their official duties relating to review of the official qualifications and medical history of applicants and employees who are covered by this record system and for the conduct of research studies.

(3) Private organizations (including educational institutions) and individuals for authorized health research in the interest of the Federal government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies.

(4) Officials and employees of the National Research Council in cooperative studies of the National History of Disease; of prognosis and of epidemiology. Each study in which the records of members and former members of the Air Force are used must be approved by the Surgeon General of the Air Force.

(5) Officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing local control of communicable diseases, preventive medicine and safety programs, child abuse and other public health and welfare programs.

(6) Authorized surveying bodies for professional certification and accreditations.

(7) The individual's organization or government agency as necessary when required by Federal statute, E.O., or by treaty.

The DoD ''Blanket Routine Uses'' published at the beginning of the Air Force's compilation of record system notices apply to this system, except as stipulated in ''Note'' below.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol/drug abuse treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD ''Blanket Routine Uses'' do not apply to these types of records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper and machine-readable form.

RETRIEVABILITY:

By name, Social Security Number, or by Military Service Number.

SAFEGUARDS:

Records are accessed by commanders of medical centers, hospitals, and clinics; by custodian of the record system, and by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets, and access to automated records is controlled and limited.

RETENTION AND DISPOSAL:

While on active duty, the Health Record of a U.S. military member is maintained at the medical unit at which the person receives treatment. On separation or retirement, records are forwarded to the Department of Veterans Affairs, Records Management Center in St. Louis, MO or to the appropriate Veterans Affairs Regional Office if a Veterans Affairs claim has been filed. Records of non-active duty personnel may be hand carried or mailed to the next military medical facility at which treatment will be received or the records are retained at the treating facility until 2 years after the end of the calendar year of the last date of treatment and then retired to the National Personnel Record Center (NPRC) or other designated depository, such as, but not limited to, Medical Director, American Red Cross, Washington, DC 20006 for Red Cross personnel. At NPRC all inpatient, outpatient, and APV records are retained for 50 years after date of last document. In addition, military records sent to the DVA after 1 May 1994 are maintained for 50 years after date of last document.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters United States Air Force.

Chief of Air Force Reserve, Headquarters United States Air Force.

Director of Air National Guard, Headquarters United States Air Force.

Commanders of medical centers, hospitals, clinics, medical aid stations; Commander, Air Force Personnel Center. Official mailing addresses are published as an appendix to the Air Force's compilation of system notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contain information about themselves should address inquiries to or visit the system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address requests to the system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of systems notices.

Requester must submit full name; Social Security Number (or Military Service Number) through whom eligibility for care is established; date (at least year) treatment was provided; name of facility providing treatment, and whether treatment was as inpatient or outpatient.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 1806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Physicians and other patient care providers such as nurses, dietitians, and physicians assistants. Administrative forms are completed by appropriate military or civilian officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–30401 Filed 12–8–03; 8:45 am]

BILLING CODE 5001–06–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter systems of records.

SUMMARY: The Department of the Air Force is proposing to alter an existing system of records notice in its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration consists of adding a new category of individuals covered, *i.e.*, non-maintenance organizations may use CAMS to maintain personnel and training data relating to their individuals.

DATES: The actions will be effective on January 8, 2004 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force FOIA/Privacy Manager, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne P. Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, was submitted on November 17, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 20, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F021 AF IL A

SYSTEM NAME:

Core Automated Maintenance System (CAMS) (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals assigned to installations that maintain aircraft, missiles, communications-electronics and associated equipment. Non-maintenance organizations may use CAMS to maintain personnel and training data relating to their individuals.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Personnel records related to an individual's on-the-job training certification, qualifications, and training.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'Used to establish and maintain personnel data and on-the-job training records.'

* * * * *

STORAGE:

Add to entry 'and computer output products.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Maintained until superseded, obsolete, or no longer needed. Destroy paper records by tearing, pulping, burning, shredding, or macerating. Destroy computer records by overwriting or degaussing.'

* * * * *

F021 AF IL A

SYSTEM NAME:

Core Automated Maintenance System (CAMS).

SYSTEM LOCATION:

All Air Force installations utilizing the Core Automated Maintenance System (CAMS). Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals assigned to installations that maintain aircraft, missiles, communications-electronics and associated equipment. Non-maintenance organizations may use CAMS to maintain personnel and training data relating to their individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel records related to an individual's on-the-job training certification, qualifications, and training.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 21–101, Aerospace Equipment Maintenance Management; Air Force Instruction 36–2232, Maintenance Training, and E.O. 9397 (SSN).

PURPOSE(S):

Used to establish and maintain personnel data and on-the-job training records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on disks or tapes and computer output products.

RETRIEVABILITY:

Retrieved by name, man number, or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are controlled by computer system software.

RETENTION AND DISPOSAL:

Maintained until superseded, obsolete, or no longer needed. Destroy paper records by tearing, pulping, burning, shredding, or macerating. Destroy computer records by overwriting or degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Maintenance Data Systems Analysis Section; individuals in charge of documentation or files maintenance section at each unit utilizing CAMS or the Host Database Manager. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the individuals in charge of documentation or files maintenance section at each unit utilizing CAMS or the Host Database Manager. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the individuals in charge of documentation or files maintenance section at each unit utilizing CAMS or the Host Database Manager. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from automated system interfaces and source documents such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–30402 Filed 12–8–03; 8:45 am]

BILLING CODE 5001–06–U

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to delete a system of records.

SUMMARY: The Defense Logistics Agency proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on January 8, 2004, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Logistics Agency proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The deletion is not within the purview of

subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 20, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S257.10 DLA–G

SYSTEM NAME:

Standards of Conduct (February 22, 1993, 58 FR 10854).

REASON:

This system is a duplicate of the Office of Government Ethics government-wide systems of records, *i.e.,* OGE/GOVT–1, Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records and OGE/GOVT–2, Executive Branch Confidential Financial Disclosure Reports. Therefore, the DLA notice is being deleted.

[FR Doc. 03–30404 Filed 12–8–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Navy is proposing to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alteration expands the records being maintained, and adds a new purpose for collecting the records.

DATES: This proposed action will be effective without further notice on January 8, 2004, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations, N09B10, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted on November 17, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: November 20, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01070–6

SYSTEM NAME:

Employee Explosives Certification Program (February 22, 1993, 58 FR 10698).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'NM01543–1'.

SYSTEM NAME:

Delete entry and replace with 'Explosives Handling Qualification/Certification Program'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Navy, Marine Corps, civilian and contractor personnel involved in the process or evolution of explosives operations.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Training records contain copies of the individual's state driver's license, Social Security Number, date of birth, home and office addresses, medical certificate stating that an individual has passed an exam by a doctor and is authorized to handle explosives, forklift/government driver's license, date of exam and expiration date.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 5013, Departmental Regulations; 10 U.S.C. 5041, Headquarters, Marine Corps; OPNAVINST 8020.14/MCO P8020.11, Department of the Navy Explosives Safety Program; and E.O. 9397 (SSN).'

PURPOSE(S):

Delete entry and replace with 'To record the names and training of all employees and their qualifications to work in certain categories of explosives operations.

To ensure all individuals performing explosives inspections can validate an individual's qualifications to perform a certain task.'

* * * * *

STORAGE:

Delete entry and replace 'Paper and electronic media.'

RETRIEVABILITY:

Delete entry and replace with 'Name and/or Social Security Number.'

SAFEGUARDS:

Delete entry and replace with 'Documents are marked 'FOR OFFICIAL USE ONLY—PRIVACY SENSITIVE' and are only distributed to those persons having an official need to know. Computerized records are password protected and only accessible by those persons with an official need to know.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Retain on board and destroy three years after an employee terminates or is no longer involved in explosives processes.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Individual, personnel files, physician, and supervisor.'

* * * * *

NM01543–1

SYSTEM NAME:

Explosives Handling Qualification/Certification Program.

SYSTEM LOCATION:

Organization elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://www.neds.nebt.daps.mil/sndl.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy, Marine Corps, civilian and contractor personnel involved in the process or evolution of explosives operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Training records contain copies of the individual's state driver's license, Social Security Number, date of birth, home and office addresses, medical certificate stating that an individual has passed an exam by a doctor and is authorized to handle explosives, forklift/government driver's license, date of exam and expiration date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Departmental Regulations; 10 U.S.C. 5041, Headquarters, Marine Corps; OPNAVINST 8020.14/MCO P8020.11, Department of the Navy Explosives Safety Program; and E.O. 9397 (SSN).

PURPOSE(S):

To record the names and training of all employees and their qualifications to work in certain categories of explosives operations.

To ensure all individuals performing explosives inspections can validate an individual's qualifications to perform a certain task.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper and electronic media.

RETRIEVABILITY:

Name and/or Social Security Number.

SAFEGUARDS:

Documents are marked 'FOR OFFICIAL USE ONLY—PRIVACY SENSITIVE' and are only distributed to those persons having an official need to know. Computerized records are password protected and only accessible by those persons with an official need to know.

RETENTION AND DISPOSAL:

Retain on board and destroy three years after an employee terminates or is no longer involved in explosives processes.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commanding Officer, Naval Ordnance Safety and Security Activity, 23 Strauss Avenue, Farragut Hall, Building D–323, Indian Head, MD 20640–5035.

Record Holder: Commanding officer or head of the organization in question. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://www.neds.nebt.daps.mil/sndl*.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer or head of the organization in question. Individuals may inspect personnel certifying documents at local activity to which individual assigned. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://www.neds.nebt.daps.mil/sndl*.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer or head of the organization in question. Individuals may inspect personnel certifying documents at local activity to which individual assigned. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.nebt.daps.mil/sndl*.

CONTESTING RECORD PROCEDURES:

The Department of the Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, personnel files, physician, and supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–30403 Filed 12–8–03; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[CFDA NO. 84.031H]

Office of Postsecondary Education; Strengthening Institutions (SIP), American Indian Tribally Controlled Colleges and Universities (TCCU), Alaska Native and Native Hawaiian-Serving Institutions (ANNH) and Developing Hispanic-Serving Institutions (HSI) Programs; Notice Inviting Applications for Designation as Eligible Institutions for Fiscal Year (FY) 2004

Purpose of Programs: Under the SIP, TCCU, and ANNH Programs, authorized under Part A of Title III of the Higher Education Act of 1965, as amended (HEA), institutions of higher education are eligible to apply for grants if they meet specific statutory and regulatory eligibility requirements. Similarly, institutions of higher education are eligible to apply for grants under the HSI Program, authorized under Title V of the HEA, if they meet specific statutory and regulatory requirements. In addition, an institution that is designated as an eligible institution under those programs may also receive a waiver of certain non-Federal share requirements under the Federal Supplemental Educational Opportunity Grant (FSEOG), the Federal Work Study (FWS), the Student Support Services (SSS) and the Undergraduate International Studies and Foreign Language (UISFL) Programs. The FSEOG, FWS and SSS Programs are authorized under Title IV of the HEA; the UISFL Program is authorized under Title VI of the HEA.

Qualified institutions may receive these waivers even if they are not recipients of grant funds under the Title III Part A Programs or Title V Program.

Special Note: To become eligible, your institution must satisfy several criteria, including one related to needy student enrollment and one related to average Educational and General (E&G) expenditures for a particular base year. Because we changed the collection processes for determining the thresholds for these two criteria, we do not have base year data beyond 2000–2001. In order to award FY 2004 grants in a timely manner, we will use threshold data from the base year 2000–2001 rather than a later base year. In completing your eligibility application, please use data from the base year 2000–2001.

Eligible Applicants: To qualify as an eligible institution under the Title III, Part A Programs or the Title V Program, an accredited institution must, among other requirements, have an enrollment of needy students, and its average E&G expenditures per full-time equivalent (FTE) undergraduate student must be low in comparison with the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction. To be an eligible Hispanic-Serving Institution, an institution must—

(1) Be accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(2) Be legally authorized by the State in which it is located to be a junior college or to provide an educational program for which it awards a bachelor's degree;

(3) Have an enrollment of needy students as described in the *Enrollment of Needy Students* section of this notice;

(4) Have low average educational and general expenditures per full-time equivalent undergraduate student as described in the *Educational and General Expenditures per Full-Time Equivalent Student* section of this notice and the application booklet;

(5) Have, at the time of application, an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic students; and

(6) Provide assurances that not less than 50 percent of its Hispanic students are low-income individuals.

Note: Numbers five and six above are required at the time of submission of the grant application.

The complete eligibility requirements for the Title III, Part A Programs are found in 34 CFR 607.2 through 607.5; the complete eligibility for the HSI Programs are found in 34 CFR 606.2 through 34 CFR 606.5. These regulations may also be accessed by visiting the following Department of Education Web site: *http://www.ed.gov/legislation/FedRegister/finrule/1999–4/121599a.html.*

Enrollment of Needy Students: Under 34 CFR 606.3(a) and 607.3(a), an institution is considered to have an enrollment of needy students if: (1) At least 50 percent of its degree students received financial assistance under one or more of the following programs: Federal Pell Grant, FSEOG, FWS, and Federal Perkins Loan Programs; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offered similar instruction.

To qualify under this latter criterion, an institution's Federal Pell Grant percentage for base year 2000–2001 must be more than the median for its category of comparable institutions provided in the table in this notice.

Educational and General Expenditures per Full-Time Equivalent Student: An institution should compare its 2000–2001 average E&G expenditures per FTE student to the average E&G expenditure per FTE student for its category of comparable institutions contained in the table in this notice. If the institution's average E&G expenditures for the 2000–2001 base year are less than the average for its category of comparable institutions, it meets this eligibility requirement.

An institution's average E&G expenditures are the total amount it expended during the base year for instruction, research, public service, academic support, student services, institutional support including library expenditures, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Federal Pell Grant percentages and the relevant average E&G expenditures per FTE student for the base year 2000–2001 for the four categories of comparable institutions:

Type of Institution	Median Pell Grant (percentage)	Average E&G per FTE
2-year public institutions	19.6	$8,668
2-year non-profit private institutions	32.7	20,483
4-year public institutions	23.5	20,789
4-year non-profit private institutions	23.2	31,579

Waiver Information: Institutions of higher education that are unable to meet the needy student enrollment requirement or the average E&G expenditures requirement may apply to the Secretary for waivers of these requirements, as described in 34 CFR 606.3(b), 606.4(c) and (d), 607.3(b) and 607.4(c) and (d). Institutions requesting a waiver of the needy student enrollment requirement or the average E&G expenditures requirement must include in their application detailed information supporting the waiver request, as described in the instructions for completing the application.

With respect to the needy student requirement waiver, 34 CFR 606.3(b)(2) and (3) and 607.3(b)(2) and (3) refer to ''low-income'' students and families. The regulations define ''low-income'' as an amount which does not exceed 150 percent of the amount equal to the poverty level in the 2000–2001 base year as established by the U.S. Bureau of the Census, 34 CFR 606.3(c) and 607.3(c).

For the purposes of this waiver provision, the following table sets forth the low-income levels for the various sizes of families:

2000 ANNUAL LOW-INCOME LEVELS

Size of family unit	Contiguous 48 States, the District of Columbia and outlying	Alaska	Hawaii
1	$12,525	$15,645	$14,385
2	16,875	21,090	19,395
3	21,225	26,535	24,405
4	25,575	31,980	29,415
5	29,925	37,425	34,425
6	34,275	42,870	39,435
7	38,625	48,315	44,445
8	42,975	53,760	49,455

For family units with more than eight members, applicants requesting a waiver should add the following amount for each additional family member: $4,350 for the contiguous 48 states, the District of Columbia and outlying jurisdictions; $5,445 for Alaska; and $5,010 for Hawaii.

The figures shown as low-income levels represent amounts equal to 150 percent of the family income levels established by the U.S. Bureau of the

Census for determining poverty status. The Census levels were published by the U.S. Department of Health and Human Services in the **Federal Register** on February 15, 2000 (65 FR 7555–7557).

The information about ''metropolitan statistical areas'' referenced in 34 CFR 606.3(b)(4) and 607.3(b)(4) may be obtained by requesting the Metropolitan Statistical Areas, 1999, order number PB99–501538, from the National Technical Information Service, Document Sales, 5285 Port Royal Road, Springfield, Virginia 22161, telephone number 1–800–553–6847. There is a charge for this publication.

Applications Available: December 5, 2003.

Deadline for Transmittal of Applications: January 20, 2004 for an applicant institution that wishes to apply for a FY 2004 new grant under the Title III, Part A Programs or the Title V Program; May 28, 2004 for an institution that wishes to apply only for cost-sharing waivers under the FSEOG, FWS, SSS or UISFL Programs; and, January 20, 2004 for an institution that wishes to apply for both a grant under the Title III, Part A Programs or the Title V Program and a waiver of the Non-Federal share requirement.

Electronic Submission of Applications: The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

We are requiring that applications for institutional eligibility for FY 2004 under Request for Designation as an Eligible Institution be submitted electronically at the following Web site: *http://webprod.cbmiweb.com/Title3and5/index.html.*

If you are unable to submit an application electronically you may submit a written request for a waiver of the electronic submission requirement. In the request, you should explain the reason or reasons that prevent you from using the Internet to submit your application. The request should be addressed to: Mr. Louis Venuto, U.S. Department of Education, 1990 K Street, room 6071, Washington, DC 20202–8513. Please submit your request no later than two weeks before the application deadline date.

If, within two weeks of the application deadline date, you are unable to submit an application electronically, you must submit a paper application by the application deadline date in accordance with the transmittal instructions in the application package. The paper application must include a written request for a waiver documenting the reasons that prevented the applicant from using the Internet to submit the application.

To enter the Web site, you must use your institution's unique 8-digit identifier, *i.e.*, your Office of Postsecondary Education Identification Number (OPE ID number). If you receive a hard copy of the eligibility application and instructions from us in the mail, look for the OPE ID number on the address label. Otherwise, your business office or student financial aid office should have the OPE ID number. If your business office or student financial aid office does not have the OPE ID number, contact the Department, using the e-mail addresses of the contact persons listed in this notice under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.**

You will find detailed instructions for completing the application form electronically under the ''eligibility 2004'' link at either of the following Web sites: *http://www.ed.gov/programs/iduestitle3a.index.html* or *http://www.ed.gov/hsi.*

For institutions of higher education that are unable to meet the needy student enrollment requirement or the average E&G expenditure requirement and wish to request a waiver of one or both of those requirements, you must complete your designation application form electronically and transmit your waiver request narrative document from the following Web site: *http://webprod.cbmiweb.com/Title3and5/index.html.*

If your institution is unable to electronically submit your narrative waiver request, print the electronic application form and mail it along with the waiver request narrative to Mr. Louis Venuto, Team Leader, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, NW, Room 6071, Request for Eligibility Designation, Washington, DC 20202–8513.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, 98, and 99. (b) The regulations for the Title III, Part A Programs in 34 CFR part 607, and for the Title V Program in 34 CFR part 606.

FOR APPLICATIONS AND FURTHER INFORMATION CONTACT: Ellen M. Sealey, Carlos Reeder or Delores Anistead, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, Room 6049, Request for Eligibility Designation, Washington, DC 20202–8513. Ms. Sealey's telephone number is (202) 502–7580. Mr. Reeder's telephone number is (202) 502–7592. Mrs. Anistead's telephone number is (202) 219–7060. Ms. Sealey, Mr. Reeder and Mrs. Anistead may be reached via e-mail at the following addresses: *ellen.sealey@ed.gov, carlos.reeder@ed.gov,* and *delores.anistead@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audio tape, or computer diskette) on request to the contact persons listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting those persons. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using the PDF, call the U.S. Government

Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1057–1059d, 1101–1103g.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–30432 Filed 12–4–03; 11:19 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0022; FRL–7597–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Magnetic Tape Manufacturing Operations (40 CFR Part 63, Subpart EE), EPA ICR Number 1678.05, OMB Control Number 2060–0326

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 8, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0022, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leonard Lazarus, Compliance Assessment and Media Programs Division, Mail Code 2223A, Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–6369; fax number: (202) 564–0050; e-mail address: *lazarus.leonard@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 19, 2003 (68 FR 27059), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2003–0022, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: NESHAP for Magnetic Tape Manufacturing Operations (40 CFR part 63, Subpart EE).

Abstract: This NESHAP requires initial notification, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance and are required, in general, of all sources subject to NESHAP.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintain reports, and records. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. This information is being collected to assure compliance with 40 CFR part 63, subpart EE as authorized in sections 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined not to be private.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 200 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the

existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of magnetic tape manufacturing operations.

Estimated Number of Respondents: 6.

Frequency of Response: Initial, quarterly, semiannually.

Estimated Total Annual Hour Burden: 3,395 hours.

Estimated Total Annual Cost: $265,000, includes $11,000 annualized capital/startup costs, $36,000 annual O&M costs, and $218,000 labor costs.

Changes in the Estimates: There is a decrease of 3,647 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to a reduction in the number of sources affected by the standard.

Dated: November 14, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–30516 Filed 12–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0073; FRL–7597–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Pollutant Discharge Elimination System (NPDES) Compliance Assessment/ Certification Information, EPA ICR Number 1427.07, OMB Control Number 2040–0110

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 29, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 9, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OW–2003–0073, to EPA online using EDOCKET (our preferred method), by e-mail to *OW-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket (Mail Code 4101T), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jack Faulk, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Mail Code 4203M, Washington, DC 20460; telephone number: 202–564–0768; fax number: 202–564–6431; e-mail address: *faulk.jack@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OW–2003–0073, which is available for public viewing at the Water 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 Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Affected entities: Entities potentially affected by this action are those which are issued NPDES permits for the discharge of domestic wastewater, industrial wastewater, and storm water, and for the use and disposal of sewage sludge. In addition, states and territories authorized to administer the NPDES program are also affected.

Title: National Pollutant Discharge Elimination System (NPDES) Compliance Assessment/Certification Information, EPA ICR Number 1427.07, OMB Control Number 2040–0110.

Abstract: Pollutant discharge limits in a NPDES permit are designed to be protective of the environment and the public. Permitting authorities must assess whether the permittee is complying with these discharge limits on a consistent basis. Compliance is assessed by reviewing records, compliance schedule reports, and noncompliance reports for a bypass, upset, or maximum daily limit violations. Permittees must maintain such records, meet compliance schedules, and report violations as mandated in 40 CFR parts 122 and 501. The information that is collected can lead the permitting authority to follow through with informal discussions with the permittee (telephone and/or letters), permit modification, or enforcement action.

Also, consistent with past practice, this ICR incorporates burden from one ICR specific to EPA's effluent limitations guidelines development program that includes NPDES compliance assessment/certification activities. Specifically, the burden and costs associated with the ICR: Best Management Practices Alternatives, Effluent Limitations Guidelines and Standards, Oil and Gas Extraction Point Source Category (40 CFR part 435), EPA ICR No. 1953.02, OMB Control No. 2040–0230, is incorporated into this ICR.

Note that six additional effluent limitations guidelines development ICRs are set to expire in the next three years prior to the next renewal of this Compliance Assessment/Certification ICR. The burden associated with those six ICRs will be incorporated into the Compliance Assessment/Certification ICR as part of the renewal process for those six separate ICRs. The six ICRs include:

1. Milestone Plans for the Bleached Papergrade Kraft and Soda Subcategory of the Pulp, Paper, and Paperboard

Point Source Category (40 CFR part 430), EPA ICR No. 1877.02, OMB Control No. 2040–0202;

2. Best Management Practices (BMPs) for Bleached Papergrade Kraft and Soda Subcategory and the Papergrade Kraft Sulfite Subcategory of the Pulp, Paper, and Paperboard Point Source Category (40 CFR part 430), EPA ICR No. 1829.02, OMB Control No. 2040–0207;

3. Pollution Prevention Compliance Alternative; Transportation Equipment Cleaning (TEC) Point Source Category (40 CFR part 442), EPA ICR No. 2018.01, OMB Control No. 2040–0235;

4. Baseline Standards and Best Management Practices for the Coal Mining Point Source Category (40 CFR part 434)—Coal Remining Subcategory and Western Alkaline Coal Mining Subcategory, EPA ICR No. 1944.02, OMB Control No. 2040–0239;

5. Certification in Lieu of Chloroform Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory of the Pulp, Paper and Paperboard Manufacturing Category (40 CFR part 430), EPA ICR No. 2015.01, OMB Control No. 2040–0242; and

6. Minimum Monitoring Requirements for Direct and Indirect Discharging Mills in the Bleached Papergrade Kraft and Soda Subcategory and the Papergrade Sulfite Subcategory of the Pulp, Paper and Paperboard Manufacturing Category (40 CFR part 430), EPA ICR No. 1878.01, OMB Control No. 2040–0243.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: Based on the information collection requirements contained in the existing ICR, the information collection for compliance assessment and certification activities will involve an estimated 16,500 reporting respondents per year with 2.15 total annual average responses per respondent and 4.15 hours per response for a total of 147,207 hours. In addition, EPA estimates 304,739 recordkeeping respondents per year and 3.86 hours per recordkeeper for a total of 1,166,012 hours. This results in an annual respondent burden of 1,313,219 hours and an annual cost of $31,025,598. States and U.S. territories are also expected to incur a burden and cost associated with this ICR. Specifically, EPA estimates an average annual burden for these respondents of 51,089 hours at a cost of $1,472,488. The total annual burden and cost to respondents, recordkeepers, and government (excluding Federal government) is estimated to be 1,375,308 hours and $32,498,086.

The burden and cost estimate for the additional ICR, namely Best Management Practices Alternatives, Effluent Limitations Guidelines and Standards, Oil and Gas Extraction Point Source Category (40 CFR part 435), EPA ICR No. 1953.02, OMB Control No. 2040–0230 are estimated as follows (as documented in the original rule-related ICR for this regulation): total burden hours for the 67 respondents are 47,168 annually at a cost of $1,200,138. This includes both reporting and recordkeeping activities.

Burden and costs for the additional six ICRs will be incorporated into this ICR as these six ICRs come up for renewal. The current number of annual responses and approved burden hours are provided below.

OMB Control No.	Annual responses	Annual hours
2040–0202	29	1,418
2040–0207	130	60,909
2040–0235	79	19,144
2040–0239	93	9,261
2040–0242	86	480
2040–0243	104	36,858

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: December 3, 2003.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 03–30518 Filed 12–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7597–7]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 128(a); Notice of Grant Funding Guidance for State and Tribal Response Programs

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) will begin to accept requests, from December 1, 2003, through January 31, 2004, for grants to supplement State and Tribal Response Programs. This notice provides guidance on eligibility for funding, use of funding, grant mechanisms and process for awarding funding, the allocation system for distribution of funding, and terms and reporting under these grants. EPA has consulted with State and tribal officials in developing this guidance.

Since 1997, the EPA Brownfields program has funded State and tribal response programs including Superfund Core funding for State and tribal voluntary cleanup programs and pre-remedial site assessment funding for State- and tribal-conducted Targeted Brownfields Assessments (TBA). Through section 128(a), Congress built upon these activities and provided EPA with expanded authority to fund other activities that establish and enhance capacity for State and tribal response programs as well as authority to grant funds to States and tribes to capitalize revolving loan funds and support insurance mechanisms.

The primary goal of this funding is to ensure that State and tribal response programs include, or are taking reasonable steps to include, certain elements and another is to provide funding for other activities that increase the number of response actions

conducted or overseen by a State or tribal response program. This funding is not intended to supplant current State or tribal funding for their response programs. Instead, it is to supplement their funding to increase their response capacity.

For fiscal year 2004, EPA will consider funding requests up to a maximum of $1.5 million per State or tribe. EPA will target funding of at least $3 million for tribal response programs to ensure adequate funding for tribal response programs.

Subject to the availability of funds, EPA regional enforcement and program staff will be available to provide technical assistance to States and tribes as they apply for and carry out these grants.

DATES: This action is effective as of December 1, 2003. EPA expects to make non-competitive grant awards to States and tribes which apply during fiscal year 2004.

ADDRESSES: Mailing addresses for U.S. EPA Regional Offices and U.S. EPA Headquarters can be located at *http://www.epa.gov/brownfields*.

FOR FURTHER INFORMATION CONTACT: The U.S. EPA's Office of Solid Waste and Emergency Response, Office of Brownfields Cleanup and Redevelopment, (202) 566–2777.

SUPPLEMENTARY INFORMATION: The Small Business Liability Relief and Brownfields Revitalization Act (SBLRBRA) was signed into law on January 11, 2002. The Act amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, by adding section 128(a). Section 128(a) authorizes a $50 million grant program [1] to establish and enhance State [2] and tribal [3] response programs. Generally, these response programs address the assessment, cleanup and redevelopment of brownfields sites and other contaminated sites. Section 128(a) grants will be awarded and administered by U.S. Environmental Protection Agency (EPA) regional offices. This document provides guidance that will enable States and tribes to apply for and use section 128(a) funds in Fiscal Year 2004.

State and tribal response programs oversee assessment and cleanup activities at the majority of brownfield sites across the country. The depth and breadth of State and tribal response programs vary. Some focus solely on CERCLA related activities, while others are multi-faceted, for example, addressing sites regulated by the Resource Conservation and Recovery Act (RCRA). Many State programs also offer accompanying financial incentive programs to spur cleanup and redevelopment. In passing section 128(a),[4] Congress recognized the accomplishments of State response programs in cleaning up and redeveloping brownfield sites. Section 128(a) also provides EPA with an opportunity to strengthen its partnership with States and tribes.

Since 1997, the EPA Brownfields program has been funding State and tribal response programs including Superfund Core funding for State and tribal voluntary cleanup programs and pre-remedial site assessment funding for State- and tribal-conducted Targeted Brownfields Assessments (TBA). Both activities were financed with Superfund appropriations and funded under CERCLA section 104(d) cooperative agreement authority. Through section 128(a), Congress built upon these activities and provided EPA with expanded authority to fund other activities that build capacity for State and tribal response programs as well as authority to grant funds to States and Indian tribes to capitalize revolving loan funds and support insurance mechanisms. The primary goal of this funding is to ensure that State and tribal response programs include, or are taking reasonable steps to include, certain elements and another is to provide funding for other activities that increase the number of response actions conducted or overseen, by a State or tribal response program. This funding is not intended to supplant current State or tribal funding for their response programs. Instead, it is to supplement their funding to increase their cleanup capacity.

Subject to the availability of funds, EPA regional enforcement and program staff will be available to provide technical assistance to States and Indian tribes as they apply for and carry out section 128(a) grants.

Eligibility for Funding

To be eligible for funding under CERCLA section 128(a), a State or tribe must:

- Demonstrate that their response program includes, or is taking reasonable steps to include, the four elements of a response program, described below; or be a party to voluntary response program Memorandum of Agreement (MOA)[5] with EPA;

and

- Maintain and make available to the public a record of sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year, *see* CERCLA section 128(b)(1)(C).

Note: Failure to meet these requirement will result in a denial of funding for FY04).

With the exception of the section 128(a) funds a State or tribe uses to capitalize a Brownfields Revolving Loan Fund under CERCLA 104(k)(3), States and tribes are not required to provide matching funds for grants awarded under section 128(a).

The Four Elements—Section 128(a)

Section 128(a) requires States or tribes to demonstrate that their response program includes, or is taking reasonable steps to include, four elements. Section 128(a) also authorizes funding for activities necessary to establish and enhance the four elements and to establish and maintain the public record requirement. Generally, the four elements are:

Timely survey and inventory of brownfield sites in State or tribal land. States and tribes must include, or be taking reasonable steps to include, in their response programs a system or process to identify the universe of brownfield sites in their State or tribal land. EPA's goal in funding activities under this element is to enable the State or tribe to establish or enhance a system or process that will provide a reasonable estimate of the number, likely locations, and the general characteristics of brownfield sites in their State or tribal lands. Given funding limitations, EPA will negotiate work plans with States and tribes to achieve this goal efficiently, effectively and within a realistic time frame. For example, many

[1] The Catalogue of Federal Domestic Assistance entry for the section 128(a) State and Tribal Response Programs grant program is 66.817.

[2] The term ''State'' is defined in this document as defined in CERCLA section 101(27).

[3] The term ''Indian tribe'' is defined in this document as it is defined in CERCLA section 101(36). Intertribal consortia, as defined in the **Federal Register** notice at 67 FR 67181, are also eligible for funding under CERCLA 128(a).

[4] The Small Business Liability Relief and Brownfields Revitalization Act (SBLRBRA) was signed into law on January 11, 2002. The Act amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, by adding section 128(a).

[5] The legislative history of SBLRBRA indicates that Congress intended to encourage States and tribes to enter into MOAs for their voluntary response programs. States or tribes that are parties to voluntary response program MOAs are automatically eligible for section 128(a) funding. A list of States that have signed CERCLA VCP MOAs with EPA can be found at *www.epa.gov/brownfields/gdc.htm#vc*.

of EPA's Brownfields Assessment grantees conduct inventories of brownfield sites in their communities or jurisdictions. EPA encourages States and tribes to work with these grantees to obtain the information that they have gathered and include it in their survey and inventory.

Oversight and enforcement authorities or other mechanisms and resources. State and tribal response programs must include, or be taking reasonable steps to include, oversight and enforcement authorities or other mechanisms, and resources that are adequate to ensure that:

• A response action will protect human health and the environment and be conducted in accordance with applicable Federal and State law; and

• The necessary response activities are completed if the person conducting the response activities fails to complete the necessary response activities (this includes operation and maintenance or long-term monitoring activities).

Mechanisms and resources to provide meaningful opportunities for public participation.[6] States and tribes must include, or be taking reasonable steps to include, in their response program mechanisms and resources for public participation, including, at a minimum:

• Public access to documents and related materials that a State, tribe, or party conducting the cleanup is relying on or developing in making cleanup decisions or conducting site activities;

• Prior notice and opportunity for public comment on cleanup plans and site activity; and

• A mechanism by which a person who is, or may be, affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfields site—located in the community in which the person works or resides—may request that a site assessment be conducted. The appropriate State or tribal official must consider this request and appropriately respond.

Mechanisms for approval of a cleanup plan and verification and certification that cleanup is complete. States and tribes must include, or be taking reasonable steps to include, in their response programs mechanisms to approve cleanup plans. In addition States and tribes must include, or be taking reasonable steps to include, in their response programs a requirement for verification by and certification or similar documentation from the State, the tribe, or a licensed site professional to the person conducting a response action indicating that the response action is complete. Written approval by a State or tribal response program official of a proposed cleanup plan is an example of an approval mechanism.

Public Record Requirement

States and tribes (including those with MOAs) that received section 128(a) funding in FY03 must have established and maintained a public record system, described below, in order to receive funds in FY04. Failure to comply with this statutory requirement will result in a denial of funding for FY04 (this includes funding through an incremental grant funding mechanism). Recipients receiving section 128(a) funding for the first time in FY04 must demonstrate, to be eligible for funding in FY05, that they established and maintained the public record, as described below.

Specifically, under section 128(b)(1)(C), States and tribes must:

• Maintain and update, at least annually or more often as appropriate, a record of sites that includes the name and location of sites at which response actions have been completed during the previous year;

• Maintain and update, at least annually or more often as appropriate, a record of sites that includes the name and location of sites at which response actions are planned to be addressed in the next year; and

• Identify in the public record whether or not the site, upon completion of the response action, will be suitable for unrestricted use. If not, the public record must identify the institutional controls relied on in the remedy.

Section 128(a) funds may be used to maintain and make available a public record system that meets the requirements discussed above.

Distinguishing the ''survey and inventory'' element from the ''public record.'' It is important to note that the public record requirement differs from the ''timely survey and inventory'' element described in the ''Four Elements'' section above. The public record addresses sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year. In contrast, the ''timely survey and inventory'' element, described above, refers to a general approach to identifying brownfield sites.

Making the public record easily accessible. EPA's goal is to enable States and tribes to make the public record and other information, such as information from the ''survey and inventory'' element, easily accessible. For this reason, EPA will allow States and tribes to use section 128(a) funding to make the public record, as well as other information, such as information from the ''survey and inventory'' element, available to the public via the internet or other means. For example, the Agency would support funding State and tribal efforts to include detailed location information in the public record such as the street address and latitude and longitude information for each site.[7] A State or tribe may also choose to use the section 128(a) funds to make their survey and inventory information available on the Internet as well.

Long-term maintenance of the public record. EPA encourages States and tribes to maintain public record information, including data on institutional controls, on a long term basis (more than one year) for sites at which a response action has been completed. Subject to EPA regional office approval, States or tribes may include development and operation of systems that ensure long term maintenance of the public record, including information on institutional controls, in their work plans.[8]

Use of Funding

Overview

Section 128(a)(1)(B) describes the eligible uses of grants funding by States and tribes. In general, a State or tribe may use a grant to ''establish or enhance'' their response programs, including elements of the response program that include activities related to responses at brownfield sites with petroleum contamination. States and tribes may use section 128(a) funding to, among other things:

• Develop legislation, regulations, procedures, guidance, *etc.* that would establish or enhance the administrative and legal structure of their response programs;

• Capitalize a revolving loan fund (RLF) for brownfields cleanup under CERCLA section 104(k)(3). These RLFs are subject to the same statutory requirements and grant terms and conditions applicable to RLFs awarded under section 104(k)(3). Requirements include a 20 percent match on the amount of section 128(a) funds used for

[6] States and tribes establishing this element may find useful information on public participation on EPA's community involvement Web site at *http://www.epa.gov/superfund/action/community/index.htm.*

[7] For further information on latitude and longitude information, please see EPA's data standards Web site available at *http://oaspub.epa.gov/edr/epastd$.startup.*

[8] States and tribes may find useful information on institutional controls on EPA's institutional controls Web site at *http://www.epa.gov/superfund/action/ic/index.htm.*

the RLF, a prohibition on using EPA grant funds for administrative costs relating to the RLF, and a prohibition on using RLF loans or subgrants for response costs at a site for which the recipient may be potentially liable under section 107 of CERCLA. Other prohibitions contained in CERCLA section 104(k)(4) also apply;

• Purchase environmental insurance or developing a risk-sharing pool, indemnity pool, or insurance mechanism to provide financing for response actions under a State or tribal response program;

• Establish and maintain the required public record described in section B above. EPA considers activities related to maintaining and monitoring institutional controls to be eligible costs under section 128(a); or

• Conduct limited site-specific activities, such as assessment or cleanup, provided such activities are secondary to the primary use of the funds, *i.e.*, to establish and enhance the response program, and are tied to the four elements.

Uses Related to ''Establishing'' a State or Tribal Response Program

Under CERCLA section 128(a), ''establish'' includes activities necessary to build the foundation for the four elements of a State or tribal response program and the public record requirement. For example, a State or tribal response program may use section 128(a) funds to develop regulations, procedures, or guidance. For more developed State or tribal response programs, establish may also include activities that keep their program at a level that meets the four elements and maintains a public record required as a condition of funding under CERCLA section 128(b)(1)(C).

Uses Related to ''Enhancing'' a State or Tribal Response Program

Under CERCLA section 128(a), ''enhance'' is related to activities that add to or improve a State or tribal response program or increase the number of sites at which response actions are conducted under a State or tribal response program. The legislative history of the provision also makes this clear:

> The vast majority of contaminated sites across the nation will not be cleaned up by the Superfund program. Instead, most sites will be cleaned up under State authority. * * * In recognition of this fact, and the need to create and improve State cleanup capacity, new [Section 128(a)] provides financial assistance to states and tribes to establish or enhance voluntary response programs.

Senate Report 107–2, March 12, 2001, p. 15.

The exact ''enhancement'' uses that may be allowable depend upon the work plan negotiated between the EPA regional office and the State or tribe. For example, regional offices and States or tribes may agree that section 128(a) funds may be used for outreach and training directly related to increasing awareness of its response program, and improving the skills of program staff. It may also include developing better coordination and understanding of other State response programs, *e.g.*, RCRA or USTs. Other ''enhancement'' uses may be allowable as well.

Uses Related to Site-Specific Activities

States and tribes may use section 128(a) funds for activities that improve State or tribal capacity to increase the number of sites at which response actions are conducted under the State or tribal response program. Eligible uses of funds include limited site-specific related activities such as conducting assessments or cleanups at *brownfields* sites. Site-specific activities should be secondary to the primary use of the funds, *i.e.*, to establish and enhance the response program, and tied to the elements.

Site-specific assessments and cleanups must comply with all applicable Federal and State laws and are subject to the following restrictions:

• No more than $200,000 per site can be funded for assessments, and no more than $200,000 per site can be funded for cleanups.

• Absent EPA approval, the recipient may not use funds awarded under this agreement to assess and clean up sites owned by the recipient.

• Assessments and cleanups cannot be conducted at sites where the recipient itself is a potentially responsible party pursuant to CERCLA section 107, except for at brownfields sites contaminated by a controlled substance as defined in CERCLA section 101(39)(D)(ii)(I).

• Subgrants cannot be provided to entities that may be potentially responsible parties (pursuant to CERCLA section 107) at the site for which the assessment or cleanup activities are proposed to be conducted.

• Section 128(a) funds cannot be used for assessments or cleanups at sites that do not meet the definition of a brownfield site at CERCLA 101(39).

However, costs incurred for oversight of cleanups at other than brownfields sites may be eligible and allowable costs if such activities are included in the State's or tribe's work plan. For example, auditing of completed site cleanups in States or tribes that use licensed site professionals to verify that sites have been properly cleaned up may be an eligible cost under section 128(a). These costs need not be incurred in connection with a brownfields site to be eligible, but must be authorized under the State's or tribe's work plan to be allowable. Other uses may be eligible and allowable as well, depending upon the work plan negotiated between the EPA regional office and the State or tribe.

Uses Related to Site-Specific Activities at Petroleum Brownfields Sites

States and tribes may use section 128(a) funds for activities that establish and enhance their response programs, even if their response programs address petroleum contamination. Also, the costs of limited site-specific activities, such as site assessments or cleanup at petroleum contaminated brownfields sites, defined at CERCLA section 101(39)(D)(ii)(II), are eligible and are allowable if the activity is included in the work plan negotiated between the EPA regional office and the State or tribe. Section 128(a) funds used to capitalize a Brownfields RLF may be used at brownfields sites contaminated by petroleum to the extent allowed under CERCLA section 104(k)(3) RLF program.

Grant Mechanism and Process for Awarding Funding

Funding authorized under CERCLA section 128(a) will be awarded through a cooperative agreement [9] with a State or tribe. The program will be administered under the general EPA grant and cooperative agreement regulations for States, tribes, and local governments found in the Code of Federal Regulations at 40 CFR part 31. Under these regulations, the grantee for section 128(a) grant program is:

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

40 CFR 31.3 Grantee

One application per State or tribe. Subject to the availability of funds, EPA regional offices will negotiate and enter into section 128(a) cooperative agreements with eligible and interested States or tribes. EPA will accept only

[9] A cooperative agreement is a grant to a State or a tribe that includes substantial involvement of EPA regional enforcement and program staff during performance of activities described in the cooperative agreement work plan. Examples of this involvement include technical assistance and collaboration on program development and site-specific activities.

one application from each eligible State or tribe. States and tribes must define the ''section 128(a) response program,'' and may designate a component of the State or tribe that will be EPA's primary point of contact for negotiations on their proposed work plan. When EPA funds the section 128(a) cooperative agreement, States and tribes may distribute these funds among the appropriate State and tribal agencies that are part of the section 128(a) response program. This distribution must be clearly outlined in their annual work plan.

Separate cooperative agreements for the capitalization of RLFs using section 128(a) funds. If a portion of the128(a) grant funds requested will be used to capitalize a revolving loan fund for cleanup, pursuant to 104(k)(3), two separate cooperative agreements must be awarded, *i.e.*, one for the RLF and one for non-RLF uses. States and tribes may, however, submit one initial request for funding, delineating the RLF as a proposed use.

Authority to Manage a Revolving Loan Fund Program. If a State or tribes chooses to use its 128(a) funds to capitalize a revolving loan fund program, the State or tribe must have the authority to manage the program, *e.g.*, issue loans. If the agency/department listed as the point of contact for the 128(a) grant does not have this authority, it must be able to demonstrate that another State or tribal agency does have the authority to manage the RLF and is willing to do so.

Section 128(a) grants are eligible for inclusion in the Performance Partnership Grant (PPG). EPA is considering a pilot project that will allow an appropriate number of States and tribes to include section 128(a) grants in the PPG in FY 2004. For FY 2004, no more than one State and one tribe or Intertribal Consortium per Region, absent approval from the Assistant Administrator, Office of Solid Waste and Emergency Response (OSWER) and the Associate Administrator, Office of Congressional and Intergovernmental Relations (OCIR), will be permitted to include their 128(a) grant funds in the PPG. EPA will establish a process and criteria for determining, in consultation with the States and tribes, whether PPGs are an efficient and effective means of carrying out the section 128(a) program on a long-term national basis. Section 128(a) funds used to capitalize an RLF will not be eligible for inclusion in the PPG.

Project Period. EPA regional offices will determine the project period for each cooperative agreement. These may be for multiple years depending on the regional office's grants policies. Each cooperative agreement must have an annual budget period tied to an annual work plan.

Demonstrating the Four Elements. As part of the annual work plan negotiation process, States or tribes that do not have MOAs must demonstrate that their program includes, or is taking reasonable steps to include, the four elements described above. EPA will not fund, in future years, State or tribal response program annual work plans if EPA determines that these requirements are not met or reasonable progress is not being made. EPA may base this determination on the information the State or tribe provides to support its work plan, or on EPA's review of the State or tribal response program.

Establishing and Maintaining the Public Record. Prior to funding a State's or tribe's annual work plan, EPA regional offices will verify that a public record as described above exists, and is being maintained. Recipients receiving funds for the first time in FY04 will have one year to meet this requirement and may utilize the 128(a) grant funds to do so.

Demonstration of Need to Receive Funds above the FY03 Funding Distribution. Due to the limited amount of funding available, recipients must demonstrate a specific need when requesting an amount above the FY03 allocation. Regions also will review the recipient's utilization rates from the previous fiscal years to determine need in FY04.

Allocation System for Distribution of Funding

EPA regional offices will work with interested States and tribes to develop their annual work plans and funding requests. For Fiscal Year 2004, EPA will consider funding requests up to a maximum of $1.5 million per State or tribe. This limit may be changed in future years based on appropriation amounts and demand for funding. The EPA regional offices will forward each of the funding request amounts and a short summary of the work plan activities to EPA Headquarters. Based on the availability of funds, EPA Headquarters will compile the requested amounts and develop the annual allocation based on State and tribal response program needs described in the work plan summaries.

When EPA Regions negotiate individual State and tribal work plans, it is anticipated that funding will be prioritized as follows:

- Funding for program development activities to establish or enhance the four elements of a State or tribal response program and to enable States and tribes to comply with the public record requirement, including activities related to institutional controls. (States and tribes that have established one or more of the four elements will not be prejudiced in funding distributions if their work plan includes activities that enhance the four elements. States with MOA's will not be prejudiced in funding distributions if their work plan does not include tasks related to establishing or enhancing the four elements.)
- Funding for program development activities to enhance the response program or the cleanup capacity of a State or tribal response program.
- Funding for limited site-specific activities at eligible brownfields sites.
- Funding for environmental insurance mechanisms.
- Funding to capitalize brownfields cleanup revolving loan funds.

States and tribes must break their work plans down into these prioritization categories.

EPA will target funding of at least $3 million per year for tribal response programs. If this funding is not used, it will be carried over and added to at least $3 million in the next fiscal year. It is expected that the funding demand from tribes will increase through the life of this grant program (authorized by Congress through FY2006), and this funding allocation system should ensure that adequate funding for tribal response programs is available in future years.

Terms and Reporting

Cooperative agreements for State and tribal response programs will include programmatic and administrative terms and conditions. These terms and conditions will describe EPA's substantial involvement including technical assistance and collaboration on program development and site-specific activities.

Progress Reports. States and tribes will provide progress reports under 40 CFR 31.40, in accordance with terms and conditions of the cooperative agreement negotiated with EPA regional offices. State and tribal costs for complying with reporting requirements are an eligible expense under the section 128(a) grant. As a minimum, State or tribal progress reports must include both a narrative discussion and performance data relating to the State's or tribe's accomplishments with section 128(a) funding. If applicable, the State or tribe must include information on activities related to establishing or enhancing the four elements of the State's or tribe's response program. All recipients must provide information

relating to establishing and maintaining the public record.

Reporting Requirements. Depending upon the activities included in the State's or tribe's work plan, an EPA regional office may request that a progress report include:

Information related to the public record. All recipients must report information related to establishing and maintaining the public record, described above. States and tribes can refer to already existing public record, *e.g.*, Web site or other public database to meet this requirement. For the purposes of grant funding only, and depending upon the activities included in the State or tribe's work plan, this may include:

- A list of sites at which response actions have been completed including:
- Date the response action was completed;
- Site name, the name of owner at time of cleanup, and the type of brownfields site (*e.g.*, petroleum, methamphetamine laboratory, mine scarred lands);
- Location of the site (street address, and latitude and longitude);
- Whether an institutional control is in place;
- Explain the type of the institutional control in place (*e.g.*, deed restriction);
- Nature of the contamination at the site (*e.g.*, hazardous substances, contaminants, or pollutants, petroleum contamination, etc.);
- Size of the site in acres.
- A list of sites planned to be addressed by the state or tribal response program including:
- Site name, the name of owner at time of cleanup, and the type of brownfields site (*e.g.*, petroleum, methamphetamine laboratory, mine scarred lands);
- Location of the site (street address, and latitude and longitude);
- To the extent known, whether an institutional control is in place;
- Explain the type of the institutional control in place (*e.g.*, deed restriction);
- To the extent known, the nature of the contamination at the site (*e.g.*, hazardous substances, contaminants, or pollutants, petroleum contamination, etc.);
- Size of the site in acres.

Reporting environmental insurance. Recipients with work plans that include funding for environmental insurance must report:

- Number and description of insurance policies purchased (*e.g.*, type of coverage provided; dollar limits of coverage; category and identity of insured persons; premium; first dollar or umbrella; site specific or blanket; occurrence or claims made, etc.);
- The number of sites covered by the insurance;
- The amount of funds spent on environmental insurance (*e.g.*, amount dedicated to insurance program, or to insurance premiums) and the amount of claims paid by insurers to policy holders.

Reporting for site-specific assessment or cleanup activities. Recipients with work plans that include funding for brownfields site assessments or cleanup must report a list of sites at which site assessments or cleanup have been completed that includes:

- Site name;
- Location of the site (street address and latitude and longitude);
- Size of the site in acres;
- Date the assessment or cleanup was completed;
- Nature of contamination at the site (*e.g.*, hazardous substances, contaminants, or pollutants, petroleum contamination, etc.).

Reporting for other site-specific activities. Recipients with work plans that include funding for other site-specific related activities must include a description of the site-specific activities and the number of sites at which the activity was conducted. For example:

- Number and frequency of oversight audits of licensed site professional certified cleanups;
- Number and frequency of State/tribal oversight audits conducted;
- Number of sites where staff conducted audits, provided technical assistance, or conducted other oversight activities;
- Number of staff conducting oversight audits, providing technical assistance, or conducting other oversight activities.

Reporting for RLF uses. Recipients with work plans that include funding for Revolving Loan Fund (RLF) must include the information required by the terms and conditions for progress reporting under CERCLA section 104(k)(3) RLF grants.

Reporting for Non-MOA States and tribes. All recipients *without* a Voluntary Response Program MOA must report activities related to establishing or enhancing the four elements of the State's or tribe's response program. For each element State/tribes must report how they are maintaining the element or how they are taking reasonable steps to establish or enhance the element as negotiated in individual State/tribal work plans. For example, pursuant to CERCLA section 128(a)(2)(B), reports on the oversight and enforcement authorities/mechanisms element may include:

- A narrative description and copies of applicable documents developed or under development to enable the response program to conduct enforcement and oversight at brownfield sites. For example:
- Legal authorities and mechanisms (*e.g.*, statutes, regulations, orders, agreements);
- Policies and procedures to implement legal authorities; and
- Other mechanisms;
- A description of the resources and staff allocated/to be allocated to the response program to conduct oversight and enforcement at brownfield sites as a result of the grant;
- A narrative description of how these authorities or other mechanisms, and resources, are adequate to ensure that:
- A response action will:
- Protect human health and the environment; and
- Be conducted in accordance with applicable Federal and State law; and
- If the person conducting the response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed; and
- A narrative description and copy of appropriate documents demonstrating the exercise of oversight and enforcement authorities by the response program at a brownfield site.

Where applicable, EPA may require States/tribes to report specific performance measures related to the four elements which can be aggregated for national reporting to Congress.

The regional offices may also request other information be added to the progress reports, as appropriate, to properly document activities described by the cooperative agreement work plan.

EPA regions may allow States or tribes to provide performance data in appropriate electronic format.

The regional offices will forward progress reports to EPA Headquarters, if requested. This information may be used to develop national reports on the outcomes of CERCLA section 128(a) funding to States and tribes.

Dated: November 25, 2003.

Linda Garczynski,

Director, Office of Brownfields Cleanup and Redevelopment, Office of Solid Waste and Emergency Response.

[FR Doc. 03–30519 Filed 12–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7597–3]

Clean Water Act Section 303(d): Final Agency Action on 3 Total Maximum Daily Loads (TMDLs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces final agency action on 3 TMDLs prepared by EPA Region 6 for waters listed in the state of Arkansas, under section 303(d) of the Clean Water Act (CWA). These TMDLs were completed in response to the lawsuit styled *Sierra Club, et al.* v. *Clifford, et al.*, No. LR–C–99–114. Documents from the administrative record files for the final 3 TMDLs, including TMDL calculations and responses to comments, may be viewed at *www.epa.gov/earth1r6/6wq/artmdl.htm*

ADDRESSES: The administrative record files for these 3 TMDLs may be obtained by writing or calling Ms. Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1999, five Arkansas environmental groups, the Sierra Club, Federation of Fly Fishers, Crooked Creek Coalition, Arkansas Fly Fishers, and Save our Streams (plaintiffs), filed a lawsuit in Federal Court against the United States Environmental Protection Agency (EPA), styled *Sierra Club, et al.* v. *Clifford, et al.*, No. LR–C–99–114. Among other claims, plaintiffs alleged that EPA failed to establish Arkansas TMDLs in a timely manner.

EPA Takes Final Agency Action on 3 TMDLs

By this notice EPA is taking final agency action on the following 3 TMDLs for waters located within the state of Arkansas:

Segment-reach	Waterbody name	Pollutant
AR11110203–904–3.	Stone Dam Creek.	Ammonia.
AR11110203–904–3.	Stone Dam Creek.	Nitrates.
AR11110203–931–10.	Whig Creek ...	Copper.

EPA requested the public to provide EPA with any significant data or information that may impact the 3 TMDLs at **Federal Register** Notice: Volume 68, Number 190, page 56632 (October 1, 2003). The comments received and EPA's response to comments may be found at *www.epa.gov/earth1r6/6wq/artmdl.htm*

Dated: December 1, 2003.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 03–30515 Filed 12–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7596–9]

Notice of Tentative Approval and Solicitation of Request for a Public Hearing for Public Water System Supervision Program Revisions for the State of Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval and solicitation of requests for a public hearing.

SUMMARY: Notice is hereby given in accordance with the provision of section 1413 of the Safe Drinking Water Act as amended, and the National Primary Drinking Water Regulations Implementation 40 CFR part 142, that the State of Maryland is revising its approved Public Water System Supervision Program. Maryland has adopted the Public Notification Rule requiring the owner or operator of a public water system to give notice to the public for all violations of national primary drinking water regulations as well as for failure to comply with a prescribed treatment technique, for failure to perform required water quality monitoring or for failure to comply with prescribed testing procedures. It has also adopted the Lead and Copper Rule Minor Revisions, which makes minor changes to the existing Lead and Copper Rule, as well as adopting several other minor revisions to its regulations. EPA has determined that these revisions, all effective April 29, 2002, are no less stringent than the corresponding Federal regulations. Therefore, EPA has decided to tentatively approve these program revisions. All interested parties are invited to submit written comments on this determination and may request a public hearing.

DATES: Comments or a request for a public hearing must be submitted by January 8, 2004. This determination shall become effective on January 8, 2004, if no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, and if no comments are received which cause EPA to modify its tentative approval.

ADDRESSES: Comments or a request for a public hearing must be submitted to the U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. Comments may also be submitted electronically to Steve Maslowski at *maslowski.steven@epa.gov.*

All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Drinking Water Branch, Water Protection Division, U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.
- Water Supply Program, Maryland Department of the Environment, Montgomery Park Business Center, 1800 Washington Blvd, Baltimore, MD 21230.

FOR FURTHER INFORMATION CONTACT: Steve Maslowski, Drinking Water Branch (3WP22) at the Philadelphia address given above; telephone (215) 814–2371 or fax (215) 814–2318.

SUPPLEMENTARY INFORMATION: All interested parties are invited to submit written comments on this determination and may request a public hearing. All comments will be considered, and, if necessary, EPA will issue a response. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by January 8, 2004, a public hearing will be held.

A request for public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03–30517 Filed 12–8–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 22, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Jeffrey Reder, Westminster, Colorado; William Schmidt, Westminster, Colorado; and Tschudy Schmidt, Fort Collins, Colorado; to acquire additional voting shares of Mountain States Bancorporation, Denver, Colorado, and thereby indirectly acquire additional voting shares of Mountain States Bank, Denver, Colorado.

Board of Governors of the Federal Reserve System, December 2, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–30349 Filed 12–8–03; 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 January 1, 2004.

A. Federal Reserve Bank of Cleveland (Nadine W. Wallman, Assistant Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. National City Corporation, Cleveland, Ohio; to merge with Allegiant Bancorp, Inc., and thereby acquire Allegiant Bank, both of St. Louis, Missouri.

In connection with this application, National City Corporation also has applied to acquire Allegiant Community Development Corporation, Allegiant Investment Counselors, Inc., and Equality Commodity Corporation, all in St. Louis, Missouri, and thereby engage in community development financing and investment activities; financing and investment advisory activities; and flood determination services activities pursuant to Sections 225.28(b)(12)(i), 225.28(b)(6), and 225.28(b)(2) of Regulation Y.

B. Federal Reserve Bank of Chicago (Patrick Wilder, Managing Examiner) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Bank of Montreal, Toronto, Canada, Bankmont Financial Corp., Wilmington, Delaware, and Harris Bankcorp, Inc., Chicago, Illinois; to merge with Lakeland Financial Corp., Round Lake Heights, Illinois, and thereby indirectly acquire Lakeland Community Bank, Round Lake Heights, Illinois.

Board of Governors of the Federal Reserve System, December 2, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–30348 Filed 12–8–03; 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 Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 2004.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Lindoe, Inc., Ordway, Colorado, to acquire 100 percent of the voting shares of First National Bank of Lake City & Creede, Lake City, Colorado.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Southwest Bancorporation of Texas, Inc., Houston, Texas, and Southwest Holding Delaware, Inc., Wilmington, Delaware, to acquire 100 percent of Reunion Bancshares, Inc., Dallas, Texas, and indirectly acquire Reunion Bancshares-Delaware, Inc., Dover, Delaware, and Lone Star Bank, Dallas, Texas.

In connection with this application, Southwest Bancorporation of Texas, Inc., Houston, Texas, and Southwest Holding Delaware, Inc., Wilmington, Delaware also have applied to acquire Reunion Mortgage Services, Inc., Dallas, Texas, and thereby engage in nonbanking activities pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 3, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E3–00484 Filed 12–8–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 p.m., Monday, December 15, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, December 5, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–30623 Filed 12–5–03; 1:33 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Oncologic Drugs Advisory Committee. This meeting was announced in the **Federal Register** of November 18, 2003 (68 FR 65076–65077). The amendment is being made to reflect a change in the *Location* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Johanna Clifford, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or by express delivery to: 5630 Fishers Lane, rm. 1093, Rockville, MD 20852, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512542. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 18, 2003 (68 FR 65076–65077), FDA announced that a meeting of the Oncologic Drugs Advisory Committee would be held on December 16, 2003. On page 65077, in the first column, the *Location* portion of the meeting is amended to read as follows:

Location: CDER Advisory Committee conference rm. 1066, 5630 Fishers Lane, Rockville, MD.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: December 3, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–30436 Filed 12–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Acting Assistant Secretary for Health have taken final action in the following case:

Jianhua (James) Xu, M.S., University of Alberta: Based on the University of Alberta (UA) Report, the respondent's admissions, and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Jianhua (James) Xu, M.S., former technician at UA, engaged in scientific misconduct in research funded by National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH), grant R01 HL61751–01.

Mr. Xu performed experiments on the enzyme lipid phosphate phosphatase-1 (LPP–1) from a family of enzymes that affect signal transduction by glycerolipid and sphingolipid phosphate esters as second messengers. A typical experiment involved the investigation of the effects on various glycerolipids, sphingolipids, and other related effector compounds on the activity of LPP–1 either in tissue culture cells or isolated enzyme preparations. Mr. Xu falsified data by adding vanadate to inhibit the enzyme LPP–1, in experiments that purported to show that the inhibition was the result of adding natural lipid effectors. He was also observed deliberately falsifying other colleagues' experiments in a similar manner.

Mr. Xu admits that he alone was responsible for the falsification.

Specifically, Mr. Xu committed scientific misconduct by falsifying data for Figures 1A, 1B, 1C, 2B, 2D, 3, 4, 5, 6, 7, and 8A that he published in: James Xu, *et al.* ''Lipid phosphate phosphatase-1 and Ca^{2+} control lysophosphatidate signaling through EDG–2 receptors.'' Journal of Biological Chemistry 275:27520–27530, 2000. The paper was retracted in Journal of Biological Chemistry 278:38104, 2003.

Due to the falsified data, Manuscript #C0007049 by Xu, *et al.* entitled ''Transactivation of platelet-derived growth factor receptors by lysophosphatidate causes tryrosine phosphorylation of lipid phosphate phosphatase-1 and feedback inhibition of EDG–2 receptor activation'' was withdrawn. Also, ORI concluded Mr. Xu committed scientific misconduct by deliberately falsifying experiments of other colleagues in the laboratory by adding vanadate to their experiments without the authorization or knowledge of his colleagues.

Mr. Xu provided the following in an admission statement dated March 23, 2003:

For the purpose of disposition of this matter by the Office of Research Integrity (''ORI'') of the U.S. Department of Health and Human Services, I confirm that I began falsifying results of experiments, relating to the inhibition of the enzyme lipid phosphate phosphatase (LPP–1), in which I was initially involved. The falsification consisted of the addition of vanadate to tubes containing certain substances. In order to cover up my initial falsification, I also falsified the experiments of others who were doing related experiments. I only falsified these subsequent experiments to the extent necessary to cover up the original falsification and did not falsify any other experiments.

The research misconduct was significant because the research focused on the study of signal transduction by lipid messenger molecules, which play an important role in regulating cellular processes as diverse as wound repair, regeneration of injured corneal tissues, adipocyte growth obesity, and cell division potentially involved in the development of cancers.

Mr. Xu has entered into a Voluntary Exclusion Agreement (Agreement) in which he has voluntarily agreed for a period of four (4) years, beginning on November 10, 2003:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility or involvement in nonprocurement programs of the United States Government referred to as ''covered transactions'' as defined in the debarment regulations at 45 CFR part 76; and

(2) to exclude himself from serving in any advisory capacity to PHS including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 03–30535 Filed 12–8–03; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

60Day–04–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: HIV Prevention Capacity-Building Assistance Information Collection: Reporting and Monitoring System—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

Background

CDC is requesting a 3-year clearance for information collection forms to monitor the HIV prevention activities of CBA provider grantees funded by CDC from 2004 to 2009. These forms will be used to collect information that assists in monitoring CBA services and activities. CDC is responsible for monitoring and evaluating HIV prevention activities conducted under these cooperative agreements. This requires that CDC have current information regarding the progress of CBA activities and services supported through these cooperative agreements. Therefore, forms such as the Trimester Interim Progress Report, CBA Notification Form, CBA Completion Form, CBA Training Events Report are considered a critical component of the monitoring and evaluation process. Since, this program will encompass approximately 36 CBA provider organizations, there is a need for a standardized system for reporting individual episodes of CBA delivered by all CBA provider grantees. The collection of data will help CDC discern and refine national goals and objectives in the prevention of HIV.

CBA providers will be required to submit CBA Trimester Progress Reports (form A). The purpose of the CBA Trimester Progress Report is to describe CBA undertaken during the previous four months. The Trimester Progress Report will be a narrative on the programs' successes and barriers; process and outcome monitoring data; collaborative and cooperative activities with other organizations; and plans for future activities.

To effectively track and monitor all requests for capacity-building assistance, CBA providers will be required to submit a CBA Notification Form (form B) following each contact with a CBO or HIV prevention stakeholder for CBA services. The purpose of this form is to track all requests for services from CBOs, health departments and stakeholders. Requests for CBA from these CBOs and stakeholders are received by CBA providers on an on-going basis.

CBA providers will also be required to submit a CBA Completion Form (form C) following each episode of CBA service delivered to all CBOs and stakeholders. The purpose of this form is to provide feedback and follow-up information to CDC Project Officers on the types of CBA services and quality of services that were delivered to all CBOs by CBA Providers. CBA Requests from CBOs, health departments, and stakeholders are received by CBA providers on an on-going basis. Information collection will be on-going throughout the duration of the cooperative agreements.

In addition, CBA providers will be required to submit pre-planned CBA training events for a CBA Training Events Report (form D). The CBA Training Events Report is used to disseminate planned capacity building assistance activities delivered by CBA providers, the CDC and other organizations providing training and technical assistance. The calendar is also used as a marketing tool to let CBOs, health departments and stakeholders know what types of

technical assistance and training activities are available.

It is estimated that Form A will require 4 hours of preparation by the respondent, Form B will require 15 minutes of preparation by the respondent, and Form C will require 30 minutes of preparation by the respondent, and Form D will require 2 hours of preparation by the respondent. There are no costs to respondents other than their participation in the collection of information.

Form name	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Form A: CBA Trimester Report	36 Grantees	3	4	432
Form B: CBA Notification Form	36 CBA Provider Grantees	50	15/60	450
Form C: CBA Completion Form	36 CBA Provider Grantees	25	30/60	450
Form D: CBA Training Events Report	36 CBA Provider Grantees	12	2	864
Total				2196

Dated: November 25, 2003.

Laura Yerdon Martin,

Acting Director, Executive Secretariat, Centers for Disease Control and Prevention.

[FR Doc. 03–30415 Filed 12–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–09–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: The National Electronic Injury Surveillance System—All Injury Program (NEISS–AIP) Special Study on Motor Vehicle Safety—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Motor vehicle injuries are the leading cause of death in the U.S. for people aged 1–34. In 2000, more than 40,000 people died as a result of motor vehicle-related injuries. In addition, motor vehicle injuries account for millions of emergency department visits annually, with many victims suffering permanent disabilities. Our goal at the National Center for Injury Prevention and Control is to reduce these deaths and disabilities. A recent priority-setting process revealed several gaps in our knowledge of motor vehicle safety that could be filled with enhancements to the NEISS All-Injury Program data collection system.

Scientific knowledge is being advanced through an expansion of the National Electronic Injury Surveillance System All Injury Program (NEISS–AIP), a collaborative effort by CDC, National Center for Injury Prevention and Control (NCIPC) and the U.S. Consumer Product Safety Commission (CPSC). The NEISS–AIP collects data about all types and external causes of non-fatal injuries and poisonings treated in U.S. hospital emergency departments (EDs). Currently, NEISS–AIP collects information only on the most severe injury. CDC proposes to expand NEISS–AIP by inserting a special screen study for one year, which will be triggered by coding motor vehicle as the cause of the injury. This special screen will permit us to collect all injury diagnoses and body parts affected (up to five), as well as restraint use and blood alcohol concentration for all motor vehicle occupants, when this information is included in the medical chart. The study will identify within that population, child occupants aged 0–12 years. A telephone follow-back survey of parents and caregivers will then be conducted to collect information about their child's seating position, restraint type, and vehicle and crash characteristics. This project will provide vital information about the type and number of injuries incurred in order to improve upon existing interventions or develop new interventions. The estimated annualized burden is 271 hours.

Survey	No. of respondents	No. of responses/respondent	Average burden/response (in hours)
NEISS Motor Vehicle Study (0–12)	1,250 (screening)	1	5/60
NEISS Motor Vehicle Study (0–12)	1,000 (respondents)	1	10/60

Dated: December 1, 2003.

Laura Yerdon Martin,

Acting Director, Executive Secretariat, Centers for Disease Control and Prevention.

[FR Doc. 03–30425 Filed 12–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–13]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Surveillance for Bloodstream and Vascular Access Infections in Outpatient Hemodialysis Centers, (0920–0442)—Extension—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

CDC is proposing an extension of a surveillance survey of bloodstream infections, vascular access infections, infections caused by hospitalization, and antimicrobial infections, all of which starts at U.S. outpatient hemodialysis centers. Although bloodstream and vascular access infections are common in hemodialysis patients, prior to this system there was no previous system to record and track these complications.

Participation in the proposed project is voluntary. Currently about 80–90 centers report data each month. We estimate that about 100 of the approximately 4,500 U.S. outpatient hemodialysis centers will participate in the coming years.

Participating centers may collect data continuously, or may discontinue participation at any time. CDC estimates that the average center will participate for nine months. Each month, participating centers will record the number of hemodialysis patients they treat and maintain a log of all hospitalizations and intravenous (IV) antimicrobial starts. For each hospitalization or IV antimicrobial start, further information (*e.g.*, type of vascular access, clinical symptoms, presence of a vascular access infection, and blood culture results) will be collected. These data may be reported to CDC on paper forms or via a secure Internet site. CDC aggregates this data and generates reports which are sent to participating dialysis centers.

Centers that participate in the Internet-based reporting system may also analyze their own data and print out reports as desired. Rates of bloodstream infection, vascular access infection, and antimicrobial use per 1000 patient-days will be calculated. Also, the percentage of antimicrobial starts for which a blood culture is performed will be calculated. Through use of these data, dialysis centers will be able to track rates of key infectious complications of hemodialysis. This will facilitate quality control improvements to reduce the incidence of infections, and clinical practice guidelines to improve use of antimicrobials. The total cost to the respondents is $157,500.

Form	Number of respondents	Number of responses per respondent	Average burden per response	Total burden (in hours)
Agreement to participate and Practices Survey	100	1	1	100
Census Form	100	12	1	1,200
Log	100	10	1	1,000
Incident Form	100	200	12/60	4,000
Total				6,300

Dated: December 1, 2003.

Laura Yerdon Martin,

Acting Director, Executive Secretariat, Centers for Disease Control and Prevention.

[FR Doc. 03–30426 Filed 12–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–11]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Pregnancy Risk Assessment Monitoring System (PRAMS) Program Evaluation—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background

The Pregnancy Risk Assessment Monitoring System (PRAMS) is a surveillance project of the CDC, National Center for Chronic Disease Prevention and Health Promotion and state health departments. PRAMS collects state-specific, population-based data on maternal attitudes and experiences prior to, during, and immediately following pregnancy.

The goal of the PRAMS project is to improve the health of mothers and infants by reducing adverse outcomes such as low birth weight, infant mortality and morbidity, and maternal morbidity. PRAMS provides state-specific data for planning and assessing health programs and for describing maternal experiences that may contribute to maternal and infant health. PRAMS collects data that are unavailable through other surveillance systems and has become a critical mechanism for identifying and monitoring trends, informing program evaluations and policy decisions, and tracking progress toward Healthy People 2010 objectives that are related to maternal and child health. Currently 31 states and New York City administer PRAMS, representing 62% of all U.S. births. The objectives of the program evaluation are threefold:

1. To inform the operational, analytic, translation, and capacity building functions of the current PRAMS system and make them more efficient, effective and capable of meeting future needs.

2. To provide information that will guide the expansion and support of additional state PRAMS programs.

3. To provide information that will enable the PRAMS system to be more responsive to changes in public health priorities and policies, including the needs of the state programs and the wider MCH community.

A key component of the PRAMS evaluation is a semi-structured mail survey of all 32 PRAMS program directors. The focus of the mail-in survey will be to examine ways to make PRAMS data accessible for analysis, factors promoting capacity and utilization, costs, indicators of success, and additional resources needed to improve quality and responsiveness.

Prior to fielding the survey, a research contractor will conduct one to two hour interviews with 3 to 4 program representatives. These interviews will help to reduce overall respondent burden by assessing whether the survey is comprehensible and relevant, whether the terms and phrases are understood as intended, and whether it is easy to read.

The information obtained from this data collection will help the CDC meet its evaluation objectives as described above, responses are voluntary. No proprietary items or sensitive information will be collected. There is no cost to respondents.

Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Mail-in Survey	32	1	60/60	32

Dated: December 1, 2003.

Laura Yerdon Martin,

Acting Director, Executive Secretariat, Centers for Disease Control and Prevention.

[FR Doc. 03–30427 Filed 12–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–12]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Coal Workers' X-ray Surveillance Program (CWXSP), OMB No. 0920–0020—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background

The CWXSP is a federally mandated program under the Federal Mine Safety and Health Act of 1977, Pub. L. 95–164. The Act provides the regulatory authority for the administration of the CWXSP, a surveillance program to protect the health and safety of underground coal miners. This Program requires the gathering of information from coal mine operators, participating miners, participating x-ray facilities, and participating physicians. The Appalachian Laboratory for Occupational Safety and Health (ALOSH), located in Morgantown, WV, is charged with administration of this Program. There are no costs to respondents.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Physicians/interpretations	5000	1	3/60	250
Physicians/certification	300	1	10/60	50
Miners	2500	1	20/60	833
Mine operators	200	1	30/60	100
X-ray facilities	25	1	30/60	13
Total				1246

Dated: December 1, 2003.

Laura Yerdon Martin,

Acting Director, Executive Secretariat, Centers for Disease Control and Prevention.

[FR Doc. 03–30428 Filed 12–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0066]

Agency Information Collection Activities; Announcement of the Office of Management and Budget Approval; 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 a collection of information entitled ''Inspection by Accredited Persons Program Under the Medical Device User Fee and Modernization Act of 2002'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

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 the **Federal Register** of October 8, 2003 (68 FR 58113), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0510. The approval expires on November 30, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: December 3, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–30534 Filed 12–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Additional Action on Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final additional action in the following case:

Kuei-Fu (Tom) Lin, D.V.M., Medical University of South Carolina (MUSC): Based on the report of an investigation conducted by MUSC and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found on June 12, 2001, that Dr. Lin, a former graduate student, Department of Biochemistry and Molecular Biology at MUSC, engaged in scientific misconduct in research supported by the National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH), grants R01 HL29397, ''Regulation and Function of Renal Kallikrein,'' and R01 HL56686, ''Gene Therapy in Experimental Hypertension and Renal Diseases,'' by falsifying data published in publications in Hypertension 26:847–853, 1995, Hypertension Research 20:269–277, 1997, and Human Gene Therapy 9:1429–1438, 1998.

Subsequent to the execution of a three-year Voluntary Exclusion Agreement (Agreement), Dr. Lin continued to receive PHS funds through April 30, 2003, in material violation of the Agreement. Based on Dr. Lin's aforementioned violation, and in lieu of initiation of debarment proceedings authorized by 45 CFR § 76.305(c)(4) for Dr. Lin's violation of a material provision of the Agreement, the parties have agreed to extend the term of Dr. Lin's voluntary exclusion through April 29, 2007.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris Pascal, J.D.,

Director, Office of Research Integrity.

[FR Doc. 03–30536 Filed 12–8–03; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[Announcement Number: HRSA–04–077]

Maternal and Child Health Federal Set-Aside Program; Special Projects of Regional and National Significance; Community-Based Abstinence Education Project Grants (CBAE); CFDA #93.110

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that approximately $33 million in fiscal year (FY) 2004 funds will be available for making competitive grants to provide abstinence education to adolescents, subject to the availability of appropriations. There are no cost sharing, matching or cost participation requirements of the program. Eligibility is open to public and private entities, including faith-based and community organizations, which develop and/or provide an abstinence program consistent with the definition of ''abstinence education'' in section 510 of the Social Security Act. In addition, the entity must agree not to provide a participating adolescent any other education regarding sexual conduct in the same setting. All awards will be made under the program authority of

section 501(a)(2) of the Social Security Act, the Maternal and Child Health (MCH) Federal Set-Aside Program (42 U.S.C. 701(a)(2)) and will be administered by the Maternal and Child Health Bureau (MCHB), HRSA. HRSA will encourage collaboration from other Federal agencies that have an interest in abstinence education, such as the Administration for Children and Families (ACF) and the Office of Population Affairs (OPA). Contingent on the availability of funding, up to 70 three-year implementation grants, with annual awards ranging from $250,000 to $800,000, will be awarded. Projects may be located in any State, the District of Columbia, and United States territories, commonwealths, and possessions. However, to ensure that there is a more even geographic distribution of grantees, special consideration will be given to highly ranked applications in States that do not have a Federally-funded Special Projects of Regional and National Significance (SPRANS) Community-Based Abstinence Education grant.

This **Federal Register** announcement will appear on the HRSA Home Page at: *http://www.hrsa.gov*. **Federal Register** notices are found by following instructions at: *www.gpoaccess.gov/fr/index.html*.

DATES: Applicants for this program are requested to notify MCHB's Division of State and Community Health by December 31, 2003. Please note that a ''notice of intent to submit an application'' will be used as a mechanism to deliver technical assistance and to assist in the planning of the objective review; it is not a requirement of the application process. Notification can be made in one of three ways: telephone, 301–443–2204; fax, 301–443–9354; or mail, MCHB, HRSA; Division of State and Community Health; Parklawn Building, Room 18–31; 5600 Fishers Lane; Rockville, MD 20857. MCHB is sponsoring five, one-day pre-application workshops in December 2003 to assist potental applicants in preparing applications that address the requirements of the SPRANS Community-Based Abstinence Education Project Grant program, as described in the Application Guidance. Attendance at a pre-application workshop is not mandatory. The tentative dates and locations of the five workshops are as follows: Kansas City, December 16; San Diego, December 18; Atlanta, January 5; Boston, January 6; and Baltimore, January 9. Registration information and possible schedule changes for these workshops will be posted on the MCHB Homepage at *www.mchb.hrsa.gov*, and can be viewed at the logistics contractor's Web site at *www.psava.com/abed*. The deadline for receipt of applications is February 9, 2004. Applications will be considered ''on time'' if they are either received on or before the deadline date or postmarked or E marked on or before the deadline date and received in time for the Independent Review Committee review. In the event that questions arise about meeting the application due date, applications must have a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be accepted as proof of timely mailing. Applications submitted electronically will be time/date stamped electronically, which will serve as receipt of submission. The projected award date is July 1, 2004.

Applications which do not meet the criteria above are considered late applications. HRSA shall notify each late applicant that its application will not be considered in the current competition.

ADDRESSES: To receive a complete application kit, applicants may contact the HRSA Grants Application Center at 1–877–477–2123 (1–877–HRSA–123) by telephone, or register on-line at: *http://www.hrsa.gov*, or by accessing *http://www.hrsa.gov/g_order3.htm* directly. This program uses the standard Form PHS 5161–1 (rev. 7/00) for applications (approved under OMB No. 0920–0428). Applicants must use the appropriate Catalog of Federal Domestic Assistance (CFDA) number when requesting application materials. The CFDA is a Government wide compendium of enumerated Federal programs, projects, services, and activities which provide assistance. The CFDA Number for the Community-Based Abstinence Education Project Grant Program is #93.110.

If applying on paper, the entire application may not exceed 80 pages in length, including the abstract, project and budget narratives, face page, attachments, any appendices and letters of commitment and support. Pages must be numbered consecutively. If applying on-line, the total size of all uploaded files may not exceed 10 MB. Applications that exceed the specified limits will be deemed non-compliant, and will be returned to the applicant without further consideration.

If you choose to submit a paper application, please send the original and two copies to: Grants Management Officer (MCHB), HRSA Grants Application Center, ATTN: Program Announcement No. HRSA–04–0777, The Legin Group, Inc., 901 Russell Avenue, Suite 450, Gaithersburg, Maryland 20879, telephone: 877–474–2345, E-mail: *hrsagac@hrsa.gov*. Upon receipt of a paper application, the Grants Application Center will mail an acknowledgment of receipt to the applicant organization's Program Director.

HRSA encourages applicants to submit applications on-line. To register and/or log-in to prepare your application, go to *https://grants.hrsa.gov/webexternal/login.asp*. For assistance in using the on-line application system, call 877-GO4-HRSA (877–464–4772) between 8:30 a.m. to 5:30 p.m. ET or e-mail *callcenter@hrsa.gov*.

When available, application guidance and the required form for the Community-Based Abstinence Education Grant Program may be downloaded in either Word or Adobe Acrobat format (.pdf) from the HRSA homepage at *http://www.hrsa.gov/grants/preview/*.

Applicants should note that HRSA is currently accepting grant applications online. Please refer to the HRSA grants schedule at *http://www.hrsa.gov/grants.htm* for more information. The automated application process should be faster, easier and better for applicants and for HRSA. We encourage you to take advantage of this new option. Applicants will be notified through the same channels that currently announce the availability of downloadable and paper application materials, including notices on HRSA Web sites and e-mail communications. Once the automated system is in place, applications can be submitted on-line and applicants will receive an electronic confirmation of the submission. Applicants will need to print the face page, sign it, and submit it to the HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879; telephone 1–877–477–2123.

Beginning October 1, 2003, all applicant organizations are required to have a Data Universal Numbering System (DUNS) number in order to apply for a grant from the Federal Government. The DUNS number is a unique nine-character identification number provided by the commercial company, Dun and Bradstreet. There is no charge to obtain a DUNS number. Information about obtaining a DUNS can be found at *http://www.hrsa.gov/grants/duns.htm* or call 1–866–705–5711. Please include the DUNS number next to the OMB approval number on the application face page. Applications will not be reviewed without a DUNS number.

Additionally, the applicant organization will be required to register

with the Federal Government's Central Contractor Registry (CCR) in order to do business with the Federal Government, including electronic. Information about registering with the CCR can be found at *http://www.hrsa.gov/grants/ccr.htm*.

FOR FURTHER INFORMATION CONTACT: Donna Hutten, 301–443–5839 (for questions specific to project activities of the program, program objectives, or the Letter of Intent described above); and Pamela Bell, 301–443–3504 (for grants policy, budgetary, and business questions).

SUPPLEMENTARY INFORMATION: Abstinence-only education programs are one way to educate young people and create an environment within communities that support teen decisions to postpone sexual activity. Between 1991 and 2001, the prevalence of sexual experience decreased 16 percent among high school students (CDC, *MMWR*, September 27, 2002). In 2001, 45.6 percent of high school students reported having had sexual intercourse and 33.4 percent reported having had sexual intercourse within the previous three months ((CDC, *MMWR*, June 28, 2002). There are some indications that early sexual intercourse by adolescents can have negative effects on social and psychological development. Research shows that teen pregnancy is linked to a list of risk factors similar to those for other problem behaviors of adolescence, such as alcohol and drug use, violence, delinquency, and school drop-out. Teen parenting is associated with the lack of high school completion and the initiation of a cycle of poverty for mothers. The Department of Health and Human Services established the reduction of teen pregnancies as a priority goal in its 1997 strategic plan. Based on preliminary U.S. birth data for 2002, birth rates for teenagers have continued their steady decline. Overall, the teen birth rate has declined 28 percent since 1990. The birth rates for teenagers 15–17 years and 18–19 years have declined 38 and 18 percent, respectively since 1990 (CDC, NCHS, *Vital Statistics Report*, June 25, 2003).

Consistent with other SPRANS grant programs, MCHB encourages coordination and collaboration between the State agencies administering a Section 510 abstinence education grant and community-based organizations applying for a SPRANS Community-Based Abstinence Education Project grant. Such coordination and collaboration is considered beneficial in promoting complementary efforts between State and community agencies and advancing maternal and child health. MCHB also encourages collaboration among Federal agencies with an interest in abstinence-only education programs, such as ACF and OPA.

Projects funded through the SPRANS Community-Based Abstinence Education Grant Program share a common definition of ''abstinence education'' with the Section 510-funded State programs. For purposes of both programs (as well as abstinence education programs funded under the Title XX Adolescent Family Life program), the term ''abstinence education'' means ''an educational or motivational program which—

(A) has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;

(B) teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;

(C) teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems;

(D) teaches that a mutually faithful monogamous relationship in the context of marriage is the expected standard of human sexual activity;

(E) teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;

(F) teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society;

(G) teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and

(H) teaches the importance of attaining self-sufficiency before engaging in sexual activity.''

Curriculum developed or selected for implementation in the SPRANS Community-Based Abstinence Education Grants Program must address all eight elements of the Section 510 abstinence education definition and may not be inconsistent with any aspect of that definition.

Authorization: Section 501(a)(2) of the Social Security Act, 42 U.S.C. 701(a)(2).

Purpose: The purpose of the SPRANS Community-Based Abstinence Education Grant Program is to provide support to public and private entities for the development and implementation of abstinence education programs for adolescents, ages 12 through 18. This program funds the planning and implementation of community-based, abstinence-only educational interventions designed to reduce the proportion of adolescents who have engaged in premarital sexual activity, including but not limited to sexual intercourse; reduce the incidence of out-of-wedlock pregnancies among adolescents; and reduce the incidence of sexually transmitted diseases among adolescents.

Specific objectives for the SPRANS Community-Based Abstinence Education planning and implementation grants are to:

- Support programmatic efforts that foster the development of abstinence-only education for adolescents, ages 12 through 18, in communities across the country.
- Develop and implement abstinence-only programs that target the prevention of teenage pregnancy and premature sexual activity.
- Develop abstinence education approaches that are culturally sensitive and age-appropriate to meet the needs of a diverse audience of adolescents, ages 12 through 18.
- Implement curriculum-based community education programs that promote abstinence decisions to adolescents, ages 12 through 18.

The SPRANS Community-Based Abstinence Education Project Grants Program is complementary to the Title V ''Section 510'' Abstinence Education Grant Program. Activities funded under the SPRANS Community-Based Abstinence Education Project Grants should enhance the State grantees' efforts to achieve performance goals and objectives established for the existing Section 510 projects in accordance with the requirements of the ''Government Performance and Results Act (GPRA) of 1993'' (Public Law 103–62). This Act requires the establishment of measurable goals for Federal programs that can be reported as part of the budgetary process, thus linking funding decisions with performance. While SPRANS Community-Based Abstinence Education Program grantees are not responsible for establishing individual program performance targets, grantees are expected to collect and annually report program data that address the six program performance measures presented in Figure 1. This data collection and reporting is essential to the Agency's efforts to assess program-wide performance and progress towards achieving the performance measure objectives.

Figure 1.—SPRANS Community-Based Abstinence Education Grant Program Performance Measures

1. Proportion of program participants who successfully complete or remain

enrolled in an abstinence-only education program.

2. Proportion of adolescents who understand that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy and sexually transmitted disease.

3. Proportion of adolescents who indicate an understanding of the social, psychological and health gains to be realized by abstaining from premarital sexual activity.

4. Proportion of participants who report they have refusal or assertiveness skills necessary to resist sexual urges and advances.

5. Proportion of youth who commit to abstain from sexual activity until marriage.

6. Proportion of participants who intend to avoid situations and risk behaviors, such as drug use and alcohol consumption, which make them more vulnerable to sexual advances and urges.

Each SPRANS Abstinence Education grantee will be required to submit an Annual Progress Summary on its activities, including a narrative discussion of the project's progress toward achieving its goals and objectives, an unduplicated count of clients served, total number of client encounters, a list of the communities served, and a description of the type of project activities being implemented.

Applications for SPRANS Community-Based Abstinence Education implementation grants are required to include a data collection plan that addresses the specified performance measures. In the Annual Progress Summary, implementation grantees will document program data for each performance measure. Further information on reporting requirements for this program and instructions regarding application requirements are included in the Program Guidance.

Curriculum developed or selected for implementation in the SPRANS Community-Based Abstinence Education Grants Program must address all eight elements of the Section 510 abstinence education definition and may not be inconsistent with any element of that definition.

Applicants are required to complete a Curriculum Summary form for every proposed curriculum, which includes documentation that the curriculum is responsive to and consistent with each of the eight elements of the section 510 abstinence education definition. Applicants are required to describe any proposed modifications to the curriculum(a) to address areas of non-compliance. Consistent with other SPRANS programs, consultation and collaboration between the SPRANS Community-Based Abstinence Education grantees and State section 510 grantees are encouraged throughout the life of the project.

Applicants should be aware that SPRANS Community-Based Abstinence Education Project grantees and their contractors/sub-grantees may not expend Federal funds for sectarian instruction, worship, prayer, or proselytization.

Eligibility: Under SPRANS project grant regulations at 42 CFR part 51a.3, any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b), is eligible to apply for grants covered by this announcement. State agencies responsible for the administration of the Section 510 Abstinence Education Grant, non-profit organizations and other community-based organizations, including faith-based organizations, are eligible to apply for funding under a SPRANS Community-Based Abstinence Education Project Grant. Projects must clearly and consistently focus on the designated definition of ''abstinence education'' and applicants must agree not to provide a participating adolescent any other education regarding sexual conduct in the same setting.

Funding Level/Project Period: Contingent on available funding, approximately $33 million will be awarded to support up to 70 new three-year implementation grants in FY 2004, with awards ranging from $250,000 to $800,000 per year. The project period consists of three budget periods, each generally of one year duration. Continuation of any project from one budget period to the next is subject to satisfactory performance and availability of funds.

Review Criteria: The following are generic review criteria applicable to all MCHB programs:

(1) The extent to which the project will contribute to the advancement of maternal and child health and/or improvement of the health of children with special health care needs;

(2) The extent to which the project is responsive to policy concerns applicable to MCH grants and to program objectives, requirements, priorities and/or review criteria for specific project categories, as published in program announcements or guidance materials;

(3) The extent to which the estimated cost to the Government of the project is reasonable, considering the anticipated results;

(4) The extent to which the project personnel are well qualified by training and/or experience for their roles in the project and the applicant organization has adequate facilities and personnel; and

(5) The extent to which, insofar as practicable, the proposed activities, if well executed, are capable of attaining project objectives.

More specific review criteria used to review and rank applications for the SPRANS Community-Based Abstinence Education grant program are included in the application kit. Applicants should pay strict attention to addressing all the criteria delineated in the application kit program guidance, as they are the basis upon which their applications will be judged.

Special consideration will be given to entities in local communities which demonstrate a strong record of support for abstinence education among adolescents. In addition, previous SPRANS Community-Based Abstinence Education grantees will receive this special consideration.

To ensure that there is a geographic distribution of grantees, special consideration may be given to highly ranked applications in States that do not currently have a funded SPRANS Community-Based Abstinence Education grant.

Public Health System Reporting Requirements: This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937–0195). Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

(a) A copy of the face page of the application (SF 424).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State and local health agencies.

It is also permissible to substitute the Project Abstract in place of the PHSIS.

Paperwork Reduction Act of 1995: Data collection requirements have been approved by the Office of Management and Budget (OMB) and are in effect, as required under the Paperwork Reduction Act of 1995 (OMB No. 0915–0272).

Executive Order 12372: The MCH Federal Set-Aside program has been determined to not be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

Dated: November 28, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–30597 Filed 12–5–03; 12:05 pm]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Submission for OMB Review; Comment Request; Request for Generic Clearance To Collect Medical Outcome and Risk Factor Data From a Cohort of U.S. Radiologic Technologists

SUMMARY: Under the provisions of section 3507(a)(1(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 26, 2003, pages 51275–51276 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health 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.

Proposed Collection: *Title:* Request for Generic Clearance to Collect Medical Outcome and Risk Factor Data from a Cohort of U.S. Radiologic Technologists. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection (OMB) No. 0925–0405 expired 09/30/1999). Need and Use of Information Collection. The primary aim of this project is to substantially increase knowledge about the long-term health affects associated with protracted low- to moderate-dose radiation exposures. With this submission, the NIH, Office of Communications and Public Liaison, seeks to obtain OMB's generic approval to conduct occasional surveys of a cohort of U.S. radiologic technologist to ascertain incident cancers, benign conditions associated with high risk of cancer, and selected other health outcomes, as well as demographic, lifestyle, reproductive, employment, and other characteristics that may influence health risks. Researchers an the National Cancer Institute and the University of Minnesota have followed a nationwide cohort of 146,000 radiologic technologist since 1982, of whom 110,000 completed at least one of two prior questionnaire surveys and 17,000 are deceased. This cohort is unique because estimates of cumulative radiation dose to specific organs (*e.g.,* breast) are available and the cohort is largely female, offering a rare opportunity to study effects of low-dose radiation exposure on breast and thyroid cancers, the two most sensitive organ sites for radiation carcinogenesis in women. Primary objectives are to quantify radiation dose-response for: (1) Cancers of the breast, thyroid, other radiogenic sites or histologies, and other cancers; (2) benign breast disease, thyroid nodules, and other benign conditions associated with increased cancer risk; and (3) other selected health outcomes that may be related to radiation exposure (*e.g.,* cardiovascular disease). Findings from this study will address an important gap in the scientific understanding of radiation dose-rate affects, *i.e.,* whether cumulative exposures of the same magnitude have the same health effects when received in single or a few doses over a very short period of time (as in atomic bomb or therapeutic exposures) or in many small doses over a protracted period of time (as in medical or nuclear occupational settings). The first survey will be mailed in 2004 to approximately 100,000 living cohort members who completed at least one prior survey and will collect information on: (1) Medical outcomes (as described above) to assess radiation-related risks; (2) detailed job-specific frequency of performing high-dose procedures (*e.g.,* handling isotopes), use of protective measures (*e.g.,* using lead aprons or standing behind shields), and other work practices (*e.g.,* holding patients for x-rays) to refine the organ dose estimates and associated uncertainty distributions; and (3) behavioral, susceptibility, and residential histories for refining estimates of lifetime ultraviolet (UV) radiation exposure to assess in greater detail the risks of melanoma and non-melanoma skin cancer associated with UV and ionizing radiation exposures, separately and jointly. Subsequent surveys will collect updated information on medical outcomes and risk factors of interest at that time. All surveys will be in optical-read format for computerized data capture. *Frequency of Response:* On occasion. *Affected Public:* U.S. radiologic technologists who have willingly participated in earlier investigations to quantify the carcinogenic risks of protracted low- to moderate-dose occupational radiation exposures. The annual reporting burden is as follows: *Estimated Number of Respondents:* 59,200. *Estimated Number of Responses Per Respondent:* 1. *Average Burden Hours per Response:* 0.4983. *Annual Burden Hours Requested:* 29,500. There are no capital costs, operating costs and/or maintenance costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the date collection plans and instruments, contact: Michele M. Doody, Radiation Epidemiology Branch, National Cancer Institute, Executive Plaza South, Room 7040, Bethesda, MD 20892–7238, or call non-toll-free at (301) 594–7203 or e-mail

your request, including your address to: *doodym@exchange.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: December 1, 2003.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 03–30495 Filed 12–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Mouse Model for Systemic Inflammation in Glucocerebrosidase-Deficient Mice With Minimal Glucosylceramide Storage

Richard L. Proia (NIDDK). DHHS Reference No. E–256–2003/0—Research Tool. *Licensing Contact:* Susan Carson; (301) 435–5020; *carsonsu@mail.nih.gov.*

Gaucher disease, the most common lysosomal storage disease, is an inherited metabolic disorder in which harmful quantities of the lipid glucocerebroside accumulate in the spleen, liver, lungs, bone marrow and in rare cases in the brain, due to a deficiency of the enzyme glucocerebrosidase (Gba) that catalyses the first step in the biodegradation of glucocerebrosides. Type 1 Gaucher disease is the most common and is distinguished from the other forms of the disease, types 2 and 3, by the lack of neurologic involvement. The clinical features of Type 1 are heterogeneous, vary broadly in clinical severity and affect many organ systems. The major disease manifestations include enlarged spleen and liver, bone lesions, hematologic abnormalities and lung involvement. The disease has also been associated with a sustained inflammatory reaction. Gaucher disease is most prevalent in the Ashkenazi Jewish population with an incidence of approximately 1 in 450 persons while in the general public the incidence is 1 in 100,000. There are an estimated 30,000 Gaucher disease patients world-wide with approximately 3000 patients currently receiving enzyme replacement therapy which has been shown to be highly effective in treatment of the disease. The cost of therapy is approximately $100,000-$300,000 annually and is a life-long treatment, which makes the case for affordable new therapies urgent.

The etiology of the disease has been difficult to study due to the absence of viable mouse models for the disease, as a complete disruption of the glucocerebrosidase (Gba) gene results in rapid neonatal death. In an attempt to produce a viable model scientists at the NIDDK introduced a human Gaucher disease point mutation, L444P, into the mouse Gba gene in order to cause a partial enzyme deficiency (J. Clin. Invest (2002) 109, 1215–1221; Proc. Natl. Acad. Sci. USA (1998) 95, 2503–2508).

The mice exhibit a partial glucocerebrosidase deficiency (15–20% of normal activity), without bulk accumulation of glucosylceramide or the presence of Gaucher cells. The mice demonstrate other clinical features of Gaucher disease, including multisystem inflammation, B cell hyperproliferation, skin abnormalities, anemia and lymphadenopathy. These mice provide a useful model for studying certain aspects of Gaucher disease pathology and in evaluating new therapeutic treatments.

Tec Kinase Deficient Mice

Pamela L. Schwartzberg (NHGRI), Michael J. Lenardo (NIAID), Harold Varmus (EM), Dan Littman (EM).

DHHS Reference No. E–178–2003/0 and DHHS Reference No. E–178–2003/1—Research Tools.

Licensing Contact: Susan Carson; (301) 435–5020; *carsonsu@mail.nih.gov.*

Stimulation of T lymphocytes through the T Cell Receptor (TCR) elicits broad responses required for proper immune function, including cell proliferation, cytokine production and apoptosis. Activation of distinct families of tyrosine kinases (Zap-70, Src) are important in TCR signalling, while the role of other tyrosine kinases, such as the Tec Kinases Rlk and Itk is less clear. However, evidence suggests that these kinases play a role in CD4+ T helper (Th) cell differentiation. Responses to infection are regulated in part by two distinct types of T helper cells, type 1 (Th1) and Th2 subclasses which produce different cytokines and have discrete effector functions. Th1 cells produce interferon-gamma (IFN-gamma), which is a key mediator of cellular immunity. In contrast Th2 cells produce interleukin 4 (IL–4), Il–5, Il–10, and Il–13 which assist humoral immunity and dominate immune responses to both helminths and allergens. Regulation of these subclasses is important not only for normal immune response, but also for abnormal disease processes, including autoimmunity and hypersensitivity. Generation of type 1 and type 2 Th cells is influenced by multiple factors including cytokines, costimulation and TCR-based signals. Understanding the mechanisms and signals important in T cell signalling is important for identifying new therapeutics that target Th1 and Th2-mediated pathologies (for example autoimmune disorders and asthma, respectively).

The Tec family of tyrosine kinases have been implicated as important mediators of polarized cytokine production and Th2 cell differentiation. Rlk is preferentially expressed in Th1 cells and Itk is important in Th2 response. Numerous studies have implicated alterations in the strength of TCR-mediated signals as playing important roles in Th cell differentiation. Researchers at the NIH have developed transgenic mouse models in order to address these issues. Rlk-deficient mice and Rlk/Itk double-deficient mice were generated and have been shown to have defects in TCR responses including proliferation, cytokine production and apoptosis in vitro and adaptive immune response to infectious agents in vivo (Science (1999) 284, 638–641; Nature Immunol (2001) 2: 1183–188). Molecular analyses of cells from these mice indicate that these kinases are critical for proper regulation of phospholipase C, calcium mobilisation and ERK activation as well as activation of downstream transcription factors in response to T cell receptor stimulation. Defects are minor in Rlk-deficient animals and most severe in Rlk/Itk double-deficient mice.

These mice provide a useful mechanistic model for dissecting out the complex interactions of TCR signalling. Additionally, the mice are useful for evaluation of therapeutics directed at specific classes of diseases (Th1 or Th2) and the utility of potential global Tec kinase inhibitors.

A Mouse Model for Type 2 Diabetes

Derek LeRoith and Ana M. Fernandez (NIDDK).

DHHS Reference No. E–132–2003/0—Research Tool.

Licensing Contact: Pradeep Ghosh; (301) 435–5282; *ghoshpr@mail.nih.gov.*

Diabetes affects over 120 million people worldwide (16 million in the US) and is a major health problem with associated health costs estimated at almost $100 billion dollars. Type 2 diabetes affects as many as 10% of the population of the Western World (with 15 million patients in the U.S. alone) and arises from a heterogeneous etiology, with secondary effects from environmental influences. Risk factors for type 2 diabetes include obesity, high blood pressure, high triglycerides and age. Type 2 diabetes is an active area for drug development and there continues to be a need for novel animal models and research tools to aid in the discovery and development of new, more efficient and cost-effective therapeutics.

Peripheral insulin resistance and impaired insulin action are the primary characteristics of type 2 diabetes. The first observable defect in this major disorder occurs in muscle, where glucose disposal in response to insulin is impaired. In an effort to study the progression of diabetes, researchers at NIDDK have developed a transgenic mouse strain (MKR) with a dominant-negative insulin-like growth factor-I receptor (KR–IGF–IR) specifically targeted to skeletal muscle (Genes & Development (2001) 15, 1926–1934). Expression of KR–IGF–IR resulted in the formation of hybrid receptors between the mutant and the endogenous IGF–I and insulin receptors, thereby abrogating the normal function of these receptors and leading to insulin resistance. Pancreatic β-cell dysfunction developed at a relative early age, resulting in diabetes.

One of the great advantages of the MKR mouse over other mouse models is the early onset of the disease phenotype as seen by insulin resistance (as early as 4 weeks), fasting hyperglycemia (from 5 weeks) and abnormal glucose tolerance (at 7–12 weeks). The MKR mice provide an extremely useful model for the study of type 2 diabetes, its pathogenesis and potential new therapies.

A Tet-Regulated Mouse Model for Cataract

Robert W. Sobol, Samuel H. Wilson (NIEHS). DHHS Reference No. E–316–2002/0—Research Tool. *Licensing Contact:* Susan Carson; (301) 435–5020; *carsonsu@mail.nih.gov.*

Cataract is the most common cause of blindness worldwide, with an estimated 25 million blind and 119 million visually impaired individuals worldwide. Over 20 million adults in the U.S. alone are currently diagnosed with cataracts making this disease a major health concern. The incidence of cataract increases with age and a number of etiologic factors have been proposed in the pathogenesis of age-related cataract in humans including genetic factors, environmental factors and metabolic and biochemical changes in the crystalline lens. Ultraviolet radiation exposure and oxidative injury to the lens has been considered by some to be one of the most important factors in cataractogenesis. The present therapy of choice for cataract is laser surgery.

Experimental investigation of human age-related cataract is hindered by a lack of available animal models of cataract. Several laboratory mice strains with heritable cataracts have been studied including the Nakona, Frasier and the Philly mouse strains. An animal model with a predictable phenotype of cataract, particularly one with a pathogenesis relating to oxidative injury to the lens (the proposed central factor in human-related cataract) would be of great value to ophthalmic researchers and in the development of pharmacological agents for delaying or preventing cataract.

Researchers at the NIEHS have developed a transgenic mouse model in which the DNA repair gene DNA polymerase β (β-pol) is highly over-expressed in the lens epithelial cells of the eye (DNA Repair (2003) 609–622). A bicistronic tetracycline-responsive transgenic system was used to over-express β-pol in mice. Over-expression of β-pol in the lens epithelium results in the early onset of severe cortical cataract with cataractogenesis beginning within 4 days after birth. In utero and post-natal suppression of transgenic Flag-β-pol-expression by doxycycline administration completely prevents cataract formation through adulthood, yet cataract is subsequently observed following removal of doxycycline and re-expression of the transgene. This predictable and regulated onset of cataract makes this mouse an ideal animal model both for evaluating new therapeutics for delaying or preventing cataract as well as for understanding the mechanisms responsible for cataract formation.

A Mouse Model for Human Osteoarthritis

Laurent G. Ameye (NIDCR), Marian F. Young (NIDCR), Ake Oldberg (EM), Tianshun Xu (NIDCR). DHHS Reference No. E–081–2002/0—Research Tool. *Licensing Contact:* Susan Carson; (301) 435–5020; *carsonsu@mail.nih.gov.*

Osteoarthritis (OA) is the most common form of arthritis and affects more than 20 million Americans, costing billions of dollars in health care annually. Osteoarthritis is caused by the breakdown of joint cartilage, leading to a loss of the cartilage ''cushion'' between the bones of the joints. Risk factors associated with OA include age, obesity, traumatic injury and overuse due to sports or occupational stresses. There is no cure for OA and current treatments are directed at the symptomatic relief of pain, and at improving and maintaining joint function. There remains, however, a critical need both to develop OA treatments that focus on slowing down the degenerative process of the disease and for validated animal models to test these new treatments. NIH scientists at the NIDCR have generated a mouse model for osteoarthritis (FASEB J. (2002) 16, 673–680) that fills one part of this important gap.

The mouse model is a double knockout mouse that lacks biglycan and fibromodulin, two members of the small leucine-rich proteoglycan family, and that spontaneously develops OA. All the hallmarks of human osteoarthritis are present, including: progressive degeneration of the articular cartilage from early fibrillation to complete erosion, subchondral sclerosis, an absence of inflammation and development of osteophytes and cysts. Advantages over the existing models for osteoarthritis include: high phenotypic penetrance, early onset (at 1–2 months) and a rapid disease progression (between 3–6 months) which can be accelerated by moderate levels of exercise, such as treadmill running. These properties, combined with a normal life span, make the biglycan/fibromodulin-deficient mouse an ideal animal model for evaluating new drugs and treatments for osteoarthritis.

Dated: December 1, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–30496 Filed 12–8–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

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Human UGRP1 (Uteroglobin-Related Protein 1) Promoter and Its Use

Shioko Kimura and Tomoaki Nimi (NCI). PCT Application No. PCT/US02/19456 filed 18 Jun 2002 (with priority to 20 Jun 2001), which published as W0 03/000111 on 03 Jan 2003 (DHHS Reference No. E–058–2001/0–PCT–02). Licensing Contact: Susan Carson; (301) 435–5020; carsonsu@mail.nih.gov.

Asthma is a genetically complex, multi-factorial disease affecting more than 17 million people in the United States alone and costing approximately US$6 billion to treat annually. Identification, mapping and linkage analyses of Single Nucleotide Polymorphisms (SNPs) have been increasingly used both to study the genetic etiology of asthma and to detect genetic loci contributing to asthma susceptibility. Researchers from the National Cancer Institute have described a novel gene, located in an asthma-susceptibility gene loci 5q31–34, named UGRP1 (uteroglobin-related protein 1) and an associated polymorphism that is significantly associated with asthma (Nimi *et al.* (2002) Am. J. Hum. Genet 70: 718–725).

UGRP1 is a homodimeric secretory protein of ~10 kDA and is expressed only in lung and trachea. The –112G/A polymorphism was identified in the human UGRP1 gene promoter and is responsible for a 24% reduction in the promoter activity in relation to the –112G allele, as examined by transfection analysis. In a case-control study using 169 Japanese individuals (84 with asthma and 85 unrelated healthy controls) those with a –112A allele (G/A or A/A) were 4.1 times more likely to have asthma than were those with the wild-type allele(G/G).

The invention describes the –112G/A polymorphism and the UGRP1 promoter region as well as methods for detecting polymorphisms present in the UGRP1 promoter which can be used as indicators for diagnosing or for predicting a predisposition to develop a respiratory disorder. The complex and polygenic nature of asthma suggests that this potential asthma susceptibility allele can be of great value not only to companies targeting respiratory diseases such as asthma but also to those more broadly involved in gene discovery, gene mapping, association-based candidate polymorphism testing, pharmacogenetics, diagnostics and risk profiling.

Dated: December 1, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–30497 Filed 12–8–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Construction of Replication-Competent Chimeric Simian Immunodeficiency Virus (SIV) Human Immunodeficiency Virus Type 1 (HIV–1) Viruses that Replicate Using HIV–1 Reverse Transcriptase and Integrase (IN): A Model System for Development and Testing of Antiviral Agents for the Treatment of HIV–1 Infection

Vijay K. Pathak and Yijun Zhang (NCI). DHHS Reference No. E–019–2004/0—Research Tool. Licensing Contact: Michael Ambrose; (301) 594–6565; *ambrosea@mail.nih.gov.*

Currently antiviral therapy is based on a cocktail that inhibits viral replication. These drugs are targeted toward the Reverse Transcriptase (RT) enzyme to inhibit such replication. However, development of HIV drug resistance to these current therapies is the leading blockage to successful treatment of such patients, and as such, leads to the progression of AIDS and eventual death. The goal of developing successful next generation drugs for HIV must contend with (1) the alarming rate of mutation of HIV and (2) an animal model that represents the natural disease in humans. This latter point must also have as one of its properties; the natural occurring mutation and resistance to the therapy in develop.

To address these questions, a chimeric virus was developed between SIV and HIV. The SIV backbone is altered such that the HIV RT and Integrase (IN) enzymes are expressed in infected cells. This allows the use of the macaque as the animal model and having the RT and IN of HIV as the potential drug targets. In this system, novel therapies can be developed and studied in vivo, in single or in combination form, in a manner more similar to the human HIV infection then is currently available. Further, toxicity studies can be designed and results obtained that are more relevant to the human disease condition.

One other advantage is the ability to use the macaque model to discover additional generations of HIV therapies and tested in the same system. This provides identical biological backgrounds to address toxicity concerns of changing medications as one becomes resistant and newer therapies are administered.

HIV–1/SIV Chimeras Promoting Trimerization of Soluble HIV–1 ENV

Bernard Moss (NIAID). U.S. Provisional Application filed 10 Oct 2003 (DHHS Reference No. E–356–2003/0–US–01). *Licensing Contact:* Susan Ano; (301) 435–5515; *anos@mail.nih.gov.*

The technology describes the replacement of the gp41 segment of HIV–1 gp140 or just the N-terminal portion (85 amino acids) with the corresponding region of SIV to promote efficient trimerization. Functional, virion associated HIV–1 and SIV env have been shown to have an almost exclusively trimeric structure. The chimera that contains only the N-terminal portion of SIV in an HIV–1 background is particularly interesting, since several broadly neutralizing HIV–1 epitopes are present in the C-terminal segment of gp41. Thus, the current technology could be useful as an immunogen to elicit antibodies that recognize a mimic of the native trimeric structure. The region of HIV–1 replaced by SIV sequence contains no known targets of neutralizing antibodies.

Use of a Statin To Kill EBV-Transformed B Cells

Jeffrey Cohen *et al.* (NIAID). U.S. Provisional Application filed 28 Oct 2003 (DHHS Reference No. E–312–2003/0-US–01).

Licensing Contact: Susan Ano; (301) 435–5515; *anos@mail.nih.gov.*

This technology describes the use of certain natural and synthetic statins, including simvastatin, other leukocyte function antigen–1 (LFA–1) inhibiting statins, and compounds derived from LFA–1 inhibiting statins and statin-like compounds, for treatment or prevention of Epstein-Barr Virus (EBV) associated tumors, including lymphomas that express LFA–1 and transforming proteins. Such compounds could also be used to treat tumors associated with other viruses that express LFA–1. Cancers associated with EBV that could be treated with the statins by methods described herein include naspharyngeal carcinoma, Hodgkin's disease, lymphoproliferative disease, T-cell lymphoma, and non-Hodgkin's lymphoma.

HIV-Dependent Expression Vector

Drs. Jon Marsh and Yuntao Wu (NIMH). U.S. Provisional Application No. 60/507,034 filed 28 Sep 2003 (DHHS Reference No. E–276–2003/0-US–01).

Licensing Contact: Sally Hu; (301) 435–5606; *hus@mail.nih.gov.*

This invention provides a DNA construct that can be useful for both diagnostics and AIDS therapeutics. The construct can be incorporated into a retrovirus or into a cell line. This construct mediates the expression of a selected gene in the presence of HIV replication, but is silent in the absence of HIV. The cell line with the incorporated construct can be used as an indicator line for the presence of replication-competent HIV. The virus containing the construct can be used to co-infect a population of HIV-infected cells. If the construct-encoded gene is a reporter, it would specifically identify cells that are infected with HIV. If the construct-encoded gene is a cytotoxin, it would specifically kill cells that are HIV-infected. This invention may offer a novel approach to HIV elimination, as well as detection of HIV infected cells or the presence of cell-free infectious HIV.

Polypeptide Multimers Having Antiviral Activity

Carol Weiss *et al.* (FDA). PCT Application filed 14 Aug 2003 (DHHS Reference No. E–155–2003/0-PCT–01); U.S. Patent Application No. 09/480,336 filed 07 Jan 2000 (DHHS Reference No. E–212–2001/0-US–02).

Licensing Contact: Susan Ano; (301) 435–5515; *anos@mail.nih.gov.*

The technology describes polypeptide multimers that have antiviral and immunogenic activity against HIV. These multimers consist of at least one monomer of the highly conserved N and C heptad regions of gp41 in a ratio of at least 2:1 N to C heptad, with the N and C heptads being connected by linkers. The monomer forms homodimers and homotrimers in solution and mimic fusion intermediate structure. Further, the technology also describes a method of raising a broadly neutralizing antibody response to HIV by administering the polypeptide multimers mentioned above. Thus, these polypeptide multimers may be used as antiviral (anti-HIV) agents. Because the structure of these polypeptide multimers mimics the gp41 fusion intermediate, they can also be used to identify compounds that may inhibit the fusion process.

Discovery of Novel Inhibitors of HIV–1 Integrase and/or RNase H That Can Be Used for the Treatment of Retroviral Infection Including AIDS

Stuart F. J. Le Grice (NCI) *et al.* U.S. Provisional Application filed 31 Oct 2003 (DHHS Reference No. E–022–2003/0-US–01).

Licensing Contact: Sally Hu; (301) 435–5606; e-mail: *hus@mail.nih.gov.*

This invention provides compounds and methods of treating retroviral infection such as AIDS by administration of a dioxtetrahydrobenzo[a]naphthacene compound, particularly a 8,13-dioxo-5,6,8,13-tetrahydro-benzo[a]naphthacene compound, *i.e.* a madurahydroxylactone compound. Retroviruses, such as HIV, need three viral enzymes for replication: reverse transcriptase, protease, and integrase. The prognosis of AIDS patients has recently been improved by the discovery and associated therapeutic administration of reverse transcriptase and/or protease inhibitors. However, a significant portion of AIDS patients fail to respond to such treatments and viral resistance remains a major problem.

It is known that HIV–1 integrase is a rational target for AIDS therapy because genetic studies have demonstrated that the enzyme is essential for viral replication, and because there is no cellular equivalent. On the other hand, the reverse transcriptase RNase H active site is another good target for antiviral therapeutic development because elimination of the RNase H activity of reverse transcriptase arrests virus replication. The compounds reported in this invention may be capable of inhibiting both enzymes since the catalytic centers of integrase and RNase H are structurally similar. As a consequence, this invention can potentially avoid viral resistance, which limits the efficacy of presently administered reverse transcriptase and/or protease inhibitor therapeutic agents. Thus, the invention may be a group of new small molecule agents for treating patients suffering from retroviral infections, particularly patients suffering from Human Immunodeficiency Virus (HIV).

Particles for Imaging Cells

Kathleen Hinds, Cynthia Dunbar (NHLBI). U.S. Patent Application No. 10/313,304 filed 06 Dec 2002 (DHHS Reference No. E–185–2002/0–US–01).

Licensing Contact: Michael Shmilovich; (301) 435–5019; shmilovm@mail.nih.gov.

Available for licensing are NIH patent pending contrast particles for use in MRI and flow cytometry to track cells migration in real time. Present cell-tracking studies rely on labeling cells with ultra-small dextran-coated iron particles that are endocytosed. The contrast agent of the present invention uses larger iron oxide particles, approximately 1 μm, situated in a tri-layer structure. The inner structure is a magnetic molecular complex of FITC (a fluorescent marker) encased in a layer of superparamagnetic microparticles, which is then covered with a shell of

inert polystyrene and di-vinyl benzene coated with soluble -COOH groups. Accordingly, the particle is labeled with both a magnetic and fluorescent marker. This dual labeling permits monitoring of the molecule on multiple spatial scales, from intracellular distribution to distribution throughout the animal.

Methods for Detecting Cancer Cells

Thomas Ried, Evelin Schrock, Bijan M. Ghadimi (NHGRI). U.S. Provisional Application No. 60/127,637 filed 01 Apr 1999 (DHHS Reference No. E–211–1998/0–US–01); PCT Application No. PCT/US00/08588 filed 31 Mar 2000 (DHHS Reference No. E–211–1998/0–PCT–02); U.S. Patent Application No. 09/937,864 filed 31 Dec 2000 (DHHS Reference No. E–211–1998/0–US–03). *Licensing Contact:* Michael Ambrose; (301) 594–6565; *ambrosem@mail.nih.gov.*

The present application describes a highly sensitive assay for distinguishing between cancer and non-cancer epithelial cells in the blood. It provides an improved diagnostic technique for detecting cancer and determining the organ-origin of the cancer. This assay can be used to prove the neoplastic nature of cells and predict when shed tumor cells have or will become metastatic. A major advantage of the present invention is that tumor cells can also be recovered as viable cells. Thus, the tumor cells can be kept alive in vitro for a sufficient period of time to determine the effect of particular anti-tumor pharmaceuticals on the cells. Furthermore, the assay provides an early detector of treatment success or failure and thereby allows a treatment regimen to be customized for an individual patient with advanced primary cancer.

Method for Detecting Transmissible Spongiform Encephalopathies

Gary E. Hsich, Kimbra Kenney, Clarence J. Gibbs, Michael G. Harrington (NINDS). U.S. Patent 5,998,149 issued on 07 Dec 1999 (DHHS Reference No. E–055–1996/0–US–01); U.S. Patent 6,406,860 issued on 18 Jul 2002 (DHHS Reference No. E–055–1996/0–US–02). *Licensing Contact:* Michael Ambrose; (301) 594–6565; *ambrosem@mail.nih.gov.*

Improved assays for the detection of transmissible spongiform encephalopathies (TSEs) in humans and non-human mammals have been developed. The assays involve detecting the presence or absence of 14–3–3 proteins in cerebrospinal fluid. Elevated levels of these proteins are indicative of TSEs, in particular Creutzfeldt-Jacob disease in humans and animals with these diseases. This invention is available for licensing on a non-exclusive basis.

Dated: December 1, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–30498 Filed 12–8–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Steroid Receptor Chaperones in Axonal Elongation.

Date: December 11, 2003.

Time: 8:30 am to 9:30 am.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202, (Telephone Conference Call).

Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–4056.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Molecular Regulation of Neural Migration.

Date: December 11, 2003.

Time: 10 am to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–4056.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Program in Cognitive Neuroscience.

Date: December 18, 2003.

Time: 1 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, NeuroAIDS Imaging Studies.

Date: January 8, 2004.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW, Washington, DC 20037.

Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extamural Research, NINDS/NIH/DHHS, 6001 Executive Boulevard, Room #3208, Bethesda, MD 20892, (301) 496–0660, *sawczuka@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 4, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30494 Filed 12–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4630–FA–11B]

Announcement of Funding Award—FY 2001 Healthy Homes Grant Program

AGENCY: Office of the Secretary—Office of Healthy Homes Research Grant Program.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of additional funding decisions made by the Department in a competition for funding under the Healthy Homes Demonstration and Education Notice of Funding Availability (NOFA). This announcement contains the name and address of the award recipient and the amount of award.

FOR FURTHER INFORMATION CONTACT: Ellen R. Taylor, Department of Housing and Urban Development, Office of Healthy Homes and Lead Hazard Control, Room P3206, 451 Seventh Street, SW., Washington, DC, 20410–3000, telephone (202) 755–1785, ext. 116. Hearing- and speech-impaired persons may access the number above via TTY by calling the toll free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The authority for Healthy Homes Demonstration and Education Program is sections 501 and 502 of the Housing and Urban Development Act of 1970 and the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001, Pub. L. 106–377, approved October 27, 2000.

These awards were the result of a competition announced in a **Federal Register** NOFA published on February 26, 2001 (66 FR 11893). The purpose of the competition was to award grant funding of approximately $1,500,000 for grants and cooperative agreements for the Healthy Homes Research Program. Applications were scored and selected on the basis of selection criteria contained in that Notice.

The Catalog of Federal Domestic Assistance number for this program is 14.900.

A total of $2,239,196 was awarded to six grantees. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of this awards as follows:

Awardee	Address	Amount of grant
Air Quality Sciences, Inc.	1337 Capital Circle, Marietta, GA 30067	$210,299.00
Columbia University	60 Haven Avenue, B–106, New York, NY 10032	505,365.00
Duke University	Box 90077, Durham, NC 27708–0077	405,217.00
Radiation Monitoring Devices, Inc.	44 Hunt Street, Watertown, MA 0272	449,444.00
Research Triangle Institute	3040 Cornwallis Road, Research Triangle Park, NC 27709	220,082.00
University of Cincinnati	PO Box 670056, Cincinnati, OH 45267–0056	448,789.00

Dated: November 4, 2003.

Joseph F. Smith,

Deputy Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 03–30412 Filed 12–8–03; 8:45 am]

BILLING CODE 4210–70–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4723–FA–30]

Announcement of Funding Award—FY 2002 Healthy Homes Demonstration, and Healthy Homes and Lead Technical Studies Grant Programs

AGENCY: Office of the Secretary—Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Healthy Homes Demonstration and Lead Technical Studies Notice of Funding Availability (NOFA). This announcement contains the name and address of the award recipients and the amounts of award.

FOR FURTHER INFORMATION CONTACT: For the Healthy Homes Demonstration and Healthy Homes Technical Studies Grant Programs, Ellen R. Taylor, Department of Housing and Urban Development, Office of Healthy Homes and Lead Hazard Control, Room P3206, 451 Seventh Street SW., Washington, DC, 20410–3000, telephone (202) 755–1785, ext. 116. For the Lead Technical Studies Grant Program, Warren Friedman, at the same address, phone extension 159. Hearing- and speech-impaired persons may access the numbers above via TTY by calling the toll free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The authority for the Healthy Homes Demonstration and Lead Technical Studies Program is sections 501 and 502 of the Housing and Urban Development Act of 1970 and the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002, Public Law 107–73, approved November 26, 2001.

These awards were the result of a competition announced in **Federal Register** NOFAs published on March 26, 2002 for Healthy Homes and Lead Technical Studies (67 FR 14093), and for Healthy Homes Demonstration (67 FR 14115). The purpose of the competition was to award grant funding of approximately $8,600,000 for grants and cooperative agreements for the Healthy Homes Demonstration and the Healthy Homes Lead Technical Studies Grant Programs. Applications were scored and selected on the basis of selection criteria contained in those Notices.

A total of $8,586,202 was awarded to 17 grantees. $5,947,235 was awarded to 9 Healthy Homes Demonstration grantees, and $2,638,967 was awarded to 8 Healthy Homes and Lead Technical Studies grantees.

The Catalog of Federal Domestic Assistance number for this program is 14.901.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of this awards as follows:

Awardee	Address	Award Amount
Healthy Homes Demonstration		
City of Phoenix	200 West Washington, 4th Floor Phoenix, AZ 85003	$950,000
Healthy Homes Network	3548 W. 129th Terrace, Leawood, KS 66209	920,805
University of Massachusetts Lowell	600 Suffolk Street—1st Fl. South Lowell, MA 01854	164,748
Coalition to End Childhood Lead Poisoning	2714 Hudson Street, Baltimore, MD 21224	872,032
Montana State University	P.O. Box 173580, Bozeman, MT 59717–3580	326,459
Urban Homesteading Assistance Board, Inc	120 Wall Street, 20th Floor New York, NY 10005	263,191
Mount Sinai School of Medicine	One Gustave L. Levy Place New York, NY 10029–6574	950,000
City of Philadelphia	2100 W. Girard Avenue, Bldg #3 Philadelphia, PA 19130–1400.	800,000
City of Milwaukee Health Department	841 North Broadway—Room 118 Milwaukee, WI 53202	700,000
Healthy Homes Technical Studies		
Saint Louis University	221 N. Grand Avenue, St. Louis, MO 63103	700,000
Advanced Energy Corporation	909 Capability Drive, Suite 2100, Raleigh, NC 27606	700,000
University of Medicine & Dentistry of New Jersey	170 Frelinghuysen Road, Room 236C Piscataway, NJ 08854	238,967
Lead Technical Studies		
Phoenix Science & Technology, Inc.	27 Industrial Ave. Chelmsford, MA 08124	397,118
National Center for Healthy Housing	10227 Wincopin Circle, Suite 205 Columbia, MD 21044	60,804
Research Triangle Institute	3040 Cornwallis Road Research Triangle Park, NC 27709	194,194
University of Cincinnati	P.O. Box 670553 Cincinnati, OH 45267	159,734
University of Cincinnati	P.O. Box 670553 Cincinnati, OH 45267	188,150

Dated: November 5, 2003.

Joseph F. Smith,

Deputy Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 03–30413 Filed 12–8–03; 8:45 am]

BILLING CODE 4210–70–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4757–FA–02]

Announcement of Funding Award—FY 2002 Operation Lead Elimination Action Program (LEAP)

AGENCY: Office of the Secretary—Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of additional funding decisions made by the Department in a competition for funding under the LEAP Notice of Funding Availability (NOFA). The purpose of the LEAP program is to leverage private sector resources to eliminate lead poisoning as a major public health threat to young children. This announcement contains the name and address of the award recipient and the amount of award.

FOR FURTHER INFORMATION CONTACT: John Baker, Department of Housing and Urban Development, Office of Healthy Homes and Lead Hazard Control, Room P3206, 451 Seventh Street, SW., Washington, DC 20410–3000, telephone (804) 771–2100 ext. 3765. Hearing- and speech-impaired persons may access the number above via TTY by calling the toll free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Operation Lead Elimination Program is authorized by HUD's 2002 Appropriation approved November 26, 2001 (Pub. L. 107–73).

These awards were the result of a competition announced in a **Federal Register** notice published on August 5, 2002 (67 FR 50766). The purpose of the competition was to award grant funding of approximately $6,500,000 for grants and cooperative agreements for the Lead Elimination Action Program. Applications were scored and selected on the basis of selection criteria contained in that notice.

The Catalog of Federal Domestic Assistance number for this program is 14.900.

A total of $6,500,000 was awarded to seven (7) grantees. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of these awards as follows:

Awardee	Address	Amount awarded
The ACCESS Agency	1315 Main Street, Willimantic, CT 06226	800,000
Alliance	227 Massachusetts Avenue, NE, Suite 200, Washington, DC 20002	1,152,013
Energy Programs	1615 M Street, Suite 800, Washington, DC 20036	937,956
National Safety Council	1025 Connecticut Avenue, NW, Suite 1200, Washington, DC 20036	679,346
National Center	10227 Wincopin Circle, Suite 100, Columbia, MD 21044	930,789
Greater Detroit	333 West Fort Street, Suite 1500, Detroit, MI 48226	999,896
Neighborhood Improvement	841 North Broadway, Room 104, Milwaukee, WI 53202	1,000,000

Dated: November 4, 2003.

Joseph F. Smith,

Deputy Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 03–30414 Filed 12–8–03; 8:45 am]

BILLING CODE 4210–70–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4630–FA–11A]

Announcement of Funding Award—FY 2001 Healthy Homes Grant Program

AGENCY: Office of the Secretary—Office of Healthy Homes Demonstration and Education Grant Programs, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of additional funding decisions made by the Department in a competition for funding under the Healthy Homes Demonstration and Education Program Notice of Funding Availability (NOFA). This announcement contains the name and address of the award recipient and the amount of award.

FOR FURTHER INFORMATION CONTACT: Ellen R. Taylor, Department of Housing and Urban Development, Office of Healthy Homes Initiative and Lead Hazard Control, Room P3206, 451 Seventh Street, SW., Washington, DC 20410–3000, telephone (202) 755–1785, ext. 116. Hearing- and speech-impaired persons may access the number above via TTY by calling the toll free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The authority for Healthy Homes Demonstration and Education Program is sections 501 and 502 of the Housing and Urban Development Act of 1970 and the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001, Pub. L. 106–377, approved October 27, 2000.

These awards were the result of a competition announced in a **Federal Register** NOFA published on February 26, 2001 (66 FR 11893). The purpose of the competition was to award grant funding of approximately $5,500,000 for grants and cooperative agreements for the Healthy Homes Demonstration and Education Grant Programs. Applications were scored and selected on the basis of selection criteria contained in that NOFA.

The Catalog of Federal Domestic Assistance number for this program is 14.900.

A total of $5,823,389 was awarded to eight grantees. However, HUD was not able to successfully conclude negotiations with the Research Foundation of the State University of New York for an award of $700,000. This amount was awarded to the next highest scoring application. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of this awards as follows:

Awardee	Address	Amount of grant
The University of Tulsa, OK	600 South College Avenue, Tulsa, OK 74104–3189	$700,000.00
Public Health Dept. Seattle/King County, WA	999 Third Avenue, Suite 1200, Seattle, WA 98104–4039	937,879.00
University of Alabama At Birmingham, AL	1530 3rd Avenue, South Birmingham, AL	850,000.00
Alameda County, CA	2000 Embarcadero, Suite 300, Oakland, CA	850,000.00
Medical & Health Research Association of New York City, NY	40 Worth Street, Suite 720, New York, NY 10013–2988	500,000.00
City of Stamford, CT	888 Washington Boulevard, Stamford, CT 06904	850,000.00
Alaska Housing Finance Corporation, AK	P.O. Box 101020, Anchorage, AK 99510–1020	700,000.00
University of Maryland/Baltimore, MD	655 West Lombard Street, Room 645D, Baltimore, MD 21201	435,510.00

Dated: November 4, 2003.

Joseph F. Smith,

Deputy Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 03–30411 Filed 12–8–03; 8:45 am]

BILLING CODE 4210–70–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4861–C–02]

Notice of Funding Availability for Revitalization of Severely Distressed Public Housing HOPE VI Revitalization and Demolition Grants Fiscal Year 2003; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability; correction.

SUMMARY: On October 21, 2003, HUD published the Notice of Funding Availability (NOFA) for Revitalization of Severely Distressed Public Housing HOPE VI Revitalization and Demolition Grants for Fiscal Year 2003. This notice corrects that funding announcement by notifying applicants of the new government-wide requirement that all applicants for Federal grants and cooperative agreements must provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number with their applications. In addition, this document makes several other corrections to the NOFA.

DATES: (1) Revitalization Applications. Revitalization grant applications are due on January 20, 2004. (2) Demolition Applications. Demolition grant applications will only be accepted from January 5, 2004, through February 18, 2004. Applications received before January 5, 2004, will be returned to the applicant and will not be considered unless resubmitted on or after January 5, 2004, through February 18, 2004. This correction notice makes no change to the application deadlines.

FOR MORE INFORMATION CONTACT: Leigh van Rij, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC, 20410–5000; telephone (202) 401–8812 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On October 21, 2003 (68 FR 60178), HUD published its Notice of Funding Availability (NOFA) for Revitalization of Severely Distressed Public Housing HOPE VI Revitalization and Demolition Grants for Fiscal Year (FY) 2003. This notice corrects the NOFA by requiring applicants to provide in their application package, a Dun and Bradstreet Data Universal Numbering System (DUNS) number. This correction

is required by an Office of Management and Budget (OMB) policy directive issued in the **Federal Register** on June 27, 2003 (68 FR 38402). The policy directive requires all applicants who will be directly receiving funding to provide a DUNS number when applying for Federal grants or cooperative agreements on or after October 1, 2003. This information was inadvertently left out of the October 21, 2003 NOFA.

In addition to the DUNS requirement, HUD makes nine additional corrections in this document. Subsequent to publication, it was discovered that the list of years for which 90 percent of Capital Funds must have been obligated prior to the application deadline, inadvertently included FY1999. This error is corrected in this document. Additionally, it was determined that the paragraph entitled, ''Threshold: Selection of Developer'' was unclear and is made clear by this correction notice. This document also clarifies the section entitled, ''Capacity of Existing HOPE VI Revitalization Grantees.'' This correction notice makes clear in the ''Project Readiness'' section of the NOFA and the application kit that applicants will receive 2 Points if the targeted severely distressed public housing site is cleared or the applicant's Revitalization Plan only includes rehabilitation and not demolition of public housing units. Finally, this correction substitutes Attachment 9, the ''TDC/Grant Limitations Worksheet,'' which has been recently updated with current data and instructions.

Subsequent to the October 21, 2003 publication of this NOFA, the **Federal Register** published (68 FR 61044) a correction to the application deadline for the Revitalization grants. The deadline for applications for Revitalization applications under this NOFA is January 20, 2004.

Accordingly, the Notice of Funding Availability for Revitalization of Severely Distressed Public Housing HOPE VI Revitalization and Demolition Grants for Fiscal Year 2003, published in the **Federal Register** on October 21, 2003, (68 FR 60178) is corrected to read as follows:

1. On page 60179, in the middle column, under section III. entitled, ''Application Submission Information,'' a new paragraph (4) is added after paragraph (A)(3) to read as follows:

''(4) New government-wide DUNS requirement. Beginning October 1, 2003, all applicants must provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the federal government. Applicants are required to provide a DUNS number with the application. OMB is currently updating the SF–424 to accommodate the submission of the DUNS, however, at this time, applicants should simply indicate the DUNS number on a separate sheet of paper and include with the application package. (This extra page will not count toward the total page number limit for your application.) Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or applying on-line at *http://www.dunandbradstreet.com.* For faster service, HUD recommends using the telephone request line to obtain the DUNS number.

Failure to provide the DUNS number with your application will be considered a curable deficiency. The DUNS number is considered a threshold requirement and failure to provide the DUNS number will prohibit an organization from receiving an award.''

2. On page 60185, in the third column, paragraph (12) is corrected to read as follows: ''An applicant must have obligated at least 90 percent of its FY 2000 and 2001 Capital Funds in accordance with Section IV(A)(2) of this NOFA.''

3. On page 60188, in the first column, under the paragraph entitled, ''(2) Threshold: Obligation of Capital Funds,'' the second sentence is corrected by removing the year ''1999'' so the sentence reads as follows: ''HUD will not consider any application from a PHA that failed to obligate 90 percent or more of its FY2000 and 2001 Capital Funds by the applicable obligation deadlines, as required by Section (9)(j) of the U.S. Housing Act of 1937, unless the Deputy Secretary has approved an extension.''

4. On page 60188, in the middle column, the first sentence in subparagraph (a) under the paragraph entitled, ''(4) Threshold: Selection of Developer,'' is corrected to read as follows: ''You have initiated RFQ competitive procurement procedures in accordance with 24 CFR 85.36 and 24 CFR 941.602(d) (as applicable), for your first phase of construction by the application due date.''

5. On page 60189, in the third column, the fourth sentence under the paragraph entitled, ''(2) Capacity of Existing HOPE VI Revitalization Grantees,'' is corrected to read as follows: ''As indicated in the following tables, up to 5 Points will be deducted if a Grantee has failed to achieve adequate progress in relation to cumulative unit production.''

6. On page 60201, in the third column, subparagraph (b) under the paragraph entitled, ''(4) Project Readiness,'' is corrected to read as follows: ''(b) You will receive 2 Points if the targeted severely distressed public housing site is cleared or your Revitalization Plan only includes rehabilitation and no demolition of public housing units.''

7. On page 60217, the first sentence in paragraph B.1 is corrected to read: ''If you are a Moving to Work participant and are not required to enter obligations into LOCCS, review Section IV(A)(2) of the NOFA and indicate the percentage of FY 2000 and 2001 Capital Funds amounts you have obligated.''

8. On page 60217, paragraph B.4 is corrected to read as follows: ''Capacity of Existing HOPE VI Revitalization Grantees. This Rating Factor is found at Section IV(B)(2). HUD will use information in the quarterly reporting system in order to evaluate this rating factor. This rating factor is only applied to PHAs with existing HOPE VI Revitalization grants from Fiscal Years 1993–2000.''

9. On page 60266, entitled, ''Attachment 31: Project Readiness,'' the second item on the list for check-off is corrected to read as follows: ''The targeted severely distressed public housing site is cleared or your Revitalization Plan only includes rehabilitation and no demolition of public housing units.''

10. The ''TDC/Grant Limitations Worksheet,'' that appears at pages 60256, 60257, and 60258 is removed and replaced with the version appended to this document.

Dated: December 2, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–P

Attachment 9:
TDC/Grant Limitations Worksheet

FOLLOW THE STEP-BY-STEP INSTRUCTIONS

Page 1

Note: If completing Attachment 9 manually, rather than using the Excel workbook, start at Step 4 (page 2).

Step 1. Select your City from the menu below.
Click as indicated to see the lists of cities, scroll through the list, click on your City, and click "OK."

Step 2. Repeat Step 1 to select your State from the menu below.
Click as indicated to see the lists of states, scroll through the list, click on your State, and click "OK."

This table includes all Total Development Cost (TDC) dollar limits published in HUD Notice PIH 2003-8. If your specific City is not shown in the table, contact Mr. Satinder Munjal for assistance: HUD Office of Public Housing Investments, (202) 708-0614, extension 4196.

If you have selected a valid City/State combination, a table will be created that extends down to row 82. The TDC limits for each unit type shown on this table will be transferred automatically to the table on the next worksheet, "TDC Limit Calculation."

Step 3. After selecting the appropriate City and State, go to Step 4, page 2. (If using the Excel file, click on the worksheet tab entitled "TDC Limit Calculation" at the bottom of this window.)

City		**<---Select or Enter City here**
StateName		**<---Select or Enter State here**

		Bedrooms	Type	Data	Total per Unit
Detached / Semi-Detached	TDC Limit per Unit	0			
		1			
		2			
		3			
		4			
		5			
		6			
	HCC Limit per Unit	0			
		1			
		2			
		3			
		4			
		5			
		6			
Elevator	TDC Limit per Unit	0			
		1			
		2			
		3			
		4			
		5			
		6			
	HCC Limit per Unit	0			
		1			
		2			
		3			
		4			
		5			
		6			
Row House	TDC Limit per Unit	0			
		1			
		2			
		3			
		4			
		5			
		6			
	HCC Limit per Unit	0			
		1			
		2			
		3			
		4			
		5			
		6			
Walkup	TDC Limit per Unit	0			
		1			
		2			
		3			
		4			
		5			
		6			
	HCC Limit per Unit	0			
		1			
		2			
		3			
		4			
		5			
		6			

Attachment 9:
TDC/Grant Limitations Worksheet

Step 4. Enter name of PHA:

Step 5. (a) Enter name(s) of project(s):

(b) Enter City (from TDC table): Note: Enter City here (manually) or at Step 1, page 1 (if using Excel file).

(c) Enter State (from TDC table): Note: Enter State here (manually) or at Step 1, page 1 (if using Excel file).

Step 6. In the appropriate BUILDING TYPE and Bedroom (BR) categories below, enter the number of NEW UNITS in section 6(a), and/or REHABILITATION UNITS in section 6(b), proposed for funding under this application.

The Excel file version of this form will calculate totals for each unit type, and worksheet totals in section 6(c), based on City and State selected on page 1.

If you are completing this Attachment 9 manually, use the applicable TDC limits for each unit type found in HUD Notice PIH 2003-8.

Definitions

NEW UNITS include all on-site and off-site rental units that will receive public housing operating subsidy. Also include any homeownership units (including lease-purchase), that will be newly-constructed or acquired (with or without rehabilitation) utilizing any HOPE VI grant funds or other public housing capital assistance for development.

REHABILITATION UNITS include only existing public housing units that are proposed for rehabilitation utilizing HOPE VI grant funds or other public housing capital assistance.

Building Types

Detached buildings are single-family dwellings.
Semi-Detached buildings, also referred to as "duplex" units, are structures that include only two units.
Elevator buildings include only those structures with an elevator and four or more floors above ground.
Row House refers to any structure with three or more units that has only vertical common walls.
If a building with three or more units has upper/lower units (and is not an elevator building), it is classified as a Walkup.
Walkup buildings include all structures with three or more units that are not classified as Elevator or Row House.

6(a) NEW UNITS (new construction, and units to be acquired and rehabilitated)

BUILDING TYPE	BR's	Number of Units	HCC Limit per Unit	HCC Totals	Community Renewal Allowance Total	TDC Limit per Unit	TDC Limit Totals
Detached / Semi-Detached	1BR					$ -	$ -
	2BR					$ -	$ -
	3BR					$ -	$ -
	4BR					$ -	$ -
	5BR					$ -	$ -
Elevator	1BR					$ -	$ -
	2BR					$ -	$ -
	3BR					$ -	$ -
	4BR					$ -	$ -
	5BR					$ -	$ -
Row House	1BR					$ -	$ -
	2BR					$ -	$ -
	3BR					$ -	$ -
	4BR					$ -	$ -
	5BR					$ -	$ -
Walkup	1BR					$ -	$ -
	2BR					$ -	$ -
	3BR					$ -	$ -
	4BR					$ -	$ -
	5BR					$ -	$ -

Subtotal New Units: _____

6(b) REHABILITATION UNITS (existing pubic housing units to be rehabilitated)*

BUILDING TYPE	BR's	Number of Units	HCC Limit per Unit	HCC Totals	Comm Renewal Allowance Total	TDC Limit per Unit*	TDC Limit Totals
Detached / Semi-Detached	1BR					$ -	$ -
	2BR					$ -	$ -
	3BR					$ -	$ -
	4BR					$ -	$ -
	5BR					$ -	$ -
Elevator	1BR					$ -	$ -
	2BR					$ -	$ -
	3BR					$ -	$ -
	4BR					$ -	$ -
	5BR					$ -	$ -
Row House	1BR					$ -	$ -
	2BR					$ -	$ -
	3BR					$ -	$ -
	4BR					$ -	$ -
	5BR					$ -	$ -
Walkup	1BR					$ -	$ -
	2BR					$ -	$ -
	3BR					$ -	$ -
	4BR					$ -	$ -
	5BR					$ -	$ -

Subtotal Rehab Units: _____

6(c)							
	Totals for all New and Rehabilitation Units						$ -

* Rehabilitation Units are eligible for 90% of the TDC limit. If the project unit configuration (number of units or bedrooms) will change due to rehabilitation activities, use the number of units and bedroom sizes after rehabilitation, not the unit configuration before rehabilitation.

Attachment 9:
TDC/Grant Limitations Worksheet

COMPLETE THIS WORKSHEET LAST **Page 3**

To determine the maximum grant amount that may be requested in this HOPE VI revitalization application, enter the requested information. If you are using the Excel form, totals are calculated automatically.
If you are manually calculating the maximum grant amount that may be requested on this Attachment 9, follow the calculation instructions provided below on this worksheet.

6(d)	TDC limit, unadjusted (entered automatically from "TDC Limit Calculation") (To calculate manually, enter the TDC Limit Total for all New and Rehabilitation Units from 6(c), page 2)		$ -
Step 7.	**Enter HOPE VI request for CSS funding.** (from Attachment 7, Sources and Uses Budget) (Note: request for HOPE VI Community and Supportive Services (CSS) funding may not exceed 15% of total grant requested, and amounts above 5% of grant must be matched by other sources.)		$ -
Step 8.	**Enter HOPE VI funds requested for demolition and remediation of dwelling units.** (Enter the combined total of the dwelling unit remediation and dwelling unit demolition line items from Attachment 7, Sources and Uses Budget)	$ -	
Step 9.	**Enter number of PH units to be demolished (after date of application only).**		
Step 10.	**Enter number of PH units to be built back on the original site.** (Do not include existing public housing units to be rehabilitated)	(-)	
10(a)	Number of PH units to be demolished and not replaced back on original site (Number of units identified in Step 9, minus the number of units identified in Step 10)	-	
10(b)	Percent of original PH units to be demolished and not replaced back on original site (Number of units identified in 10(a), divided by number of units identified in Step 9) Example: Step 9 = 100 units to be demolished. Step 10 = 40 PH units to be built back on original site. 10(a) = 60 units demolished and not built back on original site. 10(b) = 60/100 = 60%	- %	
10(c)	Demo/abatement costs attributable to units to be demolished and not replaced on orig. site (Dollar amount identified in Step 8, multiplied by percentage identified in 10(b))		$ -
Step 11.	**Enter HOPE VI request for "extraordinary site costs" (certified by architect or engineer).**		$ -
11(a)	Subtotal: TDC limit, adjusted (for CSS, abatement/demolition, and extraordinary site costs) (Total of amounts above: 6(d) + Step 7 + 10(c) + Step 11)		$ -
Step 12.	**Enter all other HUD PH capital assistance proposed for HOPE VI development.** (Include any project funds from the following sources: Public Housing Capital Funds or Mod funds (e.g., CIAP or CGP funds); Public Housing Development grants; previously-awarded HOPE VI demolition-only grants; and any borrowed funds secured by Capital Funds (from Attachment 7, Sources and Uses Budget))		($ -)
12(a)	Subtotal: Adjusted maximum allowable grant, after accounting for additional capital assistance (Total of Subtotal in 11(a), minus amount identified in Step 12)		$ -
12(b)	Maximum allowable HOPE VI Revitalization Grant (In accordance with provisions of the HUD 2003 HOPE VI Notice of Funding Availability)	$20,000,000	
12(c)	**Maximum allowable 2003 HOPE VI revitalization grant request** (The lesser of 12(a) (adjusted max. possible grant), and 12(b) ($20,000,000))		$ -
Step 13.	**Enter the amount of your 2003 HOPE VI Revitalization Grant Request** (If different than maximum allowable grant request, above)		$ -

[FR Doc. 03–30506 Filed 12–8–03; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4874–N–01]

Public Housing Operating Fund; Notice of Availability of Information and Request for Comments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: Through this notice, HUD invites public housing agencies (PHAs), public housing residents, and other interested members of the public to HUD's Web site that provides information about the Public Housing Operating Fund Formula. The Operating Fund Formula determines the allocation of operating subsidies to PHAs. The Operating Fund Formula currently in

effect was established by a March 29, 2001, interim rule, which followed a July 10, 2000, proposed rule developed through negotiated rulemaking procedures. The Web site continues the discussion of possible changes to the Operating Fund Formula, initiated during the development of and continuing through the recent release of a study of the cost of operating public housing conducted by the Harvard University Graduate School of Design. HUD's Web site presents issues for consideration and solicits comments from the public on the substance and form of a revised Operating Fund Formula.

DATES: *Comment Due Date:* Comments on the information posted on HUD's Web site will be accepted until January 30, 2004. HUD will update and revise this information on a periodic basis to reflect the availability of data and the public comments received to date. Accordingly, interested parties should visit HUD's Web site periodically during the comment period, and are invited to submit new or revised comments based on the updated information.

ADDRESSES: Interested persons are invited to submit comments regarding the information posted on HUD's Web site, http://www.hud.gov/offices/pih/divisions/ffmd/formulacomments.cfm. Comments must be submitted to: Opfund_Formula_Comments@hud.gov or Chris Kubacki, Public Housing Financial Management Division, Office of Public and Indian Housing—Real Estate Assessment Center, Department of Housing and Urban Development, 1250 Maryland Ave., SW., Suite 800, Washington, DC 20024–5000.

FOR FURTHER INFORMATION CONTACT: Chris Kubacki, Public Housing Financial Management Division, Office of Public and Indian Housing—Real Estate Assessment Center, Department of Housing and Urban Development, 1250 Maryland Ave., SW., Suite 800, Washington, DC 20024–5000; telephone (202) 708–4932 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g) establishes an Operating Fund for the purpose of making assistance available to PHAs for the operation and management of public housing. Section 9 also requires that the amount of the assistance to be made available to a PHA from that fund be determined using a formula developed through negotiated rulemaking procedures as provided in subchapter III of chapter 5 of title 5, United States Code, commonly referred to as the Negotiated Rulemaking Act of 1990.

Negotiated rulemaking for an Operating Fund Formula was initiated in March 1999, and consisted of 25 members representing PHAs, tenant organizations, community-based organizations, and the three national organizations representing PHAs—The Public Housing Authorities Directors Association (PHADA), the Council of Large Public Housing Authorities (CLPHA), and the National Association of Housing Redevelopment Officials (NAHRO). The negotiated rulemaking committee concluded with a proposed rule, published on July 10, 2000 (65 FR 42488), which was followed by an interim rule published on March 29, 2001 (66 FR 17276). The March 29, 2001, interim rule established the Operating Fund Formula that is currently in effect.

In accordance with Congressional direction, HUD contracted with the Harvard University Graduate School of Design (Harvard GSD) to conduct a study on the costs incurred in operating well-run public housing. The Harvard GSD performed extensive research on the question of what the expense level of managing public housing should be. HUD invited the members of the negotiated rulemaking committee to be active participants in Harvard GSD's research for and development of the Cost Study. The Harvard GSD also conducted several public meetings to allow for an exchange of views with the public housing industry, beyond those industry members who were part of the Operating Fund Formula negotiated rulemaking committee. The Cost Study was completed and officially released in July 2003, and the release of the Cost Study has prompted further discussion about changes to, and the future of, the Operating Fund Formula. A copy of the Cost Study and related documents may be downloaded from the Harvard GSD Web site (*http://www.gsd.harvard.edu/research/research_centers/phocs/index.html*).

II. This Notice

HUD believes that a reinitiation of the dialogue with the industry and the public on changes to the Operating Fund Formula that commenced with the development of the Cost Study and continued through its release, would be beneficial to the Department and the industry in focusing on changes that should be considered to the Operating Fund Formula. HUD is therefore making available on its Web site information and issues related to possible changes to the Operating Fund Formula (see HUD Web site at *http://www.hud.gov/offices/pih/divisions/ffmd/formulacomments.cfm*).

HUD is specifically seeking comments on the information posted on its Web site. Interested parties may submit comments on this information either electronically or by mail to the addresses listed in the **ADDRESSES** section above. Comments on the information posted on HUD's Web site will be accepted until January 30, 2004.

It is HUD's goal in posting this information to initiate an ongoing dialogue with interested members of the public. Accordingly, HUD will update and revise the information posted on its Web site on a periodic basis to reflect the availability of data and the public comments received to date. Interested parties should visit HUD's Web site periodically during the comment period, and are invited to submit new or revised comments based on the updated information. As part of this ongoing dialogue with the public, public housing residents, PHAs, and other interested parties on issues concerning possible changes to the Operating Fund Formula, HUD may also sponsor one or more meetings to further discuss changes to the Operating Fund Formula.

Dated: December 2, 2003.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–30507 Filed 12–8–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of a 2003 amendment to a Tribal-State gaming Compact taking effect between the Stockbridge-Munsee Community and the State of Wisconsin.

SUMMARY: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has deemed approved the 2003 Amendment to the

Stockbridge-Munsee Community and the State of Wisconsin gaming Compact of 1992, as amended in 1998. By the terms of IGRA, the Amendment is considered approved, but only to the extent that the Amendment is consistent with the provisions of IGRA. The Amendment authorizes the Tribe to pay the State between two and a quarter and five percent of net revenues from all class III gaming. The payment to the State is reduced if the scope of non-Indian gaming is expanded within the State or if a federally recognized tribe opens a class III gaming facility within seventy miles of the tribes on reservation gaming facility. In addition the Amendment authorizes, *inter alia,* all banking, percentage and pari-mutuel card games, all forms of live poker, craps, all banking and non-banking dice games, roulette and other wheel games, keno, wheel of fortune, baccarat-chemin de fer, pari-mutuel wagering on horse, harness and dog racing events, Caribbean stud poker, let-it-ride, and pai-gow poker.

EFFECTIVE DATE: December 9, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: December 2, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 03–30504 Filed 12–8–03; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Adjustment of the Amount of an Administrative Costs Assessment

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of adjustment of the amount of an administrative costs assessment (43 CFR 426.20[e]).

SUMMARY: The Bureau of Reclamation (Reclamation, we, our, or us) is increasing the amount of the administrative costs assessment set forth in the Acreage Limitation Rules and Regulations (Regulations), 43 CFR part 426. Section 426.20(e) of the Regulations requires us to periodically review the amount of the administrative costs we incur as a result of certain Reclamation Reform Act of 1982 (RRA) forms and excess land problems and, if needed, adjust the amount of the assessment to reflect new cost data. Based on our latest review of the associated costs, the current $260 administrative costs assessment is being increased to $290.

DATES: The increase in the amount of the administrative costs assessment to $290 becomes effective on January 1, 2004. See the last paragraph in the **SUPPLEMENTARY INFORMATION** section for more details regarding application of the new amount of the assessment.

FOR FURTHER INFORMATION CONTACT: Bureau of Reclamation, Office of Program and Policy Services, Attention: D–5200, P.O. Box 25007, Denver, Colorado 80225.

SUPPLEMENTARY INFORMATION:

Background: Section 426.20 of the Regulations provides that we will assess districts administrative costs if: (1) A district delivers Reclamation irrigation water to land that was ineligible because a landholder did not submit certification or reporting forms to the district prior to receipt of the water; (2) a district does not provide us with corrected landholder certification or reporting forms within 60 calendar days of our request for corrections; or (3) a district delivers Reclamation irrigation water to ineligible excess land. Section 426.20(e) sets the amount of the administrative fee at $260. The amount is based on the additional costs we incur to perform activities to address the problems described in the first sentence of this paragraph. Section 426.20(e) further provides that we will review the associated costs at least once every 5 years and adjust the assessment amount, if needed, to reflect new cost data.

Review Periods: The regulatory provisions for the administrative costs assessment became effective on March 27, 1995. In 2000, we reviewed the cost data for 1995–1999 and determined that the amount of the assessment should remain at $260. In July 2003, we reviewed the cost data for 2000–2002 and determined that the amount of the assessment needs to be increased by $30, to $290. In 2006, we will review the cost data for 2003–2005 and determine if the amount of the administrative costs assessment needs to be adjusted again.

Application of the New Administrative Costs Assessment: The new amount of the administrative costs assessment becomes effective on January 1, 2004. However, application will be based on the date Reclamation actually finds and documents the forms or excess land problem in question. More specifically, if after January 1, 2004, we find a forms or excess land problem described in 43 CFR 426.20, the amount of the administrative costs assessment will be $290. This will be the case even if the problem occurred prior to January 1, 2004. For problems we find prior to January 1, 2004, the amount of the administrative costs assessment will remain at $260.

Dated: October 31, 2003.

Roseann Gonzales,

Acting Deputy Director, Office of Program and Policy Services.

[FR Doc. 03–30417 Filed 12–8–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–325]

The Economic Effects of Significant U.S. Import Restraints: Fourth Update

AGENCY: United States International Trade Commission.

ACTION: Cancellation of public hearing.

EFFECTIVE DATE: December 3, 2003.

SUMMARY: On November 28, 2003, the Commission received notice that the only scheduled witnesses for the hearing scheduled for December 9, 2003, in this matter have elected to have their written submission serve as a substitute for their oral statement. Therefore, the public hearing in connection with this investigation, scheduled to be held beginning at 9:30 am on December 9, 2003, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC, is canceled. Notice of institution of this investigation and the scheduling of the hearing was published in the **Federal Register** of August 21, 2003 (68 FR 50553). To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received not later than COB January 10, 2004. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules (19CFR201.8) (*see* Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*).

FOR FURTHER INFORMATION CONTACT: Soamiely Andriamananjara, Project Leader (202–205–3252) or Marinos Tsigas, Deputy Project Leader (202–708–3654), Office of Economics, U.S. International Trade Commission, Washington, DC 20436. For information

on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–2091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

List of Subjects

U.S. Import Restraints, Nontariff measures (NTM), Tariffs, Imports.

By Order of the Commission.

Issued: December 3, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–30443 Filed 12–8–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on December 3, 2003, a proposed Consent Decree on Combined Sewer Overflows, Wastewater Treatment Plants and Implementation of Capacity Assurance Program Plan (''proposed Final Consent Decree'') in *United States and State of Ohio* v. *Board of County Commissioners of Hamilton County and the City of Cincinnati,* Civil Action Nos. C–1–02–107 and C–1–02–108, was lodged with the United States District Court for the Southern District of Ohio. On February 15, 2003, the United States previously lodged a proposed Interim Partial Consent Decree on Sanitary Sewer Overflows (''proposed IPCD''). Notice of the proposed IPCD was previously published in the **Federal Register**, and public comments were received on the proposed IPCD from February 28–March 28, 2002. 67 F.R. 9320–21 (Feb. 28, 2002).

On February 15, 2003, concurrently with the lodging of the proposed IPCD, the United States and State of Ohio filed separate complaints seeking injunctive relief from defendants for unauthorized discharges from their sanitary sewer system, located in Hamilton County, Ohio. These unauthorized discharges are also known as sanitary sewer overflows, or SSOs, and are violations of the Clean Water Act. On December 3, 2003, concurrently with the lodging of the proposed Final Consent Decree, the United States, State of Ohio, and Ohio River Valley Water Sanitation Commission (''ORSANCO'') filed a Joint Amended Complaint seeking injunctive relief and civil penalties from defendants for violations of the Clean Water Act as well as State and ORSANCO laws and regulations relating to SSOs, combined sewer overflows (CSOs), and defendants' wastewater treatment plants (''WWTPs''). In addition, the United States seeks injunctive relief pursuant to Section 504 of the Clean Water Act, 33 U.S.C. 1364, for an imminent and substantial endangerment resulting from backups of sewage into basements.

The proposed IPCD and the proposed Final Decree, taken together, require the defendants to: Implement an interim and then permanent remedy for SSO 700; to implement certain specified capital improvement projects for certain SSOs and CSOs; to perform modeling and analysis of their sanitary sewer system; to propose a comprehensive Capacity Assurance Program Plan (''CAPP'') to address their remaining SSOs and to provide adequate future system capacity; to develop and implement a Long Term Control Plan Update (''LTCPU'') to greatly reduce CSOs and bypassing at WWTPs and bring them into compliance with the law; to implement the CAPP and LTCPU, once they are approved by the plaintiffs; to implement a comprehensive sewage ''basement backup'' program, including interim prevention (*e.g.,* installing backflow prevention devices in houses to prevent sewage in basement), long-term prevention (implementing any additional remedial measures beyond those required by the CAPP or LTCPU to provide adequate sewer capacity to prevent basement backups in the future), cleanup for houses that have had backups, and reimbursement for losses to real or personal property caused by the backups; to perform several Supplemental Environmental Projects, which must cost a minimum of $5.3 million; and to pay a civil penalty of $1.2 million.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Final Consent Decree and/or the proposed IPCD. (Commenters who have previously submitted comments on the proposed IPCD need not reiterate their comments, and these will be re-reviewed and re-considered by the United States in light of the proposed Final 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 and State of Ohio* v. *Board of County Commissioners of Hamilton County and the City of Cincinnati,* D.J. Ref. 90–5–1–6–341A.

The Final Consent Decree and/or the IPCD may be examined at the Office of the United States Attorney for the Southern District of Ohio, 221 E. 4th Street, Atrium II, Suite 400, Cincinnati, Ohio 45202, and at U.S. EPA Region V, 77 West Jackson Blvd, Chicago, IL 60604–3590. A copy of the Final Consent Decree and/or IPCD may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. During the public comment period, the Final Consent Decree and/or IPCD may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Final Consent Decree and/or IPCD 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 either or both proposed consent decrees, please enclose a check payable to the U.S. Treasury for reproduction costs (at 25 cents per page) as follows:

IPCD, inclusive of Exhibits: $209.00;

IPCD, exclusive of Exhibits: $18.75;

Final Consent Decree, inclusive of Exhibits: $47.00;

Final Consent Decree, exclusive of Exhibits: $27.25.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–30470 Filed 12–8–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Parole Commission

Public Announcement Pursuant to the Government in the Sunshine Act (Public Law 94–409, 5 U.S.C. Section 552b)

AGENCY: Department of Justice, United States Parole Commission.

TIME AND DATE: 9:30 a.m., Thursday, December 11, 2003.

PLACE: 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on

the agenda for the open Parole Commission meeting:

1. Approval of Minutes of Previous Commission Meeting.

2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.

FOR FURTHER INFORMATION CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5590.

Dated: December 4, 2003.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 03–30580 Filed 12–5–03; 10:44 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

Parole Commission

Public Announcement Pursuant to the Government in the Sunshine Act (Public Law 94–409, 5 U.S.C. 552b)

AGENCY: Department of Justice, United States Parole Commission.

DATE AND TIME: 10:30 a.m., Thursday, December 11, 2003.

PLACE: U.S.Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS TO BE CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting:

Appeals to the Commission involving approximately one case decided by the National Commissioners pursuant to reference under 28 CFR 2.27. This case was originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole and are contesting revocation of parole or mandatory release.

FOR FURTHER INFORMATION CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5990.

Dated: December 4, 2003.

Rockne Chickinell,

General Counsel.

[FR Doc. 03–30581 Filed 12–5–03; 10:44 am]

BILLING CODE 4410–31–M

NUCLEAR REGULATORY COMMISSION

Call for Nominations

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is advertising for nominations for the position of Interventional Cardiology Physician on the Advisory Committee on the Medical Uses of Isotopes (ACMUI).

DATES: Nominations are due on or before March 8, 2004.

ADDRESSES: Submit four copies of the nominee's resume to the Office of Human Resources, Attn: Ms. Joyce Riner, Mail Stop T2D32, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Angela R. Williamson, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–5030; e-mail: *arw@nrc.gov.*

SUPPLEMENTARY INFORMATION: The ACMUI advises NRC on policy and technical issues regarding the regulation of the medical use of byproduct material. Responsibilities include providing comments on changes to NRC rules, regulations, and guidance documents; evaluating certain non-routine uses of byproduct material; providing technical assistance in licensing, inspection, and enforcement cases; providing consulting services when necessary; and bringing key issues to the attention of NRC for appropriate action. ACMUI members possess the medical and technical skills needed to address evolving issues. The current membership is comprised of the following professionals: (a) Nuclear medicine physician; (b) nuclear cardiologist; (c) medical physicist in nuclear medicine, unsealed byproduct material; (d) therapy physicist; (e) radiation safety officer; (f) nuclear pharmacist; (g) two radiation oncologists; (h) patients' rights advocate; (i) Food and Drug Administration representative; (j) State government representative; and (k) health care administrator. NRC is inviting nominations for an interventional cardiologist physician to the ACMUI. Nominees should be interventional cardiologist physicians with experience in intravascular brachytherapy use of radiation sources. Committee members serve a 3-year term, with possible reappointment to an additional 3-year term. Nominees must be U.S. citizens and be able to devote approximately 80 hours per year to committee business. Members who are not Federal employees are compensated for their service. In addition, members are reimbursed travel expenses (including per diem, in lieu of subsistence); and are also reimbursed secretarial and correspondence expenses. Members who are full-time Federal employees are reimbursed travel expenses only. Nominees will undergo a security background check and will be required to complete financial disclosure statements, to avoid conflict-of-interest issues.

Dated: December 3, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–30468 Filed 12–8–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No: (Redacted), License No: (Redacted), EA (Redacted)]

In the Matter of a Power Reactor Licensee Who Transports Spent Nuclear Fuel; Order Modifying License (Effective Immediately)

I

The Licensee identified in Attachment 1 to this Order has been issued a specific license by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing the possession of spent nuclear fuel and a general license authorizing the transportation of spent nuclear fuel [in a transportation package approved by the Commission] in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR parts 50 and 71. This Order is being issued to all such licensees who transport spent nuclear fuel. Commission regulations for the shipment of spent nuclear fuel at 10 CFR 73.37(a) require these licensees to maintain a physical protection system that meets the requirements contained in 10 CFR 73.37(b), (c), (d), and (e).

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility or regulated activity. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner. Therefore, the Commission is imposing requirements, as set forth in Attachment 2 of this Order, on the Licensee identified in Attachment 1 of this Order.[1] These additional security requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 2 to this Order in response to previously issued Safeguards and Threat Advisories or on their own. It is also recognized that some measures may not be possible or necessary for all shipments of spent nuclear fuel, or may need to be tailored to accommodate the licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe transport of spent nuclear fuel.

Although the additional security measures implemented by licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of common defense and security, in light of the current threat environment, the Commission concludes that the security measures must be embodied in an Order consistent with the established regulatory framework. In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, the License identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 CFR 2.202, and in light of the common defense and security matters identified above which warrant the issuance of this Order, the Commission finds that the public health, safety, and interest require that this Order be immediately effective.

[1] Attachments 1 and 2 contain Safeguards Information and will not be released to the public.

III

Accordingly, pursuant to sections 53, 103, 104, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50 and 71, *it is hereby ordered, effective immediately*, that all licenses identified in Attachment 1 to this Order are modified as follows:

A. The Licensee shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order except to the extent that a more stringent requirement is set forth in the Licensee's security plan. The Licensee shall immediately start implementation of the requirements in Attachment 2 to the Order and shall complete implementation by January 2, 2004, unless otherwise specified in Attachment 2, or before the first shipment after December 3, 2003, whichever is earlier.

B. 1. The Licensee shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

2. If the Licensee considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely impact the safe transport of spent fuel, the licensee must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the activity to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.

C. 1. The Licensee shall, within twenty (20) days of the date of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 2.

2 The Licensee shall report to the Commission when it has achieved full compliance with the requirements described in Attachment 2.

D. Notwithstanding any provisions of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Licensee responses to Conditions B1, B2, C1, and C2 above, shall be submitted to the NRC to the attention of the Director, Office of Nuclear Reactor Regulation under 10 CFR 50.4. In addition, Licensee submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555–0001. Copies also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for the NRC Region appropriate for the specific facility; and to the Licensee if the answer or hearing

request is by a person other than the Licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101 or by e-mail to *hearingdocket@nrc.gov*, and also to the Office of the General Counsel either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, Maryland, this 3rd day of December, 2003.

For the Nuclear Regulatory Commission.

J.E. Dyer,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30466 Filed 12–8–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, November 14, through November 26. The last biweekly notice was published on November 25, 2003 (68 FR 66131).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By January 8, 2004, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for

leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of amendment request: August 6, 2003.

Description of amendment request: This amendment would revise the Technical Specifications (TSs) to incorporate reference to the 10 CFR 50.55a, Codes and Standards, criteria for the inservice reactor building tendon surveillance requirements, to incorporate an administrative change to the TS Definition 1.22 to be consistent with 10 CFR 20.1003, as well as other administrative corrections from previously issued TS amendments.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed revision to Technical Specification 4.4.2.1 and associated Bases Section incorporates reference to the criteria of 10 CFR 50.55a, ''Codes and standards,'' in addition to the existing criteria of Regulatory Guide 1.35. This change provides consistency between the Technical Specification tendon surveillance program criteria and the regulatory requirements specified in 10 CFR 50.55a(b)(2)(vi). These

regulatory requirements and the associated surveillance program ensure that the reactor building tendon prestressing system is capable of maintaining the structural integrity of the containment during operating and accident conditions. The reactor building prestressing system is not an initiator of any accident. Therefore, this change is not related to the probability of any accident previously evaluated. This change ensures that the containment tendon surveillance program addresses the appropriate regulatory criteria. This change does not result in any reduction in the effectiveness of the existing surveillance program. The tendon surveillance program will continue to ensure that the containment structure is capable of performing its intended safety function in the event of a design basis accident. Therefore, this change has no affect on the consequences of an accident previously evaluated.

The proposed changes to Technical Specification Definition 1.22, Technical Specification 3.1.6.6 and associated Bases, and Technical Specification 3.24 Bases are only administrative changes or corrections and have no affect on plant design or operations. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed revision to Technical Specification 4.4.2.1 and associated Bases Section incorporates references to the criteria of 10 CFR 50.55a, ''Codes and standards,'' in addition to the existing criteria of Regulatory Guide 1.35. This change provides consistency between the Technical Specification tendon surveillance program criteria and the regulatory requirement specified in 10 CFR 50.55a(b)(2)(vi). The proposed Technical Specification change does not result in any reduction in effectiveness of the existing tendon surveillance program. The tendon surveillance program will continue to satisfy the applicable Technical Specification and regulatory required criteria, thus ensuring that the containment structure will perform its design safety function. This change has no affect on the design and operation of plant structures, systems, and components. This change does not introduce any new accident precursors and does not involve any alterations to plant configurations, which could initiate a new or different kind of accident.

The proposed changes to Technical Specification Definition 1.22, Technical Specification 3.1.6.6 and associated Bases, and Technical Specification 3.24 Bases are only administrative changes or corrections and have no affect on plant design or operations.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed revision to Technical Specification 4.4.2.1 and associated Bases Section incorporates reference to the criteria of 10 CFR 50.55a, ''Codes and standards,'' in addition to the existing criteria of Regulatory Guide 1.35. This change provides consistency between the Technical Specification tendon surveillance program criteria and the regulatory requirement specified in 10 CFR 50.55a(b)(2)(vi). The containment examination and inspection requirements specified in 10 CFR 50.55a(b)(2)(vi) meet the same standards as the criteria specified in Regulatory Guide 1.35. The proposed Technical Specification change does not result in any reduction in effectiveness of the existing tendon surveillance program. The tendon surveillance program will continue to satisfy the applicable Technical Specification and regulatory required criteria, thus ensuring that the containment structure will perform its design safety function in accordance with existing margins of safety for containment integrity.

The proposed changes to Technical Specification Definition 1.22, Technical Specification 3.1.6.6 and associated Bases, and Technical Specification 3.24 Bases are only administrative changes or corrections and have no affect on plant design or operations.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration. *Attorney for licensee:* Edward J. Cullen, Jr., Esquire, Vice President, General Counsel and Secretary, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348 *NRC Section Chief:* Richard J. Laufer.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: August 22, 2003.

Description of amendments request: The amendments would revise three different sections in the Updated Final Safety Analysis Report (UFSAR) for PVNGS [Palo Verde Nuclear Generating Station], Units 1, 2, and 3. This request would revise the sections of the UFSAR which describe the maximum fuel pin pressurization criteria used for fuel handling accident safety analyses. This change is necessitated due to the combination of higher core burnup designs, fuel which contains erbia poison, and the recent introduction of ZIRLO cladded fuel to the PVNGS reactors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would revise sections of the PVNGS UFSAR, which describe the maximum fuel pin pressurization criteria used for fuel handling accident safety analyses.

No additional equipment is being added as a result of the proposed change. None of the failure modes and effects analyses are impacted by the proposed change since no structures, systems, or components (SSCs) are being modified, system lineups remain the same, and operator actions for fuel handling accident are not changing. No manual actions are being substituted for automatic actions. The SSCs relied upon to mitigate the event are not changing. Specifically, the fuel building, BOPESFAS (Balance of Plant-Engineered Safety Features Actuation System), radiation monitor setpoints, etc. . . are not impacted. The methodology changes will have no impact on the likelihood of a malfunction of any SSCs.

No departures from the design or testing and performance standards outlined in any 10 CFR [Part] 50, Appendix A, General Design Criteria (GDC) will result from the proposed activity. The proposed UFSAR changes will not make any SSCs more likely to fail (no direct effects). Even with higher fuel pin pressures, the use of ZIRLO cladding provides more margin to design stress limits (liftoff pressure) than Zircaloy cladding. Regardless of the fuel type (and hence cladding type), the design stress and code allowable limits will not be exceeded. Palo Verde Nuclear Generating Station (PVNGS) ''Fuel Mishandling Accident Evaluation with ZIRLO Fuel Rods'' concluded that the analysis of record for fuel handling events involving fuel assemblies containing ZIRLO cladding would remain bounding. No physical changes to any SSCs will be performed as a result of the proposed changes. In addition, system/equipment redundancy requirements are maintained with the proposed UFSAR changes.

Fuel handling accident analyses must ensure doses at the site boundary and control room remains well within 10 CFR Part 100 and 10 CFR [Part] 50 Appendix A, GDC 19 exposure guideline. Restricting the peak assembly average fuel pin pressure to <1200 psig will still result in acceptable doses. Therefore, no indirect effects on SSCs associated with dose limitations are impacted.

Consequences mean dose at the Exclusion Area Boundary (EAB), Low Population Zone (LPZ), and Control Room; therefore, an increase in consequences must involve an increase in radiological doses to the public or to control room operators. No changes to the

dose exposure as a result of a fuel handling accident are proposed for the methodology change and Regulatory Guide 1.25 deviation requested. Therefore, there are no radiological consequence changes for this event.

The fuel handling accident event does involve fuel barrier failure and does involve consequences, however no changes to the fuel handling dose calculation are required since the decontamination factor will remain unchanged even with maximum fuel pin pressure exceeding 1200 psig. Activities affecting on-site dose consequences that may require prior NRC approval are those that impede required actions inside or outside the control room to mitigate the consequences of reactor accidents.

The proposed change does not modify any operator actions and hence will not impede required actions inside or outside the control room to mitigate the consequences of reactor accidents. The proposed change will not prevent or degrade the effectiveness of actions described or assumed in an accident discussed in the UFSAR. The proposed change does alter assumptions previously made in evaluating the radiological consequences of an accident described in the UFSAR, however the altered assumption is a methodology change. If the proposed methodology change were not applied, the calculated dose would increase. The peak assembly average pin pressure concept would allow the decontamination factor (DF) to remain the same and therefore consequences would remain unchanged. The proposed change does not play a direct role in mitigating the radiological consequences of an accident described in the UFSAR. The radiological consequences of the accident described in the UFSAR are bounding for the proposed activity (*e.g.*, the results of the UFSAR analysis bound those that would be associated with the proposed change).

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The accident affected by the proposed change is the fuel handling accident (UFSAR Section 15.7.4). The proposed change does not involve any new equipment and does not operate any existing equipment in a different or more severe manner than what has previously been analyzed. PVNGS evaluations concluded all analyses of record for fuel handling events involving fuel assemblies containing ZIRLO cladding will remain bounding. The material strength of ZIRLO is significantly higher than that for Zircaloy-4. Since the allowable stresses for ZIRLO cladding are significantly higher than for Zircaloy-4, the same number of fuel rods (or fewer) will be damaged by the same accident scenarios as previously evaluated. Regardless of the fuel type (and hence cladding type), the design stress and code allowable limits will not be exceeded. Slight changes in the maximum fuel pin pressure during fuel movement will have no impact on the possibility of creating an accident of a different type as long as the design pressure structural limits of the fuel assembly are not approached. PVNGS calculation documents minimum liftoff pressures will not be challenged regardless of the fuel type or cladding type. Maintaining peak assembly average fuel pin pressure below 1200 psig will not challenge the liftoff pressure design basis limit for the cladding. The peak pin internal pressures for the hot rods never exceed the clad liftoff pressure and therefore the fuel pins will not be more likely to fail. Vendor calculation shows that the ZIRLO cladding fuel design results in a greater margin to the design pressure limit of the fuel cladding and also documents liftoff pressures are not exceeded for PVNGS fuel designs.

The design function of the SSCs required to function during a fuel handling accident is to provide protection to ensure fuel damage is limited to 236 fuel pins (one fuel assembly) and ensuring doses do not exceed established limits. These are indirect affects. This change will not make a SSC more likely to fail (no direct affects). In fact, ZIRLO cladding fuel is less likely to fail than the original Zircaloy-4 cladding fuel. No physical changes to the SSCs will be performed as a result of the proposed change. This proposed change does not change the failure modes for the SSCs required to operate for the fuel handling accident. The cladding calculations document design stress or code allowable limits will not be exceeded. Hence, system/equipment redundancy requirements are maintained. Fuel handling accident analyses must ensure doses at the site boundary remain within acceptable design limits. The cladding calculations document fuel pin pressures do not exceed the design pressure ratings for the fuel assembly. Therefore, no indirect effects on SSCs associated fuel clad pressure boundary exist. None of the failure modes and effects analyses are impacted by this methodology change since no SSCs are being modified, system lineups remain the same, and operator actions are not changing.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The Nuclear Reactor Regulation (NRR) Safety Evaluation, ''Related to Task Interface Agreement 99–03 Regarding Potential Nonconservative Assumptions for Fuel Handling Accident, McGuire Nuclear Station, dated November 24, 1999,'' states in part, ''The NRR staff has concluded that the increased rod pressures associated with extended bumup fuel can be expected to decrease the value of the iodine DF. However, the NRR staff believes that the iodine DF value of 100 provided in Regulatory Guide 1.25 has sufficient margin to compensate for the increases in rod gas pressures at current allowable bumup levels and for the expected increases in gap release fractions. Conservatisms in the assessment of the amount of fuel damage provide additional margin. Design basis fuel handling accidents are not considered to have a high risk significance. On the basis of these findings, the staff concludes that there is reasonable assurance that adequate protection of the public from the effects of design basis fuel handling accidents involving fuel with peak rod average bumups as high as 62 GWD/MTU will continue.''

To assess the margin of safety, the methodology specified in Regulatory Guide 1.183, ['']Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors,['] was evaluated. This regulatory guide suggests a DF of 200 for iodine. This DF is well above the DF of 100 specified by Regulatory Guide 1.25.

APS [Arizona Public Service] proposes that ample margin is retained to justify the continued used [use] of an overall decontamination factor of 100 at a peak assembly average fuel pin pressure of 1200 psig.

Therefore, APS has concluded that the proposed license amendment request does not involve a significant reduction in a margin of safety.

Based on the above, APS concludes that the [activities associated with] the proposed amendment(s) present no significant hazards consideration under the standards set forth in 10 CFR 50.92 [''Issuance of Amendment,''] (c) and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Kenneth C. Manne, Senior Attorney, Arizona Public Service Company, P.O. Box 52034, Mail Station 7636, Phoenix, Arizona 85072–2034.

NRC Section Chief: Stephen Dembek.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona.

Date of amendments request: September 17, 2003.

Description of amendments request: The amendments would revise sections of the Technical Specifications (TS) to support replacement of the part length control element assemblies (PLCEAs) with a new design that contains neutron absorber over the entire control section of the CEA. The replacements are referred to as part strength control element assemblies (PSCEAs). Additionally, a change is proposed to TS 3.1.5—''Control Element Assembly (CEA) Alignment,'' Condition B, to eliminate a potential condition which could cause an unwarranted plant shutdown.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The physical difference between the 4-finger full strength control element assemblies (FSCEAs) and the PSCEAs involves using Inconel rather than B_4C (boron carbide) over 100% of the active control section of each CEA finger. In addition, the PSCEAs use Inconel tubing to encase solid Inconel slugs, which cover the entire control section of the control element assembly (CEA). The current PLCEAs (also have only 4-fingers) use solid Inconel rods for only the lower half of each finger and B_4C pellets in the top 15 inches (10%) of the control section of the CEA. Although failure of the solid Inconel region due to neutron fluence would be less likely than a typical clad design, the differences in swelling between the Inconel slugs encased by Inconel clad for the PSCEAs will be minor and result in a minimal impact on clad integrity. With the exception of the neutron absorber, the cladding design used for the PSCEAs is similar to the cladding of the full strength CEAs (FSCEAs). The geometry, cladding materials, and the spider assembly that supports the CEA fingers are essentially the same for the 4-finger FSCEAs and the PSCEAs. The principal difference results from the Inconel slugs contained in the PSCEAs being heavier than the B_4C pellets used in the FSCEAs. Even though the weight of a 4-finger PSCEA is greater than the weight of a 4-finger PLCEA or a 4-finger FSCEA, this weight difference is bounded by the 12-finger FSCEAs which are operated by the same CEA drive mechanism system.

The PSCEAs use Inconel as a neutron absorber in the entire control section of each CEA finger and will be operationally used the same way as the PLCEAs. In particular, the insertion restraints that are defined by the power dependent insertion limits (PDILs) for the PLCEAs will remain the same for the PSCEAs. This existing requirement will not result in any significant operational impact on the PSCEAs since the solid Inconel cylinder in the bottom 50% (operating range of the PDILs) of the PLCEAs has essentially the same reactivity worth as that of the PSCEAs.

In addition, renaming the full length CEAs and part length CEAs to full strength CEAs and part strength CEAs, respectively, and providing definition for the PSCEAs will not impact the safe operation of the plant. The terminology will be appropriately changed in any related document, equipment tag, or indication on a control panel.

The PLCEAs are not credited in the accident analyses for accident mitigation. The PSCEA design eliminates an accident scenario involving the insertion of a PLCEA past the PDIL, which results in an axial shift in power due to the upper region of the PLCEAs which has no neutron absorber. This condition will not occur with the PSCEAs because they are filled with neutron absorber over 100% of the control section of each finger.

Concerning TS Limiting Condition for Operation (LCO) 3.1.5, Condition B, proposed change; there are three position indicator channels available for each CEA. Current TS Bases state that, ''At least two of the following three CEA position indicator channels shall be OPERABLE for each CEA.'' Additionally the TS Bases states, ''If only one CEA position indicator channel is OPERABLE, continued operation in MODES 1 and 2 may continue, provided, within 6 hours, at least two position indicator channels are returned to OPERABLE status; or within 6 hours and once per 12 hours, verify that the CEA group with the inoperable position indicators are either fully withdrawn or fully inserted while maintaining the insertion limits of LCO 3.1.6, LCO 3.1.7 and LCO 3.1.8.'' The TS Bases make no restriction or condition limiting only one CEA within a subgroup to having only one CEA position indication channel. Current analyses already assume that more than one CEA in a subgroup could have only one position indicator OPERABLE. Modifying the wording for Condition B, of LCO 3.1.5, will not affect the likelihood or consequences of a CEA drop, slip, ejection, or misalignment. This change will still require at least one position indication channel be available for each CEA.

Consequently, the proposed change does not involve a significant increase in the probability or consequences of an accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not introduce any new mode of plant operation and the PSCEAs, like the PLCEAs, are not relied upon for accident mitigation. The PSCEAs will be operated in exactly the same manner in which the PLCEAs are operated. The existing operating restrictions for the PLCEAs will apply to the PSCEAs. In particular, the power dependent insertion limit (PDIL) restrictions identified in the Core Operating Limits Report (COLR) will remain the same for the PSCEAs. The PSCEA design uses Inconel over the entire control section of each CEA finger, which will prevent the potential undesired flux redistribution currently associated with the misoperation of PLCEAs. Therefore, the analysis associated with the undesired flux redistribution misoperation for the PLCEAs will be eliminated from PVNGS [Palo Verde Nuclear Generating Station] safety analyses. PSCEA misoperation events are bounded by the existing PLCEA and FSCEA misoperation safety analyses.

In addition, renaming (within the Technical Specifications) the ''full length CEAs'' and ''part length CEAs'' to ''full strength CEAs'' and ''part length or part strength CEAs,'' respectively, and providing a definition for the PSCEAs will not impact the safe operation of the plant. The terminology will be appropriately changed in any related document, equipment tag, or indication on a control panel.

Concerning TS LCO 3.1.5, Condition B proposed change, CEA position indication channels have no control function and provide input to the CEA Calculators (CEACs) and Core Protection Calculators (CPCs) for generation of a penalty factor. This change will still require at least one position indication channel be available for each CEA. Allowing Condition 'B' of LCO 3.1.5 to apply to more than one CEA per group does not create the possibility of a different type of malfunction than previously evaluated in the UFSAR [Updated Final Safety Analysis Report].

Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The design of the PSCEAs is very similar to the FSCEAs except for the neutron absorber within each finger of a PSCEA. The PSCEAs do not have as strong of a neutron absorber (Inconel) as that which is contained in the FSCEAs (B_4C). There is a weight difference which results from the Inconel slugs contained in the PSCEAs being heavier than the B_4C pellets used in the FSCEAs. Even though the weight of the 4-finger PSCEAs is greater than the weight of the 4-finger PLCEAs, the CEA drive mechanism and support components shall operate within their design bases. Therefore, the PSCEAs can be considered adequate for safety-related applications. Consequently, the differences in design between the current PLCEAs and the PSCEAs do not adversely impact safe operation.

The PLCEAs are not relied upon for shutdown margin or accident mitigation and no new requirements will apply to the PSCEAs. However, the design of the PSCEAs is effectively eliminating the concern associated with the insertion of the PLCEAs past the PDILs which could result in an undesirable shift in neutron flux to the top of the core due to the region within the PLCEAs that do not have neutron absorber. The PSCEAs have neutron absorber throughout their entire control section, which prevents a neutron flux shift to the top of the core if inserted past the PDIL, when compared to that of the PLCEAs.

In addition, renaming the ''full length CEAs'' and ''part length CEAs'' to ''full strength CEAs'' and ''part length or part strength CEAs,'' respectively, and providing definition for the PSCEAs will not impact the safe operation of the plant. The terminology will be appropriately changed in any related document, equipment tag, or indication on a control panel.

Concerning TS LCO 3.1.5, Condition B, proposed change, the current licensing bases already consider having more than one CEA in a CEA group with only one available position indication. The TS Bases for LCO 3.1.5, Condition B state that, ''At least two of the following three CEA position indicator channels shall be OPERABLE for each CEA.'' Additionally the Bases states, ''If only one CEA position indicator channel is OPERABLE, continued operation in MODES 1 and 2 may continue, provided, within 6 hours, at least two position indicator channels are returned to OPERABLE status; or within 6 hours and once per 12 hours, verify that the CEA group with the inoperable position indicators are either fully

withdrawn or fully inserted while maintaining the insertion limits of LCO 3.1.6, LCO 3.1.7 and LCO 3.1.8.'' The TS Bases make no restriction or condition limiting only one CEA within a subgroup, to having only one CEA position indication channel OPERABLE. Therefore, modifying the wording for LCO 3.1.5, Condition B, does not involve a significant reduction in the margin of safety since loss of indication to more than one CEA is already considered in the licensing bases.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

Based on the above, APS [Arizona Public Service] concludes that the activities associated with the proposed amendment(s) present no significant hazards consideration under the standards set forth in 10 CFR 50.92 [''Issuance of Amendment,''] (c) and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Kenneth C. Manne, Senior Attorney, Arizona Public Service Company, P.O. Box 52034, Mail Station 7636, Phoenix, Arizona 85072–2034.

NRC Section Chief: Stephen Dembek.

Arizona Public Service Company, et al. Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: October 7, 2003.

Description of amendment request: The licensee is proposing to revise Technical Specification (TS) Section 5.5.6, ''Pre-Stressed Concrete Containment Tendon Surveillance Program,'' for consistency with the requirements of 10 CFR 50.55a(g)(4) for components classified as Code Class CC. The proposed revision to TS 5.5.6 is to indicate that the Containment Tendon Surveillance Program, inspection frequencies, and acceptance criteria shall be in accordance with Section XI, Subsection IWL of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code and the applicable addenda as required by 10 CFR 50.55a, except where an exemption or relief has been authorized by the NRC. The licensee has also proposed to delete the provisions of Surveillance Requirement 3.0.2 from this specification.

In addition, the licensee is proposing to revise TS 5.5.16, ''Containment Leakage Rate Testing Program,'' to add exceptions to Regulatory Guide 1.163, ''Performance-Based Containment Leak-Test Program.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes would revise Technical Specification (TS) Section 5.5.6, ''Pre-Stressed Concrete Containment Tendon Surveillance Program,'' and Section 5.5.16, ''Containment Leakage Rate Testing Program,'' for consistency with the requirements of 10 CFR 50.55a(g)(4) for components classified as Code Class CC. The revised requirements do not affect the function of the containment post-tensioning system components. The post-tensioning systems are passive components whose failure modes could not act as accident initiators or precursors. The improved inspections required by the American Society of Mechanical Engineers (ASME) Code serve to maintain containment response to accident conditions, by causing the identification and repair of defects in the containment.

The proposed change affects the frequency of visual examinations that will be performed for the concrete surfaces of the containment for the purpose of the Containment Leakage Rate Testing Program. In addition, the proposed change allows those examinations to be performed during power operation as opposed to during a refueling outage. The frequency of visual examinations of the concrete surfaces of the containment and the mode of operation during which those examinations are performed has no relationship to or adverse impact on the probability of any of the initiating events assumed in the accident analyses. The proposed change would allow visual examinations that are performed pursuant to NRC approved ASME Code Section XI requirements (except where relief has been granted by the NRC) to meet the intent of visual examinations [as] required by Regulatory Guide 1.163, ''Performance-Based Containment Leak-Test Programs,'' without requiring additional visual examinations pursuant to the Regulatory Guide. The intent of early detection of deterioration will continue to be met by the more rigorous requirements of the ASME Code[-]required visual examinations. As such, the safety function of the containment as a fission product barrier is maintained.

The proposed amendment does not impact any accident initiators, analyzed events, or assumed mitigation of accident or transient events. The proposed changes do not involve the addition or removal of any equipment or any design changes to the facility.

Therefore, this proposed change does not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change revises the Technical Specification administrative controls programs for consistency with the requirements of 10 CFR 50.55a(g)(4) for components classified as Code Class CC. The function of the containment post-tensioning system components are not altered by this change. The improved inspections required by the American Society of Mechanical Engineers (ASME) Code serve to maintain containment response to accident conditions, by causing the identification and repair of defects in the containment. In addition, the change affects the frequency of visual examinations that will be performed for the concrete surface containments. The proposed change also allows those examinations to be performed during power operation as opposed to during a refueling outage. Therefore, this change updates the Technical Specifications to meet the current regulations and eliminates duplication of requirements. The safety function of the containment as a fission product barrier will be maintained.

Therefore, this proposed change does not create the possibility of an accident of a different kind than previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change revises the improved Standard Technical Specification administrative controls programs for consistency with the requirements of 10 CFR 50.55a(g)(4) for components classified as Code Class CC. The function of the containment post-tensioning system components are not altered by this change. The change also affects the frequency of visual examinations that will be performed for the concrete surface containments. In addition, the proposed change allows those examinations to be performed during power operation as opposed to during a refueling outage. The change ensures that containment integrity [will be maintained] and ensures that the safety function of the containment as a fission product barrier will be maintained.

Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Kenneth C. Manne, Senior Attorney, Arizona Public Service Company, P.O. Box 52034, Mail Station 7636, Phoenix, Arizona 85072–2034.

NRC Section Chief: Stephen Dembek.

Dominion Nuclear Connecticut, Inc., Docket No. 50–245, Millstone Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: September 18, 2003.

Description of amendment request: The licensee is proposing to revise the Design Features Technical Specification 4.2, ''Fuel Storage.'' The licensee's technical specification change implements the following proposed changes:

(1) Eliminates all credit for Boraflex as a neutron absorber.

(2) Reduces the number of fuel assemblies allowed to be stored in the spent fuel pool (SFP) from 3229 to 2959. The fuel will be prohibited from being stored in 270 specific storage rack locations. This is necessary to support the elimination of all credit for Boraflex.

(3) Changes the required spent fuel pool k_{eff} to ≤0.95. This is necessary to support the elimination of all credit for Boraflex.

(4) Eliminates the design features requirements on new fuel storage, since Millstone Unit No. 1 (MP1) is a plant that has ceased power operation and will no longer receive new fuel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Accidents previously evaluated are the fuel handling accidents[, as] described in the Decommissioned Safety Analysis Report (DSAR), and a seismic event, which is considered as part of the spent fuel rack design.

Since there are no changes to plant hardware, nor any changes in how fuel is moved, there are no changes to the probability of a fuel handling accident. The consequences of a fuel handling accident are not affected, since none of the inputs to the fuel handling accident is affected.

The proposed changes affect the criticality analysis of the spent fuel storage racks. The spent fuel racks will continue to be able to perform their design function, which is to maintain the stored fuel in a sub-critical and cooled condition under all normal and postulated accident conditions. There are no physical hardware changes to the plant from these proposed changes. The revised criticality analysis submitted with these proposed changes demonstrates that fuel will be maintained in a sub-critical condition during all normal and postulated accident conditions, including the seismic event. Since there is no change in the ability of the fuel storage racks to maintain a sub-critical condition due to a seismic event, there is no change in the probability or consequences of this accident.

Reducing the amount of fuel storage is a conservative action, and the spent fuel racks were designed and licensed to allow empty, partially filled, or completely full storage racks. Thus the fuel racks will continue to be able to perform their design function to maintain the fuel in a coolable condition.

The change to the new fuel storage racks is to delete the Technical Specification requirements for the new fuel storage k_{eff} limits. Since MP1 is a plant that has ceased power operation and will no longer receive new fuel, there is no need for these Technical Specification requirements. There are no new fuel related accidents previously analyzed, therefore this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

In summary, the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Since there are no changes to the plant equipment, there is no possibility of a new or different kind of accident being initiated or affected by equipment issues.

Reducing the number of fuel assemblies to be stored in the pool, and discontinuing credit for Boraflex are conservative changes that do not introduce any new or different kind of failure modes.

The changes made primarily affect the nuclear criticality analysis and do not create a new or different kind of accident. Changes in eliminating Boraflex credit, restricting fuel in certain storage locations, and changing the allowable k_{eff} limit are all impacts to the nuclear criticality analysis for the SFP. The SFP criticality analysis is part of the basic design of the system and is not an accident. The ability to maintain the SFP k_{eff} less than or equal to 0.95, as well as within the 10 CFR Part 50 Appendix A, ''General Design Criteria for Nuclear Power Plants,'' Criterion 62 ''Prevention of Criticality in Fuel Storage and Handling'' (Reference 6) criteria of sub-critical, have been evaluated. Criticality impacts are more appropriately discussed under the margin of safety criterion.

The change to the new fuel storage racks is to delete the Technical Specification requirements for the new fuel storage k_{eff} limits. Since MP1 is a plant that has ceased power operation and will no longer receive new fuel, there is no need for these Technical Specification requirements. Since Millstone 1 currently has no new fuel and new fuel cannot be received, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

In summary, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety relevant to the SFP is defined as (1) SFP k_{eff} remains sub-critical by an acceptable margin, and (2) the spent fuel in the SFP remains adequately cooled so that the fission product barriers remain intact.

The industry and regulatory accepted value for [the] required sub-criticality margin[s] in the SFP is to ensure that the k_{eff} of the SFP remains ≤0.95 under all normal and postulated accident conditions. This is documented in the Standard Review Plan, Regulatory Guide 1.13, and ANSI/ANS–57.2, ''American National Standard Design Requirements for LWR Spent Fuel Storage Facilities at Nuclear Power Plants.'' The current MP1 Technical Specifications require a more conservative value of 0.90 for SFP k_{eff}. The proposed Design Features Technical Specification changes the maximum SFP k_{eff} from 0.90 to 0.95. This is not a significant reduction in the margin to [of] safety since the proposed value of 0.95 is consistent with the accepted regulatory guidance for [the] sub-criticality margin. The proposed criticality analysis demonstrates that the SFP k_{eff} remains ≤0.95 on a 95/95 basis under all normal and postulated accident conditions, thus the required margin of criticality safety has been maintained.

The proposed changes conservatively reduce the amount of fuel that can be stored, and therefore do not affect the SFP cooling analysis. Therefore, the spent fuel in the SFP remains adequately cooled so that the fission product barriers remain intact.

The removal of Technical Specification requirements for the new fuel storage k_{eff} limits does not affect the margin of safety since new fuel can no longer be received.

Therefore, based on the above, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lilliam M. Cuoco, Esq., Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, Connecticut 06385.

NRC Section Chief: Stephen Dembek.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina.

Date of amendment request: October 16, 2001; as supplemented by letters dated May 20, September 12, and November 21, 2002; and January 27, September 22, and November 20, 2003.

Description of amendment request: The proposed amendments would revise the Technical Specifications to incorporate changes resulting from the use of an alternate source term and the implementation of several plant modifications. Publications of the Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing have already appeared in the **Federal Register** on January 22, 2002 (67FR2922) and October 14, 2003 (68FR59215). The November 20, 2003, submittal contained a revised No Significant Hazards Consideration Determination.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Standards for determining whether a license amendment involves no significant hazards considerations are contained in 10CFR50.92(c). The TS [Technical Specification] changes and modifications as proposed in this LAR [license amendment request] have been evaluated in accordance with 10 CFR 50.92 and determined not to involve any significant hazards considerations.

The proposed LAR includes (1) implementing the AST [alternate source term] for accident analysis as described in Regulatory Guide 1.183; (2) removing the PRVS [penetration room ventilation system] and relaxing the SFPVS [spent fuel pool ventilation system] TS because they are no longer credited for Control Room and off-site doses; (3) revising the CRVS [control room ventilation system] to allow for a one time completion time extension on Conditions B and C when entering the conditions to support implementation of the Control Room intake/booster fan modification; (4) lowering the Reactor Building leakage rate from 0.25 w%/day to 0.20 w%/day; (5) revising the VFTP [ventilation filter testing program] radioactive methyl iodide removal acceptance criterion for SFPVS and CRVS Booster Fan trains; and (6) adoption of TSTF [Technical Specification Task Force]–51.

Plant modifications are also being proposed in concert with the proposed TS changes. They include relocating the existing Control Room outside air intake from the roof of the Auxiliary Building to the roof of the Turbine Building and installing dual intakes for each Control Room; re-routing HPI [high-pressure injection]/LPI [low-pressure injection] relief valve discharge back into the Reactor Building and replacing the existing Caustic Addition system with a passive system.

As a result of this evaluation, Duke has concluded:

1. The proposed amendment will not involve a significant increase in the probability of consequences of an accident previously evaluated.

The AST and those plant systems affected by implementing the proposed changes to the TS are not assumed to initiate design basis accidents. The AST does not affect the design or operations of the facility. Rather, the AST is used to evaluate the consequences of a postulated accident. The implementation of the AST has been evaluated in the revisions to the analysis of the design basis accidents for ONS [Oconee Nuclear Station]. Based on the results of these analyses, it has been demonstrated that, with the requested changes, the dose consequences of these events meet the acceptance criteria of 10 CFR 50.67 and Regulatory Guide 1.183. Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The AST and those plant systems affected by implementing the proposed changes to the TS are not assumed to initiate design basis accidents. The systems affected by the changes are used to mitigate the consequences of an accident that has already occurred. The proposed TS changes and modifications do not significantly affect the mitigative function of these systems. Consequently, these systems do not alter the nature of events postulated in the Safety Analysis Report nor do they introduce any unique precursor mechanisms. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The implementation of the AST, proposed changes to the TS and the implementation of the proposed modifications have been evaluated in the revisions to the analysis of the consequences of the design basis accidents for the ONS. Based on the results of these analyses, it has been demonstrated that with the requested changes the dose consequences of these events meet the acceptance criteria of 10 CFR 50.67 following the provisions of Regulatory Guide 1.183. Thus, the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005,

NRC Section Chief: John A. Nakoski.

Duke Energy Corporation, Docket No. 50–270, Oconee Nuclear Station, Unit 2, Oconee County, South Carolina

Date of amendment request: October 28, 2003.

Description of amendment request: The proposed amendment would revise the licensing basis in the Updated Final Safety Analysis Report to support installation of a passive low-pressure injection (LPI) cross connect inside containment. The proposed changes would revise the licensing basis for selected portions of the core flood and LPI piping to allow exclusion of the dynamic effects associated with postulated pipe rupture of that piping by application of leak-before-break methodology. A similar amendment was approved for Unit 1 by NRC letter dated September 29, 2003.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.91, Duke Power Company (Duke) has made the determination that this amendment request involves a No Significant Hazards Consideration by applying the standards established by the NRC regulations in 10 CFR 50.92. This ensures that operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated:

The proposed LAR [license amendment request] modifies the Unit 2 licensing basis to allow the dynamic effects associated with postulated pipe rupture of selected portions of the Unit 2 LPI [low-pressure injection]/Core Flood (CF) piping to be excluded from the design basis. The proposed design allowances for these selected portions of piping continue to allow the LPI system design to meet GDC [General Design Criterion] 4 requirements related to environmental and dynamic effects. The proposed LAR will continue to ensure that ONS [Oconee Nuclear Station] can meet design basis requirements associated with the LPI safety function. The addition of the crossover line will enhance the ability of the control room operator to mitigate the consequences of specific events for which LPI is credited. Therefore, the proposed LAR does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any kind of accident previously evaluated:

The proposed LAR modifies the Unit 2 licensing basis to allow the dynamic effects associated with postulated pipe rupture of selected portions of the Unit 2 LPI/Core Flood (CF) piping to be excluded from the design basis. The proposed design allowances for these selected portions of piping continue to allow the LPI system design to meet GDC 4 requirements related to environmental and dynamic effects. The systems affected by the changes are used to mitigate the consequences of an accident that has already occurred. The proposed licensing basis change does not affect the mitigating function of these systems. Consequently, these changes do not alter the nature of events postulated in the Safety Analysis Report nor do they introduce any unique precursor mechanisms. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in the margin of safety:

The proposed licensing basis change does not unfavorably affect any plant safety limits, set points, or design parameters. The change also do [SIC] not unfavorably affect the fuel, fuel cladding, RCS [reactor coolant system], or containment integrity. Therefore, the proposed licensing basis change, which adds new design allowances associated with the passive LPI cross connect modification, do [SIC] not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: John A. Nakoski.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: November 4, 2003.

Description of amendment request: The proposed change allows entry into a mode or other specified condition in the applicability of a technical specification (TS), while in a condition statement and the associated required actions of the TS, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of Title 10 of the Code of Federal Regulations (10 CFR), part 50, Section 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.4 exceptions in individual TSs would be eliminated, and Surveillance Requirement (SR) 3.0.4 revised to reflect the LCO 3.0.4 allowance.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–359. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), on possible amendments concerning TSTF–359, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the following NSHC determination in its application dated November 4, 2003.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS LCO. The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: October 21, 2003.

Description of amendment request: The proposed change would remove MODE restrictions that currently prevent performance of Surveillance Requirements (SRs) 3.8.4.7 and 3.8.4.8 for the Division III DC electrical power subsystem while in MODE 1, 2, or 3. These surveillances verify that the battery capacity is adequate to perform its required functions. The changes would allow the performance of SR 3.8.4.7 and SR 3.8.4.8 during normal plant operations rather than only during refueling outages.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The power supplied by the battery is used as a source of control and motive power for the HPCS [High Pressure Core Spray] system logic, HPCS diesel-generator set control and protection, and other Division III related controls. The loads supplied by this system are loads associated with Division III of the Emergency Core Cooling System (ECCS).

The battery testing period is within the period of time that the system will already be out of service for other planned maintenance. The battery test does not increase unavailability of the supported system or represent any change in risk above the current practice of planned system maintenance outages as currently allowed by the TS [Technical Specification]. Any risk associated with the testing of the Division III batteries will be enveloped by the risk management of the system outage.

The out of service condition is controlled and evaluated for safety implications in accordance with 10 CFR 50.65 [''Requirements for monitoring the effectiveness of maintenance at nuclear power plants'']. The HPCS system reliability and availability are monitored and evaluated in relationship to Maintenance Rule goals to ensure that total outage times do not degrade operational safety over time.

Therefore, the proposed change will have no effect on the probability or consequences of any previously evaluated accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The request involves the testing of the HPCS battery on-line while the system is already out of service. The testing will not add additional out of service time. Testing during this period has no influence on, nor does it contribute in any way to, the possibility of a new or different kind of accident or malfunction from those previously analyzed. The method of performing this test is not changed. No new accident modes are created by testing during the period when the system is already unavailable. Because the system is already out of service, no safety-related equipment or safety functions are altered as a result of this change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The battery testing will be performed when the HPCS system is already out of service for maintenance. The out of service condition is controlled and evaluated for safety implications in accordance with 10 CFR 50.65. The batteries are not expected to be unavailable for more than 36 hours. This testing period is within the period of time that the system will already be out of service for other planned maintenance. Therefore, the battery test does not increase unavailability of the supported system or represent any change in risk above the current practice of planned system maintenance outages as currently allowed by the TS. Timing of this test has no effect on any fission product barrier.

Therefore, the propose change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: October 21, 2003.

Description of amendment request: The proposed amendment would revise Technical Specification Section 5.5.7, ''Steam Generator (SG) Tube Surveillance Program,'' to allow a one-time extension of the frequency for examination of the SG tubes. Specifically, the amendment would extend the examination, currently due no later than November 17, 2004, to June 17, 2006.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

There is no direct increase in SG leakage because the proposed change does not alter the plant design. The scope of the inspection performed during the first refueling outage subsequent to SG replacement (last outage), exceeded the technical specification requirements for the first two refueling outages combined, after replacement. More tubes were inspected than were required by the technical specifications. Indian Point 2 does not have an active SG damage mechanism and will meet the current industry examination guidelines without performing inspections during the next refueling outage. The results of the Condition Monitoring Assessment subsequent to the last outage, demonstrated that all performance criteria were met during the last operating period. The results of the aforementioned Operational Assessment show that all performance criteria will be met over the proposed operating period.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will not alter any plant design basis or postulated accident resulting from potential SG tube degradation. The scope of the inspections performed during the last (first after SG replacement) refueling outage significantly exceeds the Technical Specification requirements for the scope of the first two refueling outages combined subsequent to SG replacement.

The proposed change does not affect the SG design, the method of operation, or reactor coolant chemistry controls. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. The proposed change involves a one-time extension of the SG tube inservice inspection frequency, and therefore will not give rise to new failure modes. In addition, the proposed change does not impact any other plant system or components.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

SG tube integrity is a function of design, environmental, and current physical condition. Extending the SG tube inservice inspection frequency by one operating cycle will not alter the function or design of the SGs. Inspections conducted prior to placing the SGs into service (pre-service inspection) and inspection during the first refueling outage following SG replacement, demonstrate that the SGs do not have fabrication damage or an active damage mechanism. The scope of those inspections significantly exceeds those required by the technical specifications. These inspection results were comparable to similar inspection results for the same model SG installed at other plants, and subsequent inspections at those plants provided results that support the extension request. The improved design of the replacement SGs also provides assurance that significant tube degradation is not likely to occur over the proposed operating period.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Richard J. Laufer.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: June 30, 2003, as supplemented by letter dated November 20, 2003.

Description of amendment request: The proposed amendment would (1) reorganize the Arkansas Nuclear One, Unit No. 2 (ANO–2) Technical Specifications (TSs) Section 6.0, Administrative Controls, (2) modify the ANO–2 Facility Operating License, and actions and surveillance requirements (SRs) of various other TSs, to support the reorganization of Section 6.0, and (3) modify several actions and SRs that are related to systems that are shared by ANO–2 and Arkansas Nuclear One, Unit No. 1 (ANO–1). These changes are being proposed so that the philosophy and location of the TSs in Section 6.0 reflect the recently approved conversion of the ANO–1 TSs to the Improved Technical Specifications (ITS) and the subsequent amendments to the ANO–1 ITS. This amendment request supersedes the

previous application related to the revision of TS Section 6.0 dated January 31, 2002, as supplemented on June 26 and July 18, 2002. The January 31, 2002, application was previously noticed in the **Federal Register** on March 19, 2002 (67 FR 12602), and the June 30, 2003, application was previously noticed in the **Federal Register** on July 22, 2003 (68 FR 43385).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Administrative Changes

The proposed changes involve reformatting and rewording of the existing TSs. The reformatting and rewording process involves no technical changes to existing requirements. As such, the proposed changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

Less Restrictive—Administrative Deletion of Requirements

The proposed changes relocate requirements from the TSs to other license basis documents which are under licensee control. The documents containing the relocated requirements will be maintained using the provisions of applicable regulatory requirements.

More Restrictive Changes

The proposed changes provide more stringent requirements for the ANO–2 TSs. These more stringent requirements are not assumed to be initiators of analyzed events and will not alter assumptions relative to mitigation of accident or transient events. The more stringent requirements are imposed to ensure process variables, structures, systems, and components are maintained consistent with the safety analyses and licensing basis and to provide greater consistency with the ANO–1 TS and NUREG 1432.

Less Restrictive Changes

(1) A note will be added that allows three (3) hours to perform the channel functional test on the control room radiation monitors without entering the associated Actions.

The control room area radiation monitor is used to support mitigation of the consequences of an accident; however, it is not considered the initiator of any previously analyzed accident. Also, the addition of the Note to allow time for testing reduces the potential for initiation of a previously analyzed accident due to reduced potential for shutdowns and startups due to incomplete or missed surveillances. As such, the proposed revision to include an allowance for testing does not significantly increase the probability of any accident previously evaluated. This change does not result in any hardware changes, but does allow operation for a limited time with an inoperable monitor for the purposes of testing. Since the capability of the control room area radiation monitor to provide the required information continues to be verified, and the time allowed for inoperability for testing is short, the change will not reduce the capability of required equipment to mitigate the event. Also, the consequences of an event occurring during the proposed operation of the unit during the allowed inoperability for testing are the same as the consequences of an event occurring while operating under the current TS Actions. Therefore, this change does not involve a significant increase in the consequences of any accident previously evaluated.

(2) This change will allow the control room boundary to be opened intermittently under administrative controls, and will allow both trains of the CREVS [control room emergency ventilation system] to be inoperable due to control room boundary inoperability for a period of 24 hours.

Neither CREVS nor the control room boundary is the initiator of any accident analyzed in the SAR [Safety Analysis Report]. Therefore, this change does not result in a significant increase in the probability of an accident previously evaluated.

The CREVS and the control room boundary are intended to provide a habitable environment for the control room operators in the event of an accident that results in the release of radioactivity to the environment. The allowance to open the control room boundary intermittently is acceptable, because of the administrative controls that will be implemented to ensure that the opening can be rapidly closed when the need for control room isolation is indicated, restoring the control room habitability envelope. Allowing both CREVS trains to be inoperable for 24 hours due to an inoperable control room boundary is acceptable because of the low probability of an accident requiring control room isolation during any given 24 hour period, because entry into this condition is expected to be an infrequent occurrence, and because preplanned compensatory measures to protect the control room operators from potential hazards are implemented. Therefore, this change will not result in a significant increase in the probability [consequences] of an accident previously evaluated.

(3) An allowance will be added to allow use of a ''simulated'' or ''actual'' signal when testing the automatic isolation feature of the control room air filtration system.

The phrase ''actual or simulated'' in reference to the automatic initiation signal, has been added to the system functional test surveillance test description. This does not impose a requirement to create an ''actual'' signal, nor does it eliminate any restriction on producing an ''actual'' signal. The proposed change does not affect the procedures governing plant operations and the acceptability of creating these signals; it simply would allow such a signal to be utilized in evaluating the acceptance criteria for the system functional test requirements. Therefore, the change does not involve a significant increase in the probability of an accident previously evaluated. Since the function of the system functional test remains unaffected the change does not involve a significant increase in the consequences of an accident previously evaluated.

(4) An allowance for the diesel fuel storage tanks to contain less than 22,500 gallons of fuel for up to 48 hours as long as the individual volume is greater than 17,446 gallons will be added. The lower value when summed with the contents of the other tank ensures six days of fuel oil is available. During the 48 hours, the diesel generator is capable of performing its intended function. There is a low probability that an event would occur for which the diesel generator would be required during this short period of time when the lower fuel oil volume is allowed.

The AC Sources are used to support mitigation of the consequences of an accident and can be involved in the initiation of the accident analyzed in SAR. Equipment powered by the AC Sources, which may be considered as an initiator, continues to be assured of electrical power. The proposed increased restoration time involves parameters unrelated to initiating the failure of the AC Sources. As such the proposed time allowance for restoration of limited levels of readiness parameter degradation will not increase the probability of any accident previously evaluated. The proposed changes allow additional time for restoration of parameters that have been identified as not immediately affecting the capability of the power source to provide its required safety function. The identified parameters are capable of being replenished during operation of the diesel generators, and the short additional allowable action time continues to provide adequate assurance of operable required equipment. Therefore, this change does not involve a significant increase in the probability of or the consequences of any accident previously evaluated.

(5) Seven days will be allowed to restore the stored diesel fuel oil total particulates to within the required limits prior to declaring the associated diesel inoperable.

The testing of diesel generator fuel oil is not considered an initiator, or a mitigating factor, in any previously evaluated accident. The presence of particulates does not mean failure of the fuel oil to burn properly in the diesel engine. In addition, particulate concentration is unlikely to change significantly between surveillance intervals (31 days). Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(6) An allowance for the person who is satisfying the requirement of the radiation protection staff position and for the person filling the Shift Technical Advisor (STA) position to be vacant for not more than two hours in order to provide for unexpected absences is being added. This is consistent with the allowance permitted for the control room operator as reflected in existing TSs.

This change does not result in any changes in hardware or methods of operation. The change allowing the absence of the STA or the radiation protection technician is not considered in the safety analysis, and cannot initiate or affect the mitigation of an accident in any way. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(7) The STA will be allowed to support the shift crew rather than only the shift supervisor. This provides more flexibility and does not dilute the function of the STA.

This change does not result in any changes in hardware or methods of operation. The change in the support relationship between the STA and the control room staff is not considered in the safety analysis, and cannot initiate or affect the mitigation of an accident in any way. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(8) The Occupational Radiation Exposure Report will be submitted by April 30 of each calendar year instead of prior to March 1.

This change does not result in any changes in hardware or methods of operation. The change in date for submittal of ''after the fact'' information is not considered in the safety analysis, and cannot initiate or affect the mitigation of an accident in any way. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(9) An allowance is proposed that will revise the high radiation areas to include additional previously approved methods for implementation of alternatives to the ''control device'' or ''alarm signal'' requirements of 10 CFR [Part] 20. These alternatives provide adequate control of personnel in high radiation areas as evidenced by NRC issuance of NUREG–1432.

The controls for access to a high radiation area are not considered as initiators, or as a mitigation factor, in any previously evaluated accident. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(10) An allowance to require periodic testing of stored fuel for the particulates only is proposed.

The testing of diesel generator fuel oil is not considered an initiator or a mitigating factor in any previously evaluated accident. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(11) The removal of the requirement to notify the Vice President, Operations ANO within 24 hours of violating a safety limit.

Notification of the Vice President, Operations ANO when a safety limit is violated is not considered an initiator or a mitigating factor in any previously evaluated accident. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(12) The Radioactive Effluent Release Report will be submitted by May 1 of each calendar year instead of prior to March 1.

This change does not result in any changes in hardware or methods of operation. The change in date for submittal of ''after the fact'' information is not considered in the safety analysis, and cannot initiate or affect the mitigation of an accident in any way. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(13) A change that allows a 25% extension of the frequency in accordance with SR 4.0.2 for the integrated leak tests of each system outside containment that could contain highly radioactive fluids.

The extension of the testing frequency, up to 25% of the test interval, is not considered an initiator or a mitigating factor in any previously evaluated accident. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(14) A change that allows the OSRC [Onsite Safety Review Committee] review of the desirability of maintaining a channel in the bypassed condition to be at or before the next regularly scheduled meeting.

The proposed change is not considered an initiator or a mitigating factor in any previously evaluated accident. Therefore, the change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Administrative Changes

The proposed changes do not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operations. The proposed changes will not impose any different requirements.

Less Restrictive—Administrative Deletion of Requirements

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operations. The proposed changes will not impose any different requirements and adequate control of the information will be maintained.

More Restrictive Changes

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed changes do impose different requirements. However, these changes do not impact the safety analysis and licensing basis.

Less Restrictive Changes

(1) A note will be added that allows three (3) hours to perform the channel functional test on the control room radiation monitors without entering the associated Actions.

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will still ensure proper surveillances are required for the equipment considered in the safety analysis. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(2) This change will allow the control room boundary to be opened intermittently under administrative controls, and will allow both trains of the control room ventilation system (CREVS) to be inoperable due to a control room boundary inoperability for a period of 24'hours.

The proposed change does not necessitate a physical alteration of the unit (no new or different type of equipment will be installed) or changes in parameters governing normal unit operation. Prompt and appropriate compensatory actions will still be taken in the event of an accident. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) An allowance will be added to allow use of a ''simulated'' or ''actual'' signal when testing the automatic isolation feature of the control room air filtration system.

The possibility of a new or different kind of accident from any accident previously evaluated is not created because the proposed change introduces no new mode of plant operation and it does not involve physical modification to the plant.

(4) An allowance for the diesel fuel storage tanks to contain less than 22,500 gallons of fuel for up to 48 hours as long as the individual volume is greater than 17,446 gallons will be added. The lower value when summed with the contents of the other tank ensures six days of fuel oil is available. During the 48 hours, the diesel generator is capable of performing its intended function. There is a low probability that an event would occur for which the diesel generator would be required during this short period of time when the lower fuel oil volume is allowed.

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will continue to ensure operable safety equipment is available. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(5) Seven days will be allowed to restore the stored diesel fuel oil total particulates to within the required limits prior to declaring the associated diesel inoperable.

No changes are proposed in the manipulation of the plant structures, systems, or components, or in the design of the plant structures, systems, or components. The presence of particulates does not mean failure of the fuel oil to burn properly in the diesel engine. In addition, particulate concentration is unlikely to change significantly between surveillance intervals (31 days). Therefore, the change does not

create the possibility of a new or different kind of accident from any accident previously evaluated.

(6) An allowance for the person who is satisfying the requirement of the radiation protection staff position and for the person filling the Shift Technical Advisor (STA) position to be vacant for not more than two hours in order to provide for unexpected absences is proposed. This is consistent with the allowance permitted for the control room operator as reflected in existing TSs.

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will impact only the STA and radiation protection staffing positions and does not directly impact the operation of the plant. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(7) The STA will be allowed to support the shift crew rather than only the shift supervisor. This provides more flexibility and does not dilute the function of the STA.

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will impact only the support relationship the STA provides the control room staff and does not directly impact the operation of the plant. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(8) The Occupational Radiation Exposure Report will be submitted by April 30 of each calendar year instead of prior to March 1.

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will impact only the administrative requirements for submittal of information and does not directly impact the operation of the plant. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(9) An allowance is proposed that will revise the high radiation areas to include additional previously approved methods for implementation of alternates to the ''control device'' or ''alarm signal'' requirements of 10 CFR [Part] 20. These alternatives provide adequate control of personnel in high radiation areas as evidenced by NRC issuance of NUREG–1432.

No changes are proposed in the manipulation of the plant structures, systems, or components, or in the design of the plant structures, systems, or components. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(10) An allowance to require periodic testing of stored fuel for the particulates only is proposed.

No changes are proposed in the manipulation of the plant structures, systems, or components, or in the design of the plant structures, systems, or components. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(11) The removal of the requirement to notify the Vice President, Operations ANO within 24 hours of violating a safety limit.

No changes are proposed that result in the manipulation or the design of plant structures, systems, or components. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(12) The Radioactive Effluent Release Report will be submitted by May 1 of each calendar year instead of prior to March 1.

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will impact only the administrative requirements for submittal of information and does not directly impact the operation of the plant. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(13) A change that allows a 25% extension of the frequency in accordance with SR 4.0.2 for the integrated leak tests of each system outside containment that could contain highly radioactive fluids.

No changes are proposed that result in the manipulation or the design of plant structures, systems, or components. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(14) A change that allows the OSRC review of the desirability of maintaining a channel in the bypassed condition to be at or before the next regularly scheduled meeting.

No changes are proposed that result in the manipulation or the design of plant structures, systems, or components. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

Administrative Changes

The proposed changes will not reduce the margin of safety because they have no impact on any safety analysis assumptions. The changes are administrative in nature.

Less Restrictive—Administrative Deletion of Requirements

The proposed changes will not reduce a margin of safety because they have no impact on any safety analysis assumptions. In addition, the requirements to be transposed from the TSs to other license basis documents, which are under licensee control, are the same as the exiting TSs. The documents containing the relocated requirements will be maintained using the provisions of applicable regulatory requirements.

More Restrictive Changes

The imposition of more stringent requirements prevents a reduction in the margin of plant safety by:

(a) increasing the scope of the specification to include additional plant equipment,

(b) providing additional actions,

(c) decreasing restoration times, or

(d) imposing new surveillances.

The changes are consistent with the safety analysis and licensing basis.

Less Restrictive Changes

(1) A note will be added that allows three (3) hours to perform the channel functional test on the control room radiation monitors without entering the associated Actions.

The margin of safety for the control room area radiation monitor is based on availability and capability of the instrumentation to provide the required information to the operator. The frequency is based on unit operating experience that demonstrates channel failure is rare, and on the use of less formal but more frequent checks of channels during normal operational use of the displays associated with the required channels. Therefore, the availability and capability of the control room area radiation monitor continues to be assured by the proposed Surveillance Requirements and this change does not involve a significant reduction in a margin of safety.

(2) This change will allow the control room boundary to be opened intermittently under administrative controls, and will allow both trains of the control room ventilation system (CREVS) to be inoperable due to control room boundary inoperability for a period of 24 hours.

This change does not involve a significant reduction in a margin of safety since: (1) Administrative controls will be in place to ensure that an open control room boundary can be rapidly closed when a need for control room isolation is indicated; and (2) an inoperable control room boundary that renders both trains of CREVS inoperable is an infrequent occurrence, the probability of an accident requiring control room isolation during any given 24 hour period is low, and preplanned compensatory measures to protect the control room operators from potential hazards are implemented.

(3) An allowance will be added to use a simulated or actual signal when testing the automatic isolation feature of the control room air filtration system.

Use of an actual signal instead of the existing requirement which limits use to a simulated signal, will not affect the performance of the surveillance test. OPERABILITY is adequately demonstrated in either case since the system itself can not discriminate between ''actual'' or ''simulated'' signals. Therefore, the change does not involve a significant reduction in a margin of safety.

(4) An allowance for the diesel fuel storage tanks to contain less than 22,500 gallons of fuel for up to 48 hours as long as the

individual volume is greater than 17,446 gallons. The lower value when summed with the contents of the other tank ensures six days of fuel oil is available. During the 48 hours, the diesel generator is capable of performing its intended function. There is a low probability that an event would occur for which the diesel generator would be required during this short period of time when the lower fuel oil volume is allowed.

The parameter limits provide substantial margin to the parameter values that would be absolutely necessary for diesel generator operability. When the parameters are less than their limits this margin is reduced. However, the availability of AC Sources continues to be assured since the allowed time for parameters to be less than their limits is short and the allowed levels for the parameters are adequate to provide the immediately needed power availability. Further, the parameters can be restored to within limits during the proposed time provided should they be required. Therefore, this change does not result in a significant reduction in [a] margin of safety.

(5) Seven days will be allowed to restore the stored diesel fuel oil total particulates to within the required limits prior to declaring the associated diesel inoperable.

The proposed change allows the stored diesel fuel oil total particulates to be outside the required limits for seven days before declaring the associated diesel inoperable. The presence of particulates does not mean failure of the fuel oil to burn properly in the diesel engine. In addition, particulate concentration is unlikely to change significantly between surveillance intervals (31 days). The seven day allowance provides an appropriate backstop to ensure the particulate level is restored to within limits in a reasonable time period. Since the diesel is still capable of performing its function the margin of safety is not reduced.

(6) An allowance for the person who is satisfying the requirement of the radiation protection staff position and for the person filling the Shift Technical Advisor (STA) position to be vacant for not more than two hours in order to provide for unexpected absences is proposed. This is consistent with the allowance permitted for the control room operator as reflected in existing TSs.

The margin of safety is not dependent on the presence of the STA or the radiation protection technician. Therefore, this change does not involve a significant reduction in a margin of safety.

(7) The STA will be allowed to support the shift crew rather than only the shift supervisor. This provides more flexibility and does not dilute the function of the STA.

The margin of safety is not dependent upon who the STA supports. Therefore, this change does not involve a significant reduction in a margin of safety.

(8) The Occupational Radiation Exposure Report will be submitted by April 30 of each calendar year instead of prior to March 1.

The margin of safety is not dependent on the submittal of information. Therefore, this change does not involve a significant reduction in a margin of safety.

(9) An allowance is proposed that will revise the high radiation areas to include additional previously approved methods for implementation of alternatives to the ''control device'' or ''alarm signal'' requirements of 10 CFR [Part] 20. These alternatives provide adequate control of personnel in high radiation areas as evidenced by NRC issuance of NUREG–1432.

The requirements for control of high radiation areas provide for the use of alternates to the ''control device'' or ''alarm signal'' requirements of 10 CFR 20.1601. This change provides such alternative methods for controlling access. These methods and additional administrative requirements have been determined to provide adequate controls to prevent unauthorized and inadvertent access to such areas. Therefore, this change does not involve a significant reduction in a margin of safety.

(10) An allowance to require periodic testing of stored fuel for the particulates only is proposed.

The testing of stored diesel generator fuel oil is revised to require the periodic testing of the stored fuel oil only for particulates (replacing the periodic testing per ASTM–D975) once every 31 days. The change reflects industry-standard acceptable DG fuel oil testing programs. Over the storage life of ANO–2 DG fuel oil, the properties tested by ASTM–D975 are not expected to change and performing these tests once on the new fuel oil provides adequate assurance of the proper initial quality of fuel oil. The periodic testing for particulates monitors a parameter that reflects degradation of fuel oil and can be trended to provide increased confidence that the stored DG fuel oil will support DG operability. Therefore, this change does not involve a significant reduction in a margin of safety.

(11) The removal of the requirement to notify the Vice President, Operations ANO within 24 hours of violating a safety limit.

The margin of safety is not dependent upon notification of the Vice President, Operations ANO upon the violation of a TS safety limit. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

(12) The Radioactive Effluent Release Report will be submitted by May 1 of each calendar year instead of prior to March 1.

The margin of safety is not dependent on the submittal of information. Therefore, this change does not involve a significant reduction in a margin of safety.

(13) A change that allows a 25% extension of the frequency in accordance with SR 4.0.2 for the integrated leak tests of each system outside containment that could contain highly radioactive fluids.

The proposed allowance allows a possible increase in performance interval. However, the test will still be performed at reasonable intervals to ensure the intent of the surveillance is maintained. Therefore, this change does not involve a significant reduction in a margin of safety.

(14) A change that allows the OSRC review of the desirability of maintaining a channel in the bypassed condition to be at or before the next regularly scheduled meeting.

The proposed change allows the OSRC review to occur earlier than previously required if an OSRC meeting is called before the next regularly scheduled meeting. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, (Waterford 3) St. Charles Parish, Louisiana

Date of amendment request: October 22, 2003.

Description of amendment request: The licensee proposes to change the existing pressure/temperature limits (P/T) from 16 to 32 effective full power years (EFPY). In addition, the maximum heatup rate will be changed to 60 °F per hour and the maximum cooldown rate to 100 °F per hour for all reactor coolant system temperatures. For inservice hydrostatic pressure and leak testing, the maximum heatup and cooldown rates will be changed to 60 °F and 100 °F, respectively.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously analyzed?

Response: No.

The probability of occurrence of an accident previously evaluated for Waterford 3 is not altered by the proposed amendment to the TSs [Technical Specifications]. The accidents currently analyzed in the Waterford 3 Final Safety Analysis Report (FSAR) remain the same considering the results of the proposed changes to the P/T limits and the LTOP [low temperature overpressure] enable temperature. The new P/T and LTOP enable temperature limits were based on the NRC [Nuclear Regulatory Commission] accepted methodologies along with the ASME [American Society of Mechanical Engineers] Code [Boiler and Pressure Vessel Code] alternatives. The proposed changes do not impact the integrity of the reactor coolant pressure boundary (RCPB) (*i.e.*, there is no change to the

operating pressure, materials, loadings, etc.). The proposed change does not affect the probability nor consequences of any design basis accident (DBA). The proposed P/T limit curves, maximum heatup and cooldown rates, and the LTOP enable temperature are not considered to be an initiator or contributor to any accident currently evaluated in the Waterford 3 FSAR. The new limits ensure the long term integrity of the RCPB.

Fracture toughness test data are obtained from material specimens contained in capsules that are periodically withdrawn from the reactor vessel. These data permit determination of the conditions under which the vessel can be operated with adequate safety margins against non-ductile fracture throughout its service life. During the spring 2002 Waterford 3 refueling outage, a reactor vessel specimen capsule was withdrawn and analyzed to predict the fracture toughness requirements using projected neutron fluence calculations. For each analyzed transient and steady state condition, the allowable pressure is determined as a function of reactor coolant temperature considering postulated flaws in the reactor vessel beltline, inlet nozzle, outlet nozzle, and closure head.

The predicted radiation induces ''RT_{NDT} was calculated using the respective reactor vessel beltline materials copper and nickel contents and neutron fluence applicable to 32 EFPY including an estimated increase in flux due to proposed power uprates. The RT_{NDT} and, in turn, the operating limits for Waterford 3 were adjusted to account for the effects of irradiation on the fracture toughness of the reactor vessel materials. Therefore, new operating limits will be established which are represented in the revised operating curves for heatup/criticality, cooldown, and inservice hydrostatic testing contained in the TSs.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the P/T and LTOP enable temperature will not create a new accident scenario. The requirements to have P/T limits and LTOP protection are part of the licensing basis for Waterford 3. The approach used to develop the new P/T limits and LTOP enable temperature meets NRC and ASME regulations and guidelines. The data analysis for the vessel specimen removed during the last Waterford 3 refueling outage confirms that the vessel materials are responding as predicted.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The existing P/T curves and LTOP enable temperature in the TSs are reaching their expiration period for the number of years at effective full power operation. The revision of the P/T limits and curves will ensure that Waterford 3 continues to operate within the operating margins allowed by 10 CFR 50.60 and the ASME Code. The material properties used in the analysis are based on results established through Westinghouse material reports for copper and nickel content. The application of ASME Code Case N–641 presents alternative procedures for calculating P/T and LTOP temperatures in lieu of that established for ASME Section XI, Appendix G–2215. The Code alternative allows certain assumptions to be conservatively reduced. However, the procedures allowed by Code Case N–641 still provide significant conservatism and ensure an adequate margin of safety in the development of P/T operating and pressure test limits to prevent non-ductile fractures.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: N.S. Reynolds, Esquire, Winston & Strawn, 1400 L Street NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Unit Nos. 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: September 8, 2003.

Description of amendment request: The proposed change allows entry into a mode or other specified condition in the applicability of a Technical Specification (TS), while in a condition statement and the associated required actions of the TS, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Section 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.4, exceptions in individual TSs, would be eliminated, and Surveillance Requirement (SR) 3.0.4 revised to reflect the LCO 3.0.4 allowance.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–359. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), on possible amendments concerning TSTF–359, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the following NSHC determination in its application dated September 8, 2003.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions

of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS LCO. The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward Cullen, Vice President & General Counsel, Exelon Generation Company, LLC, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: James W. Clifford.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: September 26, 2003.

Description of amendment request: The proposed amendment would modify the fire protection plan (FPP). The change to the FPP would allow converting the existing carbon dioxide (CO_2) fire suppression systems, located in the cable spreading room (CSR) and each of the four emergency diesel generator rooms, from automatic to manual actuation systems.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed activity involves changing the actuation of the carbon dioxide (CO_2) fire suppression systems from automatic to manual. With the exception of the Emergency Diesel Generator (EDG) CO_2 system itself, the proposed activity does not result in any physical changes to safety-related structures, systems, or components (SSCs), or the manner in which safety-related SSCs are operated, maintained, modified, tested, or inspected. The EDG CO_2 system is safety related due to a potential common mode effect on all four EDGs in the event of a seismic event. Eliminating the automatic actuation function of the EDG CO_2 system will thereby eliminate a potential common mode effect on the EDGs. The proposed activity does not degrade the performance or increase the challenges of any safety-related SSCs assumed to function in the accident analysis. As a result, the proposed activity does not introduce any new accident initiators. In addition, fires are not an accident that is previously evaluated. Regardless, the proposed activity does not change the probability of a fire occurring since fire ignition frequency is independent of the method of fire suppression in the room. The consequences of the proposed activity are bounded by the fire safe shutdown analysis, which assumes fire damage throughout the affected fire area. The fire safe shutdown analysis for each of the areas addressed by the proposed activity demonstrates that safe shutdown can be accomplished assuming that no fire suppression is available. In addition, the removal of the automatic discharge capability of the CO_2 system in each of the EDG rooms significantly reduces the potential for an inadvertent discharge to shutdown the EDG if needed for non-fire accident conditions. Similarly, removal of the automatic discharge feature in the CSR significantly reduces the potential for an inadvertent discharge that would require (by procedure) immediate shutdown of both units, and the potential migration of CO_2 into the main control room or other areas. In the future, CO_2 discharge will only occur as a deliberate action to the most extreme fires, as one element of an overall graded approach to fire fighting in the affected areas.

Therefore, changing the actuation of the CO_2 fire suppression systems from automatic to manual does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed activity involves changing the actuation of the CO_2 fire suppression systems from automatic to manual. With the exception of the Emergency Diesel Generator (EDG) CO_2 system itself, the proposed activity does not result in any physical changes to safety-related structures, systems, or components (SSCs), or the manner in which safety-related SSCs are operated, maintained, modified, tested, or inspected. The proposed activity does not degrade the performance or increase the challenges of any safety-related SSCs assumed to function in the accident analysis. As a result, the proposed activity does not introduce nor increase the number of failure mechanisms of a new or different type than those previously evaluated. The fire safe shutdown analysis assumes fire damage throughout the area consistent with a complete lack of fire suppression capability. The elimination of the potential for inadvertent actuation accomplished by changing the CO_2 systems from automatic to manual prevents the CO_2 systems from creating a challenge to existing accidents.

Therefore, changing the actuation of the CO_2 fire suppression system from automatic to manual does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed activity involves changing the actuation of the CO_2 fire suppression systems from automatic to manual. With the exception of the Emergency Diesel Generator (EDG) CO_2 system itself, the proposed activity does not result in any physical changes to safety-related structures, systems, or components (SSCs), or the manner in which safety-related SSCs are operated, maintained, modified, tested, or inspected. The proposed activity does not degrade the performance or increase the challenges of any safety-related SSCs assumed to function in the accident analysis. The proposed activity does not impact plant safety since the conclusions of the fire safe shutdown analysis remain unchanged.

Therefore, changing the actuation of the CO_2 fire suppression system from automatic to manual does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Mr. Edward Cullen, Vice President and General Counsel, Exelon Generation Company, LLC, 2301 Market Street, S23–1, Philadelphia, PA 19101.

NRC Section Chief: James W. Clifford.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: August 25, 2003.

Description of amendment request: The proposed amendment would allow extension of the current Emergency Diesel Generator (EDG) Technical Specifications allowed outage time (AOT) from 72 hours to a period of 14 days. This proposal would be supported by permanently installing a non-safety-related supplemental emergency power system (SEPS).

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR) Section 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a change in the operational limits or physical design of the electrical power systems, particularly the emergency power systems. The proposed changes do not change the function or operation of plant equipment or affect the response of that equipment if called upon to operate. The proposed AOT extensions to allow for additional operational flexibility will not cause a significant increase in the probability or consequences of an accident previously evaluated. In actuality, the installation of the SEPS will have an overall net reduction in core damage frequency. The AOT extensions will lessen the burden of time pressure to quickly determine the cause of failure and perform corrective actions without needing to place the plant in a transient to shutdown because of a short allotted AOT.

A Probabilistic Risk Assessment (PRA) has been performed to quantitatively assess the risk impact of an increase in the Allowed Outage Time. The proposed change results in a significant decrease in core damage frequency (CDF). Large Early Release Frequency (LERF) is dominated by containment bypass and containment isolation failures and remains relatively unchanged by the addition the SEPS combined with a 14-day AOT.

Based on the above, the proposed changes will not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not involve a change in the operational limits or physical design of the electrical power systems, particularly the emergency power systems. The proposed changes do not change the function or operation of plant equipment or introduce any new failure mechanisms. The SEPS and interfacing components with the safety-related busses have been designed to ensure independence and separation, particularly during faulted conditions. As such, no new failure modes are being introduced. The plant equipment will continue to respond per the design and analyses and there will not be a malfunction of a new or different type introduced by the proposed changes.

The proposed amendment extends the Allowed Outage Times for restoring an inoperable EDG to OPERABLE status and extends the period for operability verification of redundant features to allow for minor repair prior to placing the plant in a shutdown transient. The proposed amendment will not result in changes to the type of corrective or preventive maintenance activities associated with the EDGs. Plant operating procedures and the procedures used to respond to abnormal or emergency conditions will be enhanced with the option to use the SEPS when deemed necessary. Assumptions made in the safety analysis related to EDG availability will also remain unchanged. Performance of certain maintenance activities at power requires an evaluation to assure plant safety is maintained or enhanced, which would include evaluation for new or different plant conditions. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes do not involve a change in the operational limits. The proposed changes do not change the function or operation of plant equipment or affect the response of that equipment if it is called upon to operate. The performance capability of the emergency diesel generators will not be affected. Installation of the SEPS will have an overall net reduction in core damage frequency. Emergency diesel generator reliability and availability will be improved by implementation of the proposed changes. In addition, administrative controls will ensure there are adequate compensatory measures that can be and will be taken during extended EDG maintenance activities to reduce overall risk. The results of the PRA performed to quantitatively assess the risk impact of an increase in the Allowed Outage Time indicate the proposed change results in a significant decrease in core damage frequency (CDF) by up to 30 percent. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Esquire, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Section Chief: James W. Clifford.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: October 6, 2003.

Description of amendment request: The proposed amendment would revise the Seabrook Station licensing basis to implement the alternative source term (AST) methodology of Regulatory Guide (RG) 1.183 through reanalysis of the radiological consequences of a number of the Updated Final Safety Analysis Report Chapter 15 accidents. Further, having revised the licensing basis, the amendment would also revise the definition of dose equivalent I–131 in Technical Specifications Section 1.12.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR) Section 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Alternative source term calculations have been performed that demonstrate the dose consequences remain below limits specified in NRC [Nuclear Regulatory Commission] Regulatory Guide 1.183 (July 2000) and 10CFR50.67. The proposed change does not modify the physical design or operation of the plant. The use of AST changes only the regulatory assumptions regarding the analytical treatment of the design basis accidents and has no direct effect on the probability of the accident. AST has been utilized in the analysis of the limiting design basis accidents listed above. The results of the analyses, which include the proposed change to the Technical Specifications, demonstrate that the dose consequences of these limiting events are all within the regulatory limits. The proposed Technical Specification change to the definition of dose equivalent I–131 is consistent with the implementation of AST and the requirements of RG 1.183 (July 2000).

Therefore, the proposed change does not involve a significant increase the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not affect any plant structures, systems, or components. The operation of plant systems and equipment will not be affected by this proposed change. The alternative source term and the dose equivalent I–131 definition change do not have the capability to initiate accidents. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed implementation of the alternative source term methodology is consistent with NRC RG 1.183 (July 2000). The Technical Specification change to the definition of dose equivalent I131 is consistent with the implementation of AST and the requirements of RG 1.183 (July 2000). Conservative methodologies, per the guidance of RG 1.183 (July 2000), have been used in performing the accident analyses. The radiological consequences of these accidents are all within the regulatory acceptance criteria associated with use of the alternative source term methodology.

The proposed changes continue to ensure that the doses at the exclusion area and low population zone boundaries and in the Control Room are within the corresponding regulatory limits of RG 1.183 (July 2000) and 10CFR50.67. The margin of safety for the radiological consequences of these accidents is considered to be that provided by meeting the applicable regulatory limits, which are set at or below the 10CFR50.67 limits. An acceptable margin of safety is inherent in these limits.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Esquire, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Section Chief: James W. Clifford.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: September 26, 2003.

Description of amendment requests: The proposed change allows entry into a mode or other specified condition in the applicability of a Technical Specification (TS), while in a condition statement and the associated required actions of the TS, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of 10 CFR 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.4 exceptions in individual TS would be eliminated, and Surveillance Requirement (SR) 3.0.4 revised to reflect the LCO 3.0.4 allowance.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–359. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), on possible amendments concerning TSTF–359, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the following NSHC determination in its application dated September 26, 2003.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS LCO. The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: October 23, 2003.

Description of amendment request: The proposed amendment would delete the surveillance requirements associated with the Emergency Diesel Generator lockout features.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the Technical Specifications (TS) 3/4.8.1.1, AC Sources—Operating, would delete an unnecessary surveillance. The probability of occurrence or the consequences for an accident or malfunction of equipment is not increased by the proposed changes. In addition, the proposed changes do not alter the way any structure, system or component (SSC) functions, do not modify the manner in which the plant is operated, and do not significantly alter equipment out-of-service time. Deleting the surveillance of equipment protection does not change the probability or consequences of any accident and dose consequences are unaffected. No changes to the design of structures, systems, or components (SSC) are made and there are no effects on accident mitigation.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The possibility of a new or different kind of accident from any accident or malfunction in the Hope Creek Updated Final Safety Analysis Report (UFSAR) is not created. The Emergency Diesel Generators are accident mitigation equipment and cannot initiate an accident. The proposed changes to the TS do not change the design function or operation of any SSCs. The TS, as amended, would

continue to provide assurance of EDG operability.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes are procedural in nature and make no changes that affect the ability of plant SSCs to perform their design basis accident functions. In addition, the proposed changes do not change the margin of safety since no SSCs are changed. The results of accident analysis remain unchanged by the proposed changes to TS.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: October 24, 2003.

Description of amendment request: The proposed change to Technical Specifications will revise surveillance requirements associated with reactor protection system instrumentation, control rod block instrumentation, source range monitors, and power distribution limits, to minimize unnecessary testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment would revise the Technical Specification (TS) Surveillance Requirements (SRs) for certain Reactor Protection System and Control Rod Block Instrumentation, the source range monitors and power distribution limits, consistent with NUREG–1433, ''Standard Technical Specifications (STS) General Electric Plants, BWR [Boiling Water Reactor]/4,'' Revision 2. No changes are being made to any instrumentation setpoints or plant components. The revised SRs continue to assure that the necessary quality of systems and components is maintained, that facility operation will be within safety limits, and that the Limiting Conditions for Operation will be met.

Since the proposed changes do not affect any accident initiator and since the associated equipment will remain capable of performing its design function, the proposed change does not involve a significant increase in the probability or radiological consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not change the design function or operation of any plant equipment. No new failure mechanisms, malfunctions, or accident initiators are being introduced by the proposed changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

No changes are being made to any plant instrumentation setpoints or to the required level of redundancy. No changes are being made to any power distribution limits.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: September 12, 2003.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) Sections 1.1, 3.7.10, 3.7.12, 3.7.13, 3.7.14, 3.9.4, 5.5.2, and 5.5.10, and the associated Bases Sections to implement an alternate source term at North Anna Power Station, Units 1 and 2. The proposed changes would implement NUREG–1465, ''Accident Source Terms for Light-Water Nuclear Power Plants,'' dated February 1995, as the design-basis source term, achieve a consistent design basis for all accident dose assessments, increase operational flexibility by allowing for increased emergency core cooling system leakage and unfiltered control room in-leakage, and eliminate the surveillance requirement to test the bottled air flow rate.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

We have reviewed the proposed TS changes relative to the requirements of 10 CFR 50.92 and determined that a significant hazards consideration is not involved. Specifically, operation of North Anna Power Station with the proposed changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a significant increase in the probability or consequence of an accident previously analyzed. The North Anna MCR/ESGR [main control room/emergency switchgear room] EVS [emergency ventilation system], PREACS [pump room exhaust air cleanup system], and MCE [MCR]/ESGR Bottled Air systems only function following the initiation of a design basis radiological accident. Therefore, the changes to these specifications, the definition of currently irradiated fuel, and the increase [of] the depressurization time of [the] containment following a design basis LOCA [loss-of-coolant accident] will not increase the probability of any previously analyzed accident. These systems are not initiators of any design bases accident.

Revised dose calculations, which take into account the changes proposed by this [these] amendment[s] and the use of the alternative source term[,] have been performed for the North Anna design basis radiological accidents. The results of these revised calculations indicate that public and control room doses will not exceed the limits specified in 10 CFR 50.67 and Regulatory Guide 1.183. There is not a significant increase in predicted dose consequences for any of the analyzed accidents. Therefore, the proposed changes do not involve a significant increase in the consequences of any previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The implementation of the proposed changes does not create the possibility of an accident of a different type than was previously evaluated in the UFSAR [Updated Final Safety Analysis Report]. Although the proposed changes could affect the operation of the MRC [MCR]/ESGR EVS following a design basis radiological accident, none of these changes can initiate a new or different kind of accident since they are only related to system capabilities that provide protection from accidents that have already occurred. These changes do not alter the nature of events postulated in the UFSAR nor do they introduce any unique precursor mechanisms.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from those previously analyzed.

3. Involve a significant reduction in the margin of safety.

The implementation of the proposed changes does not reduce the margin of safety. The proposed changes for the MCR/ESGR EVS, PREACS, and MCE [MCR]/ESGR Bottled Air System do not affect the ability of these systems to perform their intended safety functions to maintain dose less than the required limits during design basis radiological events. The revised dose calculations also indicate that the change to the containment depressurization times will continue to maintain the dose to the public and control room operators less than the required limits.

The radiological analysis results, when compared with the revised TEDE [total effective dose equivalent] acceptance criteria, meet the applicable limits. These acceptance criteria have been developed for application to analyses performed with alternative source terms. These acceptance criteria have been developed for the purpose of use in design basis accident analyses such that meeting the stated limits demonstrates adequate protection of public health and safety. It is thus concluded that the margin of safety will not be reduced by the implementation of the changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Section Chief: John A. Nakoski.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: June 2, 2003.

Brief description of amendment: The amendment revised the Technical Specifications, Sections 3.7.B.1 and 3.7.C.2. Section 3.7.B.1 required that the reactor may remain in operation ''for a period not to exceed 7 days in any 30 day period if a startup transformer is out of service.'' Section 3.7.C.2 required that the reactor may be in operation ''for a period not to exceed 7 days in any 30 day period if a diesel generator is out of service.'' The amendment deleted the phrase ''in any 30 day period'' from these two sections.

Date of Issuance: November 24, 2003.

Effective date: November 24, 2003 and shall be implemented within 30 days of issuance.

Amendment No.: 239.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 8, 2003 (68 FR 40709).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 24, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: March 27, 2002, as supplemented on May 30, July 10, October 10, October 28, November 26, and December 18, 2002, and on January 6, January 27, February 26, April 8, May 19, June 23, June 26, July 15, August 6, September 11, October 8, and October 14, 2003.

Brief description of amendment: This amendment converts the current Technical Specifications (TS) to a set of Improved TS based on NUREG–1431, Revision 2, ''Standard Technical Specifications for Westinghouse Plants,'' Revision 2, dated June 2001.

Date of issuance: November 21, 2003.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 238.

Facility Operating License No. DPR–26: Amendment replaced the current Technical Specifications (TSs) with the Improved TSs in their entirety and revised the license.

Date of initial notice in **Federal Register:** *September 26, 2003 (68 FR 55660).*

The supplemental letters that were received subsequent to the issuance of the **Federal Register** notice provided clarifying information that did not change the no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 21, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: March 19, 2003.

Brief description of amendment: This amendment deletes Technical Specification (TS) 5.5.3, ''Post Accident Sampling,'' and thereby eliminates the requirements to have and maintain the post accident sampling system at the Pilgrim Nuclear Power Station.

Date of issuance: November 14, 2003.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 204.

Facility Operating License No. DPR–35: Amendment revised the TSs.

Date of initial notice in **Federal Register:** *June 10, 2003 (68 FR 34663).*

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 14, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: October 16, 2002, as supplemented by letters dated June 20, 2003 and October 14, 2003.

Brief description of amendments: The amendments revise the completion time of Required Action A.1 of Technical Specification 3.8.7, ''Inverters-Operating,'' from the current 24 hours to 7 days for one inoperable instrument bus inverter. This provides greater operational flexibility for online maintenance of an instrument bus inverter with the potential to reduce the duration of refueling outages.

Date of issuance: November 19, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 135/135, 129/129.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 10, 2002 (67 FR 75874).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 19, 2003. No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: October 24, 2002 and as supplemented by letter dated June 20, 2003.

Brief description of amendments: The amendments revise Technical Specification 5.5.13, ''Primary Containment Leakage Rate Testing Program,'' to reflect a one-time deferral of the primary containment Type A test to no later than June 13, 2009 for Unit 1 and no later than December 7, 2008 for Unit 2.

Date of issuance: November 19, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 162, 148.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 10, 2002 (67 FR 75876).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 19, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: May 19, 2003.

Brief description of amendments: The amendments revise Appendix A, Technical Specifications (TS), of Facility Operating License Nos. NPF–11 and NPF–18. Specifically, the change will decrease the frequency associated with TS Surveillance Requirement (SR) 3.7.7.1 for Turbine Bypass Valve (BPV) testing from 7 to 31 days. The change is consistent with the testing frequency contained in NUREG–1434, ''Standard Technical Specifications General Electric Plants, BWR/6,'' Revision 2, dated June 2001, for BPV testing. The 7-day frequency associated with SR 3.7.7.1 was established in the LaSalle County Station (LSCS) TS during conversion to improved Standard Technical Specifications (STS) format due to the testing frequency contained in the LSCS custom TS and the difficulties experienced with other Electro-Hydraulic Control (EHC) system valves to consistently pass their surveillance tests. LSCS has recently re-evaluated the performance of these valves and has determined that the current performance of these valves supports decreasing the testing frequency of the BPVs from 7 to 31 days.

Date of issuance: November 13, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 163/148.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 24, 2003 (68 FR 37577).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 13, 2003.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: December 19, 2002, as supplemented July 25, 2003.

Brief description of amendment: The proposed amendment would revise the Kewaunee technical specifications to change the Nuclear Regulatory Commission reporting requirements for the discovery of defective or degraded steam generator tubes so that the requirements are aligned with 10 CFR 50.72 and 10 CFR 50.73.

Date of issuance: November 20, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 171.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 21, 2003 (68 FR 2807).

The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 20, 2003.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama
Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendments request: September 2, 2003.

Brief Description of amendments: The amendments extend from 1 hour to 24 hours the completion time for Condition B of Technical Specification 3.5.1, which defines requirements for the restoration of an emergency core cooling system accumulator when it has been declared inoperable for a reason other than boron concentration.

Date of issuance: November 18, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 162, 155, 129, & 107.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** October 14, 2003 (68 FR 59220).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 18, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: December 19, 2002.

Brief description of amendment: The amendment consists of changes to Technical Specification (TS) 5.0, ''Administrative Controls,'' to incorporate three approved TS Task Force (TSTF) changes: TSTF–258, Revision 4, ''Changes to Section 5.0, Administrative Controls''; TSTF–299, Revision 0, ''Administrative Controls Program 5.5.2.b Test Interval and Exception''; and TSTF–308, Revision 1, ''Determination of Cumulative and Projected Dose Contributions in the Radioactive Effluent Controls Program.'' In addition, two editorial changes are incorporated to update personnel titles and clarify required staffing levels.

Date of issuance: November 13, 2003.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 49.

Facility Operating License No. NPF–90: Amendment revised the TSs.

Date of initial notice in **Federal Register:** April 1, 2003 (68 FR 15764).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 13, 2003.

No significant hazards consideration comments received: No.

For the Nuclear Regulatory Commission

Dated at Rockville, Maryland, this 1st day of December 2003.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30246 Filed 12–8–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in its review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.

Regulatory Guide 1.199, ''Anchoring Components and Structural Supports in Concrete,'' has been developed to provide guidance to licensees and applicants on methods acceptable to the NRC staff for complying with the NRC's regulations in the design, evaluation, and quality assurance of anchors (steel embedments) used for component and structural supports on concrete structures.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Questions on the content of this guide may be directed to Mr. H. Graves, (301) 415–5880; *e-mail hlg1@nrc.gov.*

Regulatory guides are available for inspection or downloading at the NRC's Web site at *http://www.nrc.gov* under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by e-mail to *distribution@nrc.gov.* Issued guides may also be purchased from the National Technical Information Service (NTIS) on a standing order basis. Details on this service may be obtained by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161; telephone 1–800–553–6847; *http://www.ntis.gov.* Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, MD this 28th day of November 2003.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 03–30467 Filed 12–8–03; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Facility Tour

AGENCY: Postal Rate Commission.

ACTION: Notice of Commission tour.

SUMMARY: Postal Rate Commissioners and several staff members will tour United Parcel Service (UPS) facilities on December 11 and 12, 2003. On the evening of December 11, from approximately 8 p.m. to 10 p.m., the group will tour the UPS Mail Innovations facility in Paulsboro, NJ. On December 12, from approximately 11:30 a.m. to 1:15 p.m., the group will tour the UPS air hub at the Philadelphia airport. The purpose of the tours (including any related briefings) is to observe operations.

DATES: (1) December 11, 2003: UPS facilities (Paulsboro, NJ). (2) December 12, 2003; UPS facilities (Philadelphia Airport Hub).

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, (202) 789–6818.

Dated: December 4, 2003.

Garry J. Sikora,

Acting Secretary.

[FR Doc. 03–30434 Filed 12–8–03; 8:45 am]

BILLING CODE 7710–FW–M

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: Rule 11Ac1–1; SEC File No. 270–404; OMB Control No. 3235–0461.

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 previously approved collection of information discussed below.

Rule 11Ac1–1, Dissemination of Quotations, contains two related collections of information necessary to

disseminate market makers' published quotations to buy and sell securities to the public. The first collection of information is found in Rule 11Ac1–1(c) 17 CFR 11Ac1–1(c). This reporting requirement obligates each ''responsible broker or dealer,'' as defined under the rule, to communicate to its exchange or association its best bids, best offers, and quotation sizes for any subject security, as defined under the rule. The second collection of information is found in Rule 11Ac1–1(b) 17 CFR 11Ac1–1(b). This reporting requirement obligates each exchange and association to make available to quotation vendors for dissemination to the public the best bid, best offer, and aggregate quotation size for each subject security.[1] Brokers, dealers, other market participants, and members of the public rely on published quotation information to determine the best price and market for execution of customer orders.

It is anticipated that 721 respondents, consisting of 180 exchange specialists and 541 OTC market makers, will make 246,788,005 total annual responses pursuant to Rule 11Ac1–1, resulting in an annual aggregate burden of approximately 205,486 hours.

Rule 11Ac1–1 does not impose a retention period for any recordkeeping requirements. Compliance with the rule is mandatory and the information collected is made available to the public. Please note that 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.

General comments regarding the estimated burden hours should be directed to the following persons: (i) The 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 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: December 2, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30499 Filed 12–8–03; 8:45 am]

BILLING CODE 8010–01–P

[1] A third requirement under Rule 11Ac1–1, as amended at 17 CFR 11Ac1–1(c)(5), gives electronic communications networks (''ECNs'') the option of reporting to an exchange or association for public dissemination, on behalf of their OTC market maker or exchange specialist customers, the best priced orders and the full size for such orders entered by market makers, to satisfy such market makers' reporting obligation under Rule 11Ac1–1(c). Because this reporting requirement is an alternative method of meeting the market makers' reporting obligation, and because it is directed to nine or fewer persons (ECNs), this collection of information is not subject to OMB review under the Paperwork Reduction Act.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48865; File No. SR–CBOE–2003–48]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Determination of the Closing Exercise Settlement Value for Interest Rate Options and to the Designation of the Reporting Authorities for Interest Rate Options

December 2, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on November 19, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Interpretation and Policy .01 and .02 under CBOE Rule 23.1 with respect to the determination of the closing exercise settlement value for interest rate options when the designated reporting authority is unable to provide that value and with respect to the designation of the reporting authorities for interest rate options. The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends Interpretation and Policy .02 to CBOE Rule 23.1, which provides for an alternate method of determining the closing exercise settlement value for the last business day of trading prior to the expiration of any interest rate option should the appropriate reporting authority[3] be unable to do so. Currently, Interpretation and Policy .02 provides that the Exchange would be responsible for determining the applicable closing value by conducting a random poll of a minimum of ten primary government bond dealers. In place of this provision, the Exchange proposes that, in the event the reporting authority does not generate a closing value for the last business day of trading prior to expiration of any interest rate option, the closing value would be determined in accordance with the Rules and By-Laws of the Options Clearing Corporation (''OCC''). The CBOE believes that this change is appropriate because OCC's rules are predominant to the CBOE's rules in the context of determining settlement values when such values are unavailable.

To illustrate, OCC By-Laws, Article XVI (Yield-Based Treasury Options), Section 4 (Unavailability or Inaccuracy of Settlement Value of Underlying Yield), governs the situation in which the settlement value of the underlying yield for series of yield-based options is unreported or otherwise unavailable for the purposes of calculating the settlement amount for exercised option contracts. Section 4(a) provides for methods that would allow OCC to determine the settlement amount(s) for affected series. Specifically, Section 4(a)(2) provides that OCC may fix the settlement amount for exercised contracts of affected series by using the best information available as to the correct settlement value of the underlying yield.

[1] 15 U.S.C 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] CBOE Rule 23.1(h) provides that ''[t]he term ''reporting authority'' in respect of a particular interest rate measure means the institution or reporting service designated by the Exchange as the official source for securing and disseminating the value underlying an interest rate measure.''

Additionally, this rule change proposes to delete references to specific reporting authorities for interest rate options in the appropriate Exchange rules. Currently, Interpretation and Policy .01 to CBOE Rule 23.1 identifies the companies that are the official sources for collecting and disseminating the values that underlie an interest rate measure.[4] The Exchange proposes to amend Interpretation and Policy .01 so that specific entities are not enumerated. As such, the Exchange proposes that Interpretation and Policy .01 be changed to reflect that the Exchange may, from time to time, designate a reporting authority to report the values necessary to calculate and disseminate yields for each security or to determine the closing exercise settlement values of expiring interest rate options.

The CBOE believes that this rule change would allow the CBOE to quickly designate a new reporting authority if a situation were to arise in which an approved reporting authority becomes unable to perform the required calculations. The CBOE believes that incidents such as the tragic events of September 11, 2001 or the expansive blackouts of recent weeks illustrate the need for flexibility to take appropriate action in these situations. The Exchange also believes that it may find it operationally beneficial to change a reporting authority for other reasons. The Exchange represents that any reporting authority chosen would need to have demonstrated to the Exchange that it would be operationally capable of performing the required functions. Although the Exchange would have the ability to change the designated reporting authorities for interest rate options under this proposed rule change, the Exchange has represented that it does not intend nor anticipate changing reporting authorities on a regular basis. The Exchange will issue notification of the designation of any new reporting authority for interest rate options in the form of a regulatory circular.

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act[5] in general, and is in furtherance of the objectives of Section 6(b)(5) of the Act[6] in particular, in that providing a reliable source for determining the exercise settlement values of interest rate options, including when the reporting authority previously relied upon for this purpose has discontinued reporting such values, will facilitate exercise transactions in these securities and will thereby serve to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)[8] thereunder, because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing. The CBOE provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least 5 business days prior to the filing date.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–CBOE–2003–48. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2003–48 and should be submitted by December 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–30501 Filed 12–8–03; 8:45 am]

BILLING CODE 8010–01–P

[4] Interpretation and Policy .01 to CBOE Rule 23.1 identifies Telerate, Inc. as the designated reporting authority of each interest rate option's ''current value'' and identifies Gov PX as the designated reporting authority of each interest rate option's ''closing exercise settlement value.''

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48868; File No. SR–NASD–2003–165]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the National Association of Securities Dealers, Inc. To Establish a New ''Discretionary'' Order in Nasdaq's SuperMontage System

December 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 7, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

prepared by Nasdaq. Nasdaq filed Amendment Nos. 1, 2, and 3 to the proposal on November 14, 2003,[3] November 21, 2003,[4] and November 28, 2003, respectively.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to adopt a new order type, the discretionary order (''DO''), in Nasdaq's National Market Execution System (''NNMS'' or ''SuperMontage''). Subject to Commission approval, Nasdaq intends to implement the proposed rule change shortly after December 8, 2003, and will inform market participants of the exact implementation date via a Head Trader alert on *www.nasdaqtrader.com*. The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.[6]

* * * * *

4700. NASDAQ NATIONAL MARKET EXECUTION SYSTEM (NNMS)

4701. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

(a)–(jj) No Change.

(kk)–(ll) Reserved.

(mm) No change.

(nn) The term ''Discretionary'' shall mean, for priced limit orders so designated, an order that when entered into NNMS has both a displayed bid or offer price, as well as a non-displayed discretionary price range in which the participant is also willing to buy or sell, if necessary. The displayed price may be fixed or may be pegged to equal the inside quote on the same side of the market. The pegging of the Discretionary Order may be capped in the same manner as that of a Pegged Order. The discretionary price range of a Discretionary Order that is pegged will be adjusted to follow the pegged displayed price.

* * * * *

4706. Order Entry Parameters

(a) Non-Directed Orders—

(1) General. The following requirements shall apply to Non-Directed Orders Entered by NNMS Market Participants:

(A) An NNMS Participant may enter into the NNMS a Non-Directed Order in order to access the best bid/best offer as displayed in Nasdaq.

(B) A Non-Directed Order must be a market or limit order, must indicate whether it is a buy, short sale, short-sale exempt, or long sale, and may be designated as an ''Immediate or Cancel'', or as a ''Day'' or a ''Good-till-Cancelled'' order. If a priced order designated as ''Immediate or Cancel'' (''IOC'') is not immediately executable, the unexecuted order (or portion thereof) shall be returned to the sender. If a priced order designated as a ''Day'' order is not immediately executable, the unexecuted order (or portion thereof) shall be retained by NNMS and remain available for potential display/execution until it is cancelled by the entering party, or until 4 p.m. Eastern Time on the day such order was submitted, whichever comes first, whereupon it will be returned to the sender. If the order is designated as ''Good-till-Cancelled'' (''GTC''), the order (or unexecuted portion thereof) will be retained by NNMS and remain available for potential display/execution until cancelled by the entering party, or until 1 year after entry, whichever comes first. Starting at 7:30 a.m., until the 4 p.m. market close, IOC and Day Non-Directed Orders may be entered into NNMS (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. GTC orders may be entered (or previously entered GTC orders cancelled) between the hours 7:30 a.m. to 6:30 p.m. Eastern Time, but such orders entered prior to market open, or GTC orders carried over from previous trading days, will not become available for execution until 9:30 a.m. Eastern Time. Exception: Non-Directed Day (other than Pegged *and Discretionary* Orders) and GTC orders may be executed prior to market open if required under Rule 4710(b)(3)(B). In addition, an order may be assigned the designations described below.

An order may be designated as ''Discretionary'', in which case the order will also automatically be designated as Day. A Discretionary Order may not be designated as a Preferenced Order. The order (or unexecuted portion thereof) shall be displayed in the system, if appropriate, using the displayed price selected by the entering party, with the system also retaining a non-displayed discretionary price range within which the entering party is also willing to execute if necessary. If a Discretionary Order is pegged, its displayed price will be adjusted in response to changes in the Nasdaq inside market. Starting at 7:30 a.m., until the 4 p.m. market close, Discretionary Orders may be entered into NNMS (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. Discretionary Orders whose displayed price or discretionary price range does not lock or cross another Quote/Order will be available for execution at 9:30 a.m. All other Discretionary Orders will be added to the time-priority queue described in Rule 4706(a)(1)(F) and (a)(2)(B) and processed by NNMS at market open.

An order may be designated as ''Pegged,'' in which case the order will also automatically be designated as Day. A Pegged Order may not be designated as a Preferenced Order. A Pegged Order

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[3] *See* letter from John M. Yetter, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated November 14, 2003 (''Amendment No. 1''). In Amendment No. 1, Nasdaq clarified that discretionary orders entered by a market maker with an anti-internalization qualifier value of ''Y'' (*i.e.*, that may not be internalized) would be cancelled if the only available trading interest is a bid/offer from the same market maker entered automatically by the system under NASD Rule 4710(b)(5). In Amendment No. 1, Nasdaq also clarified the order execution priority for discretionary orders resting on the book.

[4] *See* letter from John M. Yetter, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated November 20, 2003 (''Amendment No. 2''). In Amendment No. 2, Nasdaq reiterated its request for accelerated approval of the proposed rule change pursuant to section 19(b)(2) of the Act.

[5] *See* letter from John M. Yetter, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated November 26, 2003 (''Amendment No. 3''). In Amendment No. 3, Nasdaq amended the description of the proposal to, among other things, explain the treatment of discretionary orders at the opening and DAY order only designation. Nasdaq also amended the proposed rule text to clarify the conditions under which a resting discretionary order would execute at a discretionary price and the price priority of discretionary orders, to replace the phrase ''order or Quote/Order'' with ''Non-Directed Order or Quote/Order,'' and to reflect the Commission's approval of SR–NASD–2003–134. *See* Securities Exchange Act Release No. 48821 (November 20, 2003) (Order granting approval of SR–NASD–2003–134).

[6] The Commission recently published for notice and public comment proposed rule changes filed by Nasdaq that proposes to modify the rules governing the operation of SuperMontage. *See* Securities Exchange Act Release Nos. 48501 (September 17, 2003), 68 FR 56358 (September 30, 2003) (Notice of Filing of SR–NASD–2003–128); 48671 (October 21, 2003), 68 FR 61531 (October 28, 2003) (Notice of Filing of SR–NASD–2003–135); 48674 (October 21, 2003), 68 FR 61508 (October 28, 2003) (Notice of Filing of SR–NASD–2003–149); 48675 (October 21, 2003), 68 FR 61528 (October 28, 2003) (Notice of Filing of SR–NASD–2003–143); and 48798 (November 17, 2003) (Notice of Filing and Immediate Effectiveness of SR–NASD–2003–150). The text of the proposed rule change is shown as marked against the text of the SuperMontage rules as currently in effect, and therefore reflects the immediate effectiveness of SR–NASD–2003–150, but does not reflect proposed rule changes that are not yet effective. Nasdaq represents that it will file such amendments to SR–NASD–2003–165 or other pending filings as Commission staff may request to reflect the approval, disapproval, immediate effectiveness, or withdrawal of other filings.

(or unexecuted portion thereof) will be retained by NNMS and its price adjusted in response to changes in the Nasdaq inside market. A Pegged Order (*including a Discretionary Order that is pegged*) will be cancelled if there is no displayable Quote/Order to which its price can be pegged. Starting at 7:30 a.m., until the 4 p.m. market close, Pegged Orders may be entered into NNMS (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. The initial price of Pegged Orders (*including Discretionary Orders that are pegged*) entered prior to market open will be established at 9:30 a.m. based on the Nasdaq inside bid or offer at that time. To maintain the capacity and performance of the NNMS, Nasdaq may at any time suspend the entry of Pegged Orders (*including Discretionary Orders that are pegged*) for all securities or for any security. Pegged Orders that are in the NNMS at the time of such suspension will continue to be available for adjustment and execution.

(C)–(E) No Change.

(F) A NNMS Market Participant may enter a Non-Directed Order that is either a market order or a limit order prior to the market's open. Market orders and limit orders designated as Immediate or Cancel orders *and Discretionary Orders whose displayed price or discretionary price range would lock or cross another Quote/Order if they were displayed* shall be held in a time-priority queue that will begin to be processed by NNMS at market open. If an Immediate or Cancel limit order is unmarketable at the time it reaches the front of time-priority processing queue, it will be returned to the entering market participant. Limit orders that are not designated as Immediate or Cancel orders shall be retained by NNMS for potential display in conformity with Rule 4707(b) and/or potential execution in conformity with Rule 4710(b)(1)(B).

(2) Entry of Non-Directed Orders by NNMS Order Entry Firms—In addition to the requirements in paragraph (a)(1) of this rule, the following conditions shall apply to Non-Directed Orders entered by NNMS Order-Entry Firms:

(A) All Non-Directed orders shall be designated as Immediate or Cancel, GTC or Day but shall be required to be entered as Non-Attributable if not entered as IOC. NNMS Order Entry Firms may designate orders as ''Pegged[,]'' *or ''Discretionary,''* in which case the order will also automatically be designated as Day. For IOC orders, if after entry into the NNMS of a Non-Directed Order that is marketable, the order (or the unexecuted portion thereof) becomes non-marketable, the system will return the order (or unexecuted portion thereof) to the entering participant.

(B) A Non-Directed Order that is either a market or limit order may be entered prior to the market's open. [Such limit] *Limit* and market orders *designated as Immediate or Cancel and Discretionary Orders whose displayed price or discretionary price range would lock or cross another Quote/Order if they were displayed* will be held in a time-priority queue that will begin to be processed at market open. A limit order that is designated as IOC and is not marketable at the time it reaches the front of the time-priority processing queue will be returned to the entering participant.

(b)–(e) No change.

4707. Entry and Display of Quotes/Orders

(a) Entry of Quotes/Orders—Nasdaq Quoting Market Participants may enter Quotes/Orders into the NNMS, and NNMS Order Entry Firms may enter Non-Attributable Quotes/Orders into the NNMS, subject to the following requirements and conditions:

(1) No change.

(2) Upon entry of a Quote/Order into the system, the NNMS shall time-stamp it, which time-stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders as described in Rule 4710(b). For each subsequent size increase received for an existing quote at a given price, the system will maintain the original time-stamp for the original quantity of the quote and assign a separate time-stamp to that size increase. When a Pegged Order *(including a Discretionary Order that is pegged)* is displayed as a Quote/Order, its time-stamp will be updated whenever its price is adjusted.

(3)–(4) No change.

(b)–(e) No change.

4710. Participant Obligations in NNMS

(a) No change.

(b) Non-Directed Orders

(1) No change.

(A) No change.

(B) No change.

(i)–(iii) No change.

(iv) Exceptions.—The following exceptions shall apply to the above execution parameters:

a. If a Nasdaq Quoting Market Participant or NNMS Order Entry Firm enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's or NNMS Order Entry Firm's own Quote/Order if the participant is at the best bid/best offer in Nasdaq. Nasdaq Quoting Market Participants and NNMS Order Entry Firms may avoid any attempted automatic system matching permitted by this paragraph through the use of an anti-internalization qualifier (AIQ) quote/order flag containing the following values: ''Y'' or ''I'', subject to the following restrictions:

Y—if the Y value is selected, the system will execute the flagged quote/order solely against attributable and non-attributable quotes/orders (displayed and reserve) of Nasdaq Quoting Market Participants and NNMS Order Entry Firms other than the party entering the AIQ ''Y'' flagged quote/order. If the only available trading interest is that of the same party entered the AIQ ''Y'' flagged quote/order, the system will not execute at an inferior price level, and will instead return the latest entered of those interacting quote/orders (or unexecuted portions thereof) to the entering party*; provided, however, that in the case of a Discretionary Order interacting with a bid/offer entered by the system pursuant to Rule 4710(b)(5), the Discretionary Order (or unexecuted portions thereof) will be returned.*

I—if the I value is selected, the system will execute against all available trading interest, including the quote/orders of the NNMS Order Entry Firm or Nasdaq Quoting Market Participant that entered the AIQ ''I'' flagged order, based exclusively on the execution algorithm selected when entering the AIQ I flagged quote/order.

b.–c. No change.

d. Reserved.

e. *If an NNMS Market Participant enters a Discretionary Order, the Discretionary Order shall first be executed against (or delivered in an amount equal to) the Quotes/Orders and Reserve Size of NNMS Market Participants (including displayed Discretionary Orders at their displayed prices) in conformity with this rule and subject to any applicable exceptions. If the full size of the incoming Discretionary Order cannot be executed at its displayed price, the order may also be executed against (or delivered in an amount equal to) the Quotes/Orders and Reserve Size of NNMS Market Participants within the incoming Discretionary Order's discretionary price range (including displayed Discretionary Orders at their displayed prices), in conformity with this rule and subject to any applicable exception. If the full size of the incoming Discretionary Order cannot be executed*

in this manner, the order may also be executed by (or receive delivery of) displayed Discretionary Orders with discretionary price ranges that overlap with the incoming Discretionary Order's discretionary price range, in conformity with this rule and subject to any applicable exception. The unexecuted portion of a Discretionary Order will then be retained by NNMS for potential display in conformity with Rule 4707(b).

When a Discretionary Order is displayed as a Quote/Order, Non-Directed Orders or Quotes/Orders entered at the displayed price (including incoming Discretionary Orders with a displayed or discretionary price equal to the displayed Discretionary Order's displayed price) may be executed against (or delivered to) the displayed Discretionary Order, and market orders may be executed against (or delivered to) the displayed Discretionary Order when its displayed price is at the inside. Non-Directed Orders or Quotes/Orders (other than Discretionary Orders) entered at a price within the displayed Discretionary Order's discretionary price range may be executed by (or receive delivery of) the displayed Discretionary Order at the price of the incoming Non-Directed Order or Quote/Order if there are no displayed Quotes/Orders at that price or better. Incoming Discretionary Orders with a discretionary price range that overlaps with the displayed Discretionary Order's discretionary price range may be executed by (or receive delivery of) the displayed Discretionary Order at the overlapping price most favorable to the displayed Discretionary Order. A displayed Discretionary Order that may be executed at a price in its discretionary price range will execute against Non-Directed Orders and Quotes/Orders entered by NNMS Participants in the automatic execution functionality of the NNMS, and will be delivered to Non-Directed Orders and Quotes/Orders entered by NNMS Order-Delivery ECNs.

For purposes of determining execution priority, the price priority of a displayed Discretionary Order will be based on its displayed price when it may be executed at its displayed price. When displayed Discretionary Orders may be executed at prices within their discretionary price ranges, their price priority vis-à-vis one another will be based on their most aggressive discretionary prices, and their price priority vis-à-vis Quotes/Orders that are not Discretionary Orders will be based upon the price at which they are executable.

(C)–(D) No change.

(2)–(8) No change.

(c)–(e) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A.Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

To provide increased functionality to system users, Nasdaq proposes to adopt a new order type, DO, for use in SuperMontage. A DO would allow market participants to enter an order that has both a displayed bid or offer price and a non-displayed discretionary price range within which the participant is also willing to buy or sell, if necessary. For example, a market participant may enter a DO to buy at $20.00, with a discretionary price range of $0.05, thereby indicating that the market participant wishes to buy at $20.00, but is also willing to pay up to $20.05, if necessary. If the $20.00 price matches the best offer (*i.e.*, if the $20.00 price is marketable), the DO would first execute against Quotes/Orders and reserve size at that price. If the $20.00 price is not marketable, or if size available at that price is exhausted, the DO would next execute against Quotes/Orders (including DOs at their displayed prices) and reserve size at successively higher prices, up to $20.05, and then interact with displayed DOs with overlapping discretionary price ranges. If the incoming DO is not filled through this process, it would be displayed on the book at $20.00 along with other quotes/orders at that price.

DOs on the book would interact with incoming orders in the following manner. Market orders would execute against or be delivered to a DO's displayed price if it is at the inside market, with the DO's discretionary price range not taken into consideration. Incoming limit orders and DOs that are marketable against the best bid/best offer would likewise execute against or be delivered to a DO with a displayed price at the inside market. Incoming limit orders with prices that fall within the discretionary ranges of DOs may be executed by DOs, with the execution occurring at the price of the incoming order, if there are no displayed Quotes/Orders at that price or better.[7] Similarly, incoming DOs whose discretionary price ranges overlap with the discretionary price ranges of resting DOs would execute at the price most beneficial to the resting order. Thus, if the best bid was $20.00, and a DO to buy at $20.00 with discretion up to $20.02 was on the book, the DO could interact with (i) a market order (at $20.00), (ii) a marketable limit order or DO (at $20.00), (iii) a limit order priced at $20.01 or $20.02 (at the price of the limit order), or (iv) a DO with a discretionary price of $20.01 and/or $20.02, at the lowest overlapping price. For purposes of determining execution priority, the price priority of a displayed DO would be based on its displayed price when it may be executed at its displayed price.[8] When displayed DOs may be executed at prices within their discretionary price ranges, their price priority vis-à-vis one another would be based on their most aggressive discretionary prices, and their price priority vis-à-vis Quotes/Orders that are not DOs will be based upon the price at which they are executable.[9]

If a new quote/order would interact with a resting DO's discretionary price(s), SuperMontage would immediately execute the overlapping portion of the newly-entered quote/order. Thus, if the best bid was $20.00, the best offer was $20.08, and a DO to buy at $20.00 with discretion up to $20.04 was on the book, a new offer at $20.03 would be immediately executed against by the resting DO. If the new quote/order is entered by an NNMS Order-Delivery ECN, however, SuperMontage will instead deliver an order to the ECN for its acceptance.[10]

It should be noted that when SuperMontage matches an incoming Non-Directed Order or Quote/Order against a price in the discretionary price range of a DO submitted by an NNMS Order-Delivery ECN residing in the SuperMontage book, the resting DO would: (i) Automatically execute if the incoming order has been entered by an NNMS automatic execution participant, or (ii) be delivered if the incoming order has been entered by an NNMS Order-Delivery ECN. This is the case because the participant entering the incoming order would have no awareness of the

[7] *See* Amendment No. 3, *supra* note 5.

[8] *See* Amendment No. 1, *supra* note 3.

[9] *See* Amendment No. 3, *supra* note 5.

[10] *Id.*

discretionary price range reflected in the resting DO, and would therefore expect its order to be displayed and provide liquidity, rather than to execute. By contrast, the participant entering the resting DO has, by that fact, expressed a willingness to buy (sell) at prices higher (lower) than its displayed price, but not a willingness to make its potential interest at other price levels known to other market participants. Accordingly, Nasdaq believes that it is more in keeping with the parties' expectations, and therefore fairer, to base the determination of whether the interacting orders should be delivered or automatically executed on the status of the party entering the incoming order, rather than the status of the party that originally entered the DO. When an incoming order is matched against a resting DO entered by an Order-Delivery ECN at the displayed price of the resting DO, however, the incoming order would be delivered to the Order-Delivery ECN.

DOs may only be entered as DAY orders (reflecting Nasdaq's expectation that market participants would not generally seek to reflect discretionary trading interest at multiple price points on an inter-day basis). DOs may be entered (but not displayed or executed) prior to market open. Accordingly, DOs entered before market open that do not lock or cross other Quotes/Orders will be available for interaction with other orders at 9:30 a.m. DOs that would lock or cross another Quote/Order if they were displayed will be held in a time-priority queue (along with IOC orders) and processed by the NNMS at 9:30 a.m. Since a market participant entering a DO would prefer the order to execute at its displayed price (but is also willing to accept executions within its discretionary price range), Nasdaq believes it is appropriate to prevent executions of DOs prior to 9:30 a.m., since the comparatively scattered nature of trading before the market open makes it more likely that the DO would execute at a discretionary price. This is particularly the case during the ''opening spin'' described in NASD Rule 4710(b)(3)(B), where DOs would have a marked tendency to execute at prices away from their displayed price. For example, if a DO to buy at 10 with a discretionary price range of up to 10.05 was processed through the opening spin, and was entered in time after a Quote/Order to sell with a price of 10.02, the DO could execute at 10.05, since Quotes/Orders in the opening spin are executed at the price of the more recent Quote/Order.[11]

DOs may not be preferenced or directed to another market participant. In conformity with NASD Rule 4706(a)(1)(C), the system will not allow a DO to sell short to be executed if its execution would violate the short sale rule. DOs entered by a market maker with an anti-internalization qualifier value of ''Y'' (*i.e.*, that may not be internalized) will be cancelled if the only available trading interest is a bid/offer entered automatically by the system under NASD Rule 4710(b)(5) after the market maker's quote has been closed.[12]

Market participants may peg the displayed price of a DO in a manner similar to that of a pegged order.[13] Thus, a market participant can elect to enter a pegged-discretionary order that has its displayed price pegged to equal the Nasdaq inside on the same side of the market as the DO. The discretionary price range of the DO would, in turn, move along with the displayed pegged price. As with a regular pegged order, the market participant entering the order can specify a price cap, so that the displayed price of the order will become permanently fixed if the Nasdaq inside equals the price cap. A DO cannot be designated as a reverse pegged order, however, since its discretionary price range would then lock or cross the price to which the order would be pegged. If Nasdaq suspends the entry of pegged orders during a period when they are negatively impacting system capacity and performance, as permitted by NASD Rule 4706(a)(1)(B), the suspension would apply to pegged-discretionary orders as well.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[14] in general, and with section 15A(b)(6) of the Act,[15] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq believes the proposed rule change would provide market participants with a voluntary tool to express potential trading interest at multiple price levels. Nasdaq notes that the Commission has found a similar order offered by at least one other market center to be consistent with the Act.[16]

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NASD–2003–165. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[11] *Id.*

[12] *Id.*

[13] *See* Securities Exchange Act Release No. 48798 (November 17, 2003) (Notice of Filing and Immediate Effectiveness of SR–NASD–2003–150).

[14] 15 U.S.C. 78*o*–3.

[15] 15 U.S.C. 78*o*–3(b)(6).

[16] *See* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR–NASD–2003–165 and should be submitted by December 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–30500 Filed 12–8–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48864; File No. SR–NASD–2003–169]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Remove Pricing for Tools and Tools Plus Products

December 2, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on November 24, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Pursuant to section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(3) thereunder,[4] Nasdaq has designated this proposal as one concerned solely with the administration of the self-regulatory organization, which renders the proposed rule change effective immediately upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to remove pricing for the Tools and Tools Plus products formerly supported by Nasdaq. Nasdaq will implement the proposed rule change immediately.

The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

7000. Charges for Services and Equipment

7050. Other Services

(a)–(d) No change.

[(e) Software Products]

[(1) The following fees shall be paid by customers of Tools ™:]

[(A) Fee Charge]	[Price]
[Minimum fee per market participant (includes coverage of up to 49 stocks on an unlimited number of Nasdaq Workstation II terminals located at a single office)].	[$1,000/month]
[Coverage of each additional block of 25 or fewer stocks]	[$500/month]
[Each additional office equipped with Tools]	[$1,000/month]
[Aggregate maximum fee per market participant]	[$15,000/month]

[B) Customers who also subscribe to Tools Plus℠ services shall receive the following reduction on fees incurred pursuant to subsection (1)(A):]

[Number of Tools Plus Terminals]	[Discount]
[Five or fewer Tools Plus terminals]	[50%]
[Between six and 15 Tools Plus terminals]	[75%]
[Greater than 15 Tools Plus terminals]	[100%]

[(2) The following deposits and fees shall be paid by all customers of Tools Plus:]

[(A) Each customer shall pay a deposit at the time it initially subscribes to Tools Plus equal to two times the subscriber's aggregate monthly Terminal Charge (as defined below), calculated based on the number of terminals ordered by the subscriber upon subscribing to Tools Plus (the ''Deposit''). The Deposit shall be refunded to the customer upon termination of its subscription to Tools Plus after deducting any outstanding balances owed Nasdaq.]

[(B) Terminal Charge]

[Fee Charge]	[Price]
[Terminal Charge per full functionality terminal equipped with Tools Plus]	
[(More than 30 terminals if customer signs two-year contract)]	[$500/terminal/month]
[(All other situations)]	[$750/terminal/month]
[Terminal Charge per correspondent/ floor broker terminal equipped with Tools Plus].	[$350/terminal/month]
[Minimum Terminal Charge]	[$2,000/month]
[(C) Fee Charge]	[Price]

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

[Connection Charge to Nasdaq Computer-to-Computer Interface (CTCI)]	[$265/month]
[Connection Charge to Nasdaq Service Delivery Platform (SDP) (charged to subscribers who handle customer orders)].	[$250/month]
[Installation Fee] [1]	
[(one-time charge for Tools Plus and includes up to 15 terminals)]	[$16,000]
[(each additional set of up to 15 terminals)]	[$13,000]
[Port Charges (one-time charge per line)]	[$1,250]
[(one-time aggregate charge for two lines)]	[$2,500]
[Training Fee on-site at customer]	[$400/day (plus travel expenses)]
[Training Fee for course at Nasdaq Tools]	[$150/course]
[Electronic communication network (ECN) maintenance charge (charged to subscribers who route orders to ECN)].	[$250/per ECN/month]

[1] [Installation Fee includes two hours of on-site training of customer personnel and all programming costs associated with one customized interface for the customer to access its clearing firm.]

[Market data redistribution charges, which are set by the relevant market data provider, are passed through to Tools Plus subscribers at cost.]

[(D) Labor rates for programming customized interfaces and maintenance on interfaces for customers of Nasdaq Tools Plus shall be billed according to the following rates:]

[Calendar Year 2002]	[Calendar Year 2003 and thereafter]
[Senior Programmer $175/hour]	[$200/hour]
[Programmer $125/hour]	[$150/hour]
[Junior Programmer $100/hour]	[$125/hour]
[Project Management $150/hour]	[$175/hour]
[Network Engineer $125/hour]	[$150/hour]
[Operations Support $100/hour]	[$125/hour]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq has discontinued support for the Tools and Tools Plus software product lines, effective November 14, 2003 and November 11, 2003, respectively. Users of these products were informed in the second quarter of 2003 of Nasdaq's intention to discontinue support of the products in the fourth quarter of 2003. Accordingly, Nasdaq is removing the prices for these product lines from the fee schedule in the NASD Manual.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act.[5] The proposed rule change merely eliminates fees for product lines that are no longer supported by Nasdaq.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(3) thereunder, because Nasdaq has designated the proposal as concerned solely with the administration of the exchange.[7] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2003–169. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all 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

[5] 15 U.S.C. 78o–3.

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(3).

the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–169 and should be submitted by December 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–30503 Filed 12–8–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48869; File No. SR–CSE–2003–16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Stock Exchange To Extend a Pilot Amending Exchange Rule 12.6, Customer Priority, To Require Designated Dealers To Better Customer Orders at the National Best Bid or Offer by Whole Penny Increments

December 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 28, 2003, National Stock Exchange (''Exchange'')[3] filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed this proposal pursuant to section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6)[5] thereunder, which renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the termination date of a pilot that amended Exchange Rule 12.6, ''Customer Priority,'' to add Interpretation .02.

Interpretation .02 requires an Exchange Designated Dealer (''Specialist'') to better the price of a customer limit order that is held by that Specialist if that Specialist determines to trade with an incoming market or marketable limit order.[7] Under the pilot rule, the Specialist is required to better a customer limit order at the national best bid or offer (''NBBO'') by at least one penny and at a price outside the current NBBO by at least the nearest penny increment. Through this proposal, the Exchange is seeking only to extend the existing pilot, and the exemption letters associated therewith,[8] through June 30, 2004. The Exchange proposes no other substantive changes to the pilot. The text of the proposed rule change is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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 extend its pilot program, under Exchange Rule 12.6,[9] which relates to the trading of securities in subpenny increments.[10] Under the pilot, Interpretation .02 of Exchange Rule 12.6 requires a Specialist to better the price of a customer limit order held by the Specialist by at least one penny (for those customer limit orders at the NBBO) or at least the nearest penny increment (for those customer limit orders that are not at the NBBO) if the Specialist determines to trade with an incoming market or marketable limit order.[11]

The purpose of the Interpretation is to prevent a Specialist from taking unfair advantage of customer limit orders held by that Specialist by trading ahead of such orders with incoming market or

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange was formerly known as The Cincinnati Stock Exchange. See Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003) (SR–CSE–2003–12).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The Exchange gave the Commission written notice of its intention to file the proposed rule change on November 24, 2003. The Commission reviewed the Exchange's submission, and asked the Exchange to file the instant proposed rule change pursuant to Rule 19b–4(f)(6) under the Act. The Exchange asked the Commission to waive the 30-day operative delay. 17 CFR 240.19b–4(f)(6).

[7] *See* Securities Exchange Act Release Nos. 46274 (July 29, 2002), 67 FR 50743 (August 5, 2002) (SR–CSE–2001–06)(''Pilot''); 46554 (September 25, 2002), 67 FR 6276 (October 4, 2002)(SR–CSE–2002–12)(''Pilot Extension''); 46929 (November 27, 2002), 67 FR 72711 (December 6, 2002)(SR–CSE–2002–17)(''Second Extension''); and 47941 (May 29, 2003), 68 FR 33751 (June 5, 2003)(SR–CSE–2003–05)(''Third Exemption'').

[8] *See* letter from Robert L.D. Colby (''Colby''), Deputy Director (''DD''), Division of Market Regulation (''Division''), Commission, to Jeffrey T. Brown (''Brown''), Senior Vice President (''SVP'') and General Counsel (''GC''), the Exchange, (July 26, 2002) (''Initial Exemption Letter'') in response to letter from Brown, SVP and GC, Exchange, to Annette Nazareth (''Nazareth''), Director, Division, Commission (November 27, 2001)(''Initial Exemptive Request''); letter from Colby, DD, Division, Commission, to Brown, SVP and GC, Exchange (September 25, 2002) (amending and extending Initial Exemption Letter)(''Amended Exemption Letter'') in response to letter from Brown, SVP and GC, Exchange, to Nazareth, Director, Division, Commission (September 18, 2002)(''Amended Exemption Request''); letter from Alden S. Adkins, Associate Director, Division, Commission, to Brown, SVP and GC, Exchange (November 27, 2002)(''Second Exemption Extension Letter'') in response to letter from Brown, SVP and GC, Exchange, to Nazareth, Director, Division, Commission (November 20, 2002)(''Second Exemption Request''); and letter from Colby, DD, Division, Commission, to Brown, SVP and GC, Exchange, (May 29, 2003)(''Third Exemption Extension Letter'') in response to letter from Brown, SVP and GC, Exchange, to Nazareth, Director, Division, Commission (May 19, 2003)(''Third Exemption Request'').

[9] Exchange Rule 12.6 provides, in pertinent part, that no member shall (i) personally buy or initiate the purchase of any security traded on the Exchange for its own account or for any account in which it or any associated person of the member is directly or indirectly interested while such member holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to buy such security in the unit of trading for a customer, or (ii) sell or initiate the sale of any such security for any such account while it personally holds or has knowledge that any person associated with it holds an unexecuted market or limit price order to sell such security in the unit of trading for a customer.

[10] In conjunction with the proposed rule change, the Exchange has requested that the Commission again extend the Amended Exemption Request pursuant to Rules 11Ac1–1(e) (17 CFR 240.11Ac1–1(e)), 11Ac1–2(g) (17 CFR 240.11Ac1–2(g)) and 11Ac1–4(d) (17 CFR 240.11Ac1–4(d)) of the Act to allow subpenny quotations to be rounded down (buy orders) and rounded up (sell orders) to the nearest penny for quote dissemination for Nasdaq and listed securities. *See* letter from Jennifer M. Lamie (''Lamie''), Assistant General Counsel (''AGC'') and Secretary, to Nazareth, Director, Division, Commission (November 21, 2003) (''Fourth Exemptive Request''). Concurrent with the instant rule proposal, the Commission has granted the Fourth Exemptive Request. *See* letter from Colby, DD, Division, Commission, to Lamie, AGC and Secretary, CSE (December 1, 2003)(''Fourth Exemption Letter'').

[11] Interpretation .01 to Exchange Rule 12.6 provides that ''[i]f a Designated Dealer holds for execution on the Exchange a customer buy order and a customer sell order that can be crossed, the Designated Dealer shall cross them without interpositioning itself as a dealer.''

marketable limit orders. Notwithstanding the fact that a Specialist may price-improve incoming orders by providing prices superior to that of customer limit orders it holds, customers should have a reasonable expectation to have their orders filled at their limit order prices. This expectation should be reflected in reasonable access to incoming contra-side order flow, unless other customers place better-priced limit orders with the Specialist or the Specialist materially improves upon the customer limit order prices (not the customers' quoted prices) it holds.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,[12] in general, and section 6(b)(5) of the Act,[13] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6)[15] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that such waiver is consistent with the protection of investors and the public interest, for it will allow the pilot to continue without interruption. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–CSE–2003–16. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CSE–2003–16 and should be submitted by December 30, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[17]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–30502 Filed 12–8–03; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] For purposes only of accelerating the operative date of the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Declaration of Disaster #3559, Amdt. 2]

Commonwealth of Puerto Rico

In accordance with notices received from the Department of Homeland Security—Federal Emergency Management Agency, effective November 23 and December 2, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on November 10, 2003, and continuing through November 23, 2003. This declaration is also amended to include the municipalities of Cabo Rojo, Lajas and Luquillo as disaster areas due to damages caused by severe storms, flooding, mudslides and landslides occurring on November 10, 2003, and continuing through November 23, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous municipalities Hormigueros, Mayaguez, and San German may be filed until the specified date at the previously designated location. All other municipalities contiguous to the above named primary municipalities have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 20, 2004, and for economic injury the deadline is August 23, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 3, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–30430 Filed 12–8–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3558, Amdt. 3]

State of West Virginia

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective November 30, 2003, the above

numbered declaration is hereby amended to establish the incident period for this disaster as beginning on November 11, 2003, and continuing through November 30, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 20, 2004, and for economic injury the deadline is August 23, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 3, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–30429 Filed 12–8–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3558, Amdt. 2]

State of West Virginia

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective December 1, 2003, the above numbered declaration is hereby amended to include Harrison County as a disaster area due to damages caused by severe storms, flooding and landslides occurring on November 11, 2003, and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Barbour in the State of West Virginia may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary county have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 20, 2004, and for economic injury the deadline is August 23, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 2, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–30431 Filed 12–8–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice # 4528]

Notice of Meeting; United States International Telecommunication Advisory Committee; Preparations for ITU–T Study Group 16

January 6, 2004.

The Department of State announces a meeting of the U.S. International Telecommunication Advisory Committee (ITAC). The purpose of the Committee is to advise the Department on policy, technical and operational issues with respect to international telecommunications standardization bodies such as the International Telecommunication Union (ITU).

The ITAC will meet on January 6, 2004 to prepare for an ITU Telecommunication Standardization Study Group 16 meeting to be held in Geneva from January 20–30, 2004. The meeting will be held at the offices of Communication Technologies, 14151 Newbrook Dr., Chantilly, Virginia. The time of the meeting will be announced on the e-mail reflector (list server) *SGD@ALMSNTSA.LMLIST.State.gov.* People may join this reflector by sending a message saying they wish to join the list to *itac@state.gov.*

Dated: November 21, 2003.

James Ennis,

Director, Advanced Network Technologies, Department of State.

[FR Doc. 03–30276 Filed 12–8–03; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–71]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 29, 2003.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16288 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Jan Thor (425–227–2127), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or Caren Centorelli (202–267–8199), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on December 3, 2003.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–16288.

Petitioner: Precision Conversions LLC.

Section of 14 CFR Affected: 14 CFR 25.783(h), 25.807(g)(1), 25.807(i)(1), 25.810(a)(1), 25.812(e), 25.812(h), 25.813(b), 25.857(e), 25.1445(a)(2), and 25.1447(c)(1).

Description of Relief Sought: To permit relief from the requirements of these regulations to allow carriage of four non-crewmembers (commonly referred to as supernumeraries) on Boeing Model 757–200 airplanes which

have been converted from a passenger to freighter configuration.

[FR Doc. 03–30451 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2003–70]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 29, 2003.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14299 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. You may also review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Madeleine Kolb (425–227–1134), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or Caren Centorelli (202–267–8199), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on December 3, 2003.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–14299.

Petitioner: Structural Integrity Engineering.

Section of 14 CFR Affected: 14 CFR 25.812 (e) and (h); 25.813(b); 25.857(e); 25.1447 (c) (1); and 25.1449.

Description of Relief Sought: Exemption to provide relief from the requirements of certain sections of 14 CFR part 25 to allow carriage of non-crewmembers in a compartment behind the flight deck on Boeing Model 757–200 airplanes which have been converted from a passenger to freighter configuration.

[FR Doc. 03–30452 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–69]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains the disposition of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Caren Centorelli, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–8199.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on December 3, 2003.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2003–16037.

Petitioner: Custom Air Transport.

Section of 14 CFR Affected: 14 CFR 25.855(a), 25.857(e) and 25.1447(c)(1).

Description of Relief Sought/Disposition: To permit type certification of the Boeing 727–200 passenger-to-freight converted airplanes with provisions for the carriage of supernumeraries.

Grant, 11/03/2003, Exemption No. 8164.

Docket No.: FAA–2003–15565.

Petitioner: Israel Aircraft Industries, Ltd.

Section of 14 CFR Affected: 14 CFR 25.783(h), 25.807(g)(1), 25.810(a)(1), 25.813(b)(3) and 25.857(e).

Description of Relief Sought/Disposition: To permit certification of Boeing Model 737–300 airplanes which have been converted from a passenger to a freighter configuration with provisions for the carriage of supernumeraries.

Grant, 11/17/2003, Exemption No. 8174.

[FR Doc. 03–30453 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–04–C–00–DUJ To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Dubois-Jefferson County Airport, Falls Creek, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dubois-Jefferson County Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 8, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Lori Ledebohm,

Community Planner/PFC Contact, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Robert W. Shaffer of Clearfield-Jefferson Counties Regional Airport Authority at the following address: P.O. Box 299, Falls Creek, Pennsylvania 15840.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Clearfield-Jefferson Counties Regional Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Community Planner/PFC Contact, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011, 717–730–2835. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dubois-Jefferson County Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 10, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by Clearfield-Jefferson Counties Regional Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 7, 2004.

The following is a brief overview of the application.

Proposed charge effective date: April 1, 2004.

Proposed charge expiration date: February 1, 2011.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $325,413.

Brief description of proposed project(s):

Impose and Use

Airport Master Plan
Wildlife Hazard Assessment
Runway Safety Areas—Runway 7 End
Electrical Vault
Snow Removal Equipment
High Intensity Runway Lighting
ARFF Building
ARFF Vehicle
Replace Security Card Gates
Expand Terminal Apron
Security Enhancements
Impose Runway 25 Safety Area (Land Acquisition), Phase I

PFC Formulation

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-scheduled on-demand air carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Eastern Region, Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, New York 11434.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Clearfield-Jefferson Counties Regional Airport Authority.

Issued in Camp Hill, PA on November 21, 2003.

Lori Ledebohm,

PFC Contact, Harrisburg Airports District Office, Eastern Region.

[FR Doc. 03–30464 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–03–C–00–CID to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Eastern Iowa Airport, Cedar Rapids, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Eastern Iowa Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 8, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Lawrence K. Mullendore, Airport Director, at the following address: The Eastern Iowa Airport, 2515 Wright Brothers Blvd. W, Cedar Rapids, Iowa 52404.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Eastern Iowa Airport, Cedar Rapids, Iowa, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Nicoletta S. Oliver, Airports Compliance Specialist, FAA, Central Region, 901 Locust Street, Kansas City, MO 64106, (816) 329–2642. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Eastern Iowa Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 2, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Cedar Rapids Airport Commission, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 26, 2004.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: March 2004.

Proposed charge expiration date: July 2006.

Total estimated PFC revenue: $4,182,615.

Brief description of proposed project(s): Acquire two snow removal end loaders; Rehabilitate Runway 13/31; Extend south end of Runway 13/31; Improve north end of Runway 13/31 safety area and relocate road; Extend north end of Runway 13/31 and construct Taxiway F connection; Improve east end of Runway 9/27 safety area; Reconstruct T-hangar taxiways and general aviation aprons; Construct runway and taxiways overlay; Construct cargo ramp expansion (Phase I); Construct terminal and cargo ramp expansion and rehabilitation (Phase (II); Construct cargo apron; Rehabilitate cargo apron (Phase III); and Rehabilitate cargo apron (Phase IV).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice

and other documents germane to the application in person at the Eastern Iowa Airport, Cedar Rapids, Iowa.

Issued in Kansas City, Missouri on December 2, 2003.

George A. Hendon,

Manager, Airports Division Central Region.

[FR Doc. 03–30465 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at George M. Bryan Field Airport, Starkville, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on land release request.

SUMMARY: Under the provisions of title 49, U.S.C. section 47153(c), notice is being given that the FAA is considering a request from the city of Starkville to waive the requirement that a 7.87+-acre parcel of surplus property, located at the George M. Bryan Field Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before January 8, 2004.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to The honorable Mack Rutledge, Mayor of Starkville, Mississippi at the following address: City Hall, 101 Lampkin Street, Starkville, MS 39759.

FOR FURTHER INFORMATION CONTACT: David Shumate, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9882. The land release request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the city of Starkville to release 7.87 acres of surplus property at the George M. Bryan Field Airport. The property will be purchased by the city for the construction of a police complex. The net proceeds from the sale of this property will be used for airport purposes.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the city of Starkville.

Issued in Jackson, Mississippi on December 2, 2003.

Rans D. Black,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 03–30463 Filed 12–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Golden Triangle Regional Airport, Columbus, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Golden Triangle Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 8, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Jackson, Mississippi, 39208.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Nick Ardillo, Executive Director of the Golden Triangle Regional Airport at the following address: Golden Triangle Regional, Airport Authority, 2080 Airport Road, Columbus, MS 39701.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Golden Triangle Rational Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: David Shumate, Program Manager, Jackson Airports District Office, 100 West Cross Street, Jackson, Mississippi, 39208, (601) 664–9882. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Golden Triangle Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On 12–2–2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by Golden Triangle Regional Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 16, 2003.

The following is a brief overview of the application.

PFC Application No.: 04–03–C–00–GTR.

Level of the proposed PFC: $4.50.

Proposed charge effective date: June 1, 2008.

Proposed charge effective date: August 1, 2010.

Total estimated net PFC revenue: $285,555.

Brief description of proposed project(s): Construct Air Traffic Control Tower; Master Plan/Noise Compatibility Study; Handicapped Lift Device; Runway Overlay/Grooving/Paint; Taxiway Sealcoat; Reconstruction of General Aviation Ramp.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Golden Triangle Regional Airport Authority.

Dated: Issued in Jackson, Mississippi on December 2, 2003.

Rans Black,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 03–30462 Filed 12–8–03; 8:45 am]

BILLING CODE 491073–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Renewal of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its renewal of an information collection titled, ''(MA)—Municipal Securities Dealers and Government Securities Brokers and Dealers Registration and Withdrawal.''

DATES: You should submit written comments by February 9, 2004.

ADDRESSES: You should direct all written comments to the Communications Division, Attention: 1557–0184, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. In addition, you may send comments by facsimile transmission to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC, between 9 a.m. and 5 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: You can request additional information from or a copy of the collection from John Ference or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0184), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

The OCC is proposing to extend OMB approval of the following information collection:

Title: (MA)—Municipal Securities Dealers and Government Securities Brokers and Dealers Registration and Withdrawal.

OMB Number: 1557–0184.

Form Numbers: MSD, MSDW, MSD–4, MSD–5, G–FIN, G–FINW.

Abstract: This information collection is required to satisfy the requirements of the Securities Act Amendments of 1975 and the Government Securities Act of 1986 which requires that any national bank that acts as a government securities broker/dealer or a municipal securities dealer notify the OCC of its broker/dealer activities. The OCC uses this information to determine which national banks are government and municipal securities broker/dealers and to monitor institutions entry into and exit from government and municipal securities broker/dealer activities. The OCC also uses the information in planning bank examinations.

Type of Review: Renewal of a currently approved collection.

Affected Public: Businesses or other for-profit; individuals.

Estimated Number of Respondents: 100.

Estimated Total Annual Responses: 3,080.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 2,706 burden hours.

Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information 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: December 1, 2003.

Mark Tenhundfeld,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 03–30405 Filed 12–8–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–OID

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–OID, Original Issue Discount.

DATES: Written comments should be received on or before February 9, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Original Issue Discount.

OMB Number: 1545–0117. Form Number: 1099–OID.

Abstract: Form 1099–OID is used for reporting original issue discount as required by section 6049 of the Internal Revenue Code. It is used to verify that income earned on discount obligations is properly reported by the recipient.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 5,906,965.

Estimated Time Per Response: 12 min.

Estimated Total Annual Burden Hours: 1,142,324.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of

information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 2, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30525 Filed 12–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8879-C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8879-C, IRS e-file Signature Authorization for Form 1120.

DATES: Written comments should be received on or before February 9, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: IRS e-file Signature Authorization for Form 1120.

OMB Number: 1545–1864.

Form Number: 8879–C.

Abstract: Form 8879–C authorizes an officer of a corporation and an electronic return originator (ERO) to use a personal identification number (PIN) to electronically sign a corporation's electronic income tax return and, if applicable, Electronic Funds Withdrawal Consent.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 7,760.

Estimated Time Per Respondent: 6 hours, 32 minutes.

Estimated Total Annual Burden Hours: 50,673.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 2, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30526 Filed 12–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8831

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8831, Excise Taxes on Excess Inclusions of REMIC Residual Interests.

DATES: Written comments should be received on or before February 9, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Excise Taxes on Excess Inclusions of REMIC Residual Interests.

OMB Number: 1545–1379.

Form Number: 8831.

Abstract: Form 8831 is used by a real estate mortgage investment conduit (REMIC) to figure its excise tax liability under Internal Revenue Code sections 860E(e)(1), 860E(e)(6), and 860E(e)(7). IRS uses the information to determine the correct tax liability of the REMIC.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 31.

Estimated Time Per Response: 7 hours, 39 minutes.

Estimated Total Annual Burden Hours: 237.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 1, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30527 Filed 12–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8498

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8498, Program Sponsor Agreement for Continuing Education for Enrolled Agents.

DATES: Written comments should be received on or before February 9, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Program Sponsor Agreement for Continuing Education for Enrolled Agents.

OMB Number: 1545–1459.

Form Number: Form 8498.

Abstract: Form 8498 is used by the Director of Practice to determine the qualifications of those individuals or organizations seeking to present continuing professional educational programs for persons enrolled to practice before the Internal Revenue Service.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 36 minutes.

Estimated Total Annual Burden Hours: 300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 3, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30528 Filed 12–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8879–S

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8879–S, IRS e-file Signature Authorization for Form 1120S.

DATES: Written comments should be received on or before February 9, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: IRS e-file Signature Authorization for Form 1120S.

OMB Number: 1545–1863.

Form Number: 8879–S.

Abstract: Form 8879–S authorizes an officer of a corporation and an electronic return originator (ERO) to use a personal identification number (PIN) to electronically sign a corporation's electronic income tax return and, if applicable, Electronic Funds Withdrawal Consent.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 11,360.

Estimated Time Per Respondent: 6 hours, 32 minutes.

Estimated Total Annual Burden Hours: 74,181.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 3, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30529 Filed 12–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8453–C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8453–C, U.S. Corporation Income Tax Declaration for an IRS e-file Return.

DATES: Written comments should be received on or before February 9, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Corporation Income Tax Declaration for an IRS e-file Return.

OMB Number: 1545–1866.

Form Number: 8453–C.

Abstract: Form 8453–C is necessary to enable the electronic filing of Form 1120, U.S. Corporation Income Tax Return. The form is created to meet the stated Congressional policy that paperless filing is the preferred and most convenient means of filing Federal tax and information returns.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 7 hours, 1 minute.

Estimated Total Annual Burden Hours: 14,040.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 3, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30530 Filed 12–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2001–29

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C.

3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2001–29, Leveraged Leases.

DATES: Written comments should be received on or before February 9, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbula, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Leveraged Leases.

OMB Number: 1545–1738.

Revenue Procedure Number: Revenue Procedure 2001–29.

Abstract: Revenue Procedure 2001–29 sets forth the information and representations required to be furnished by taxpayers in requests for an advance ruling that a leveraged lease transaction is, in fact, a valid lease for Federal income tax purposes.

Current Actions: There is no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 10.

Estimated Time Per Respondent: 80 hours.

Estimated Total Annual Burden Hours: 800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 3, 2003.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 03–30531 Filed 12–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, December 19, 2003 from 11 am EDT to 12:30pm EDT.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or (954) 423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, December 19, 2003, from 11 am EST to 12:30 pm EST via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or (954) 423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or (954) 423–7979.

The agenda will include various IRS issues.

Dated: December 2, 2003.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–30532 Filed 12–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) will be discussing issues on IRS Customer Service.

DATES: The meeting will be held Monday, January 5, 2004.

FOR FURTHER INFORMATION CONTACT: Judi Nicholas at 1–888–912–1227, or (206) 220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be held Monday, January 5, 2004 from 8am Pacific Time to 9 am Pacific Time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or (206) 220–6096, or write to Judi Nicholas, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Judi Nicholas. Ms. Nicholas can be reached at 1–888–912–1227 or (206) 220–6096.

The agenda will include the following: Various IRS issues.

Dated: December 2, 2003.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–30533 Filed 12–8–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 236

Tuesday, December 9, 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.

PEACE CORPS

22 CFR Part 303

Procedures for Disclosure of Information Under the Freedom of Information Act

Correction

In rule document 03–29409 beginning on page 66006 in the issue of Tuesday, November 25, 2003, make the following correction:

§ 303.9 [Corrected]

On page 66011, in § 303.9, in the second column, paragraph (e)(5)(vi) should read (e)(5)(iv).

[FR Doc. C3–29409 Filed 12–8–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
December 9, 2003

Part II

Department of Education

34 CFR Part 200

Title I—Improving the Academic Achievement of the Disadvantaged; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AA95

Title I—Improving the Academic Achievement of the Disadvantaged

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the programs administered under title I, part A, of the Elementary and Secondary Education Act of 1965 (ESEA). These regulations are needed to implement statutory provisions regarding State, local educational agency (LEA), and school accountability for the academic achievement of students with the most significant cognitive disabilities and are needed to implement changes to title I of the ESEA made by the No Child Left Behind Act of 2001 (NCLB Act).

DATES: These regulations are effective January 8, 2004.

FOR FURTHER INFORMATION CONTACT: Jacquelyn C. Jackson, Ed.D. Acting Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W202, FB–6, Washington, DC 20202–6132. Telephone: (202) 260–0826.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: These regulations implement statutory provisions of title I of the ESEA, as amended by the NCLB Act (Pub. L. 107–110), enacted January 8, 2002. On March 20, 2003, the Secretary published a notice of proposed rulemaking (NPRM) for title I programs in the **Federal Register** (68 FR 13796). The NPRM proposed allowing States to adopt alternate achievement standards for children with the most significant cognitive disabilities and include assessment scores based on those standards in title I adequate yearly progress (AYP) calculations.

Background

Including Children With Disabilities in State Assessment Programs

The Individuals with Disabilities Education Act (IDEA), section 504 of the Rehabilitation Act of 1973, and title I require inclusion of all students with disabilities in the State assessment system. Title I further requires that the assessment results for all students (and all students with disabilities, among other groups) who have been enrolled in a school for a full academic year be used in calculating AYP for the school, and that the assessment results of students who have been in a district for a full academic year be used in calculating AYP for the district and the State. System accountability should be just that—accountability for everyone in the system. Students with disabilities are a part of the student body. Most of these students spend the majority of their time in general education classrooms, and receive instruction from regular classroom teachers. Regardless of where students receive instruction, all students with disabilities should have access to, participate in, and make progress in, the general curriculum. Thus, all students with disabilities must be included in the measurement of AYP toward meeting the State's standards.

Several critical elements in title I as amended by the NCLB Act ensure that schools are held accountable for educational results, so that the best education possible is provided to each and every student. Three critical elements—academic content standards, academic achievement standards, and assessments aligned to those standards—provide the foundation for an accountability system ensuring that students with disabilities reach high standards. State assessments are the mechanism for determining whether schools have been successful in teaching students the knowledge and skills defined by the content standards. States are required to hold all students to the same standards except that these regulations permit States to measure the achievement of students with the most significant cognitive disabilities based on alternate achievement standards.

Only by including all students in accountability measures will certain unintended negative consequences be avoided. For example, we know from research that when students with disabilities are allowed to be excluded from school accountability measures, the rates of referral of students for special education increase dramatically. (*See* National Center for Educational Outcomes Synthesis 26: *http://education.umn.edu/nceo/OnlinePubs/Synthesis26.html.*) In addition, students with disabilities accrue positive benefits when they are included in school accountability systems. Educators realize that these students also count, just like all other students; they understand that they need to make sure that these students learn to high levels, just like other students. When students with disabilities are part of the accountability system, educators' expectations for these students are more likely to increase.

One State explains the instructional benefits of including students with the most significant cognitive disabilities in its assessment: ''Some students with disabilities have never been taught academic skills and concepts, for example, reading, mathematics, science, and social studies, even at very basic levels. Yet all students are capable of learning at a level that engages and challenges them. Teachers who have incorporated learning standards into their instruction cite unanticipated gains in students' performance and understanding. Furthermore, some individualized social, communication, motor, and self-help skills can be practiced during activities based on the learning standards.'' (*Concerns and Questions about Alternate Assessment. http://www.doe.mass.edu/mcas/atl/QabdC.doc.* September 22, 2003).

Too often in the past, students with disabilities were excluded from assessments and accountability systems, and the consequence was that they did not receive the academic attention they deserved. Access and exposure to the general curriculum for students with disabilities often did not occur, and there was no systemwide measure to indicate whether or what they were learning. These regulations are designed to ensure that schools are held accountable for the educational progress of students with the most significant cognitive disabilities, just as schools are held accountable for the educational results of all other students with disabilities and students without disabilities.

Regulatory Development

In a notice of proposed rule making (NPRM) published in the **Federal Register** (67 FR 50986) on August 6, 2002, the Secretary proposed a regulation to allow States to develop and use alternate achievement standards for students with the most significant cognitive disabilities for the purpose of determining the AYP of States, LEAs, and schools, provided that the number of proficient scores based on the alternate achievement standards included in AYP calculations, at the

State and LEA levels separately, did not exceed 0.5 percent of all students in the grades assessed. However, because the comments indicated significant misunderstanding of the proposed rule, § 200.13 of title 34 of the Code of Federal Regulations, as adopted in the final regulations published in the **Federal Register** (67 FR 71710) on December 2, 2002, did not allow any use of alternate achievement standards for students with the most significant cognitive disabilities.

In an NPRM printed in the **Federal Register** on March 20, 2003, the Secretary again proposed to amend the title I regulations to allow States to develop and use alternate achievement standards for students with the most significant cognitive disabilities for the purpose of determining the AYP of States, LEAs, and schools. In the new NPRM, the Secretary proposed that the number of proficient and advanced scores based on alternate achievement standards included in AYP calculations at the State and LEA levels, separately, could not exceed 1.0 percent of all students in the grades assessed at the State and the LEA levels, respectively. One percent of all students is approximately 9.0 percent of students with disabilities.

The March 20, 2003, NPRM included additional explanatory information on the purpose and intent of the proposed regulations. However, the comments on this NPRM, like those received on the August 6, 2002, NPRM, indicated that there continued to be misunderstandings about alternate assessments, alternate achievement standards, and the intent and purpose of the proposed regulations. Many commenters continued to think that the number of students with disabilities who could take an alternate assessment was being limited. The NPRM did not propose limiting the number or percentage of students who take an alternate assessment; rather, it proposed to limit the number of proficient and advanced scores based on alternate achievement standards that may be counted in the calculation of AYP.

Being mindful of timing issues related to these proposed regulations, the submission of State accountability plans, and State efforts to develop assessments that better measure the progress of students with disabilities toward meeting State standards, as well as the fact that some States already had administered out-of-level assessments (instructional level assessments) in the 2002–2003 school year, the Secretary used his transitional authority to afford States flexibility in making AYP determinations, based on data from assessments administered during the 2002–2003 school year. Under that transition policy, a State, in calculating AYP for schools and districts, could use alternate achievement standards for students with the most significant cognitive disabilities (subject to a 1.0 percent cap) and also could use results from out-of-level assessments (instructional level assessments). The Department communicated this transition policy to States through the State accountability system approval process as well as in a letter to each State. (*See http://www.ed.gov/policy/speced/guid/secletter/030627.html.*)

Key Concepts

The following paragraphs clarify the Department's understanding of several critical issues related to these regulations. They are: (1) Alternate assessments: (2) out-of-level assessments; and (3) and the 1.0 percent cap.

Alternate Assessments

An alternate assessment is an assessment designed for the small number of students with disabilities who are unable to participate in the regular State assessment, even with appropriate accommodations. An alternate assessment may include materials collected under several circumstances, including (1) teacher observation of the student, (2) samples of student work produced during regular classroom instruction that demonstrate mastery of specific instructional strategies in place of performance on a computer-scored multiple-choice test covering the same content and skills, or (3) standardized performance tasks produced in an ''on-demand'' setting, such as completion of an assigned task on test day. To serve the purposes of assessment under title I, an alternate assessment must be aligned with the State's content standards, must yield results separately in both reading/language arts and mathematics, and must be designed and implemented in a manner that supports use of the results as an indicator of AYP.

As part of the State assessment program, alternate assessments should have a clearly defined structure, guidelines for which students may participate, clearly defined scoring criteria and procedures, and a report format that clearly communicates student performance in terms of the academic achievement standards defined by the State. The requirements for high technical quality set forth in §§ 200.2(b) and 200.3(a)(1), including validity, reliability, accessibility, objectivity, and consistency with nationally recognized professional and technical standards, apply to alternate assessments as well as to regular State assessments.

Alternate assessments may be needed for students who have a broad variety of disabling conditions; consequently, a State may employ more than one alternate assessment. An alternate assessment may be scored against grade-level standards, or, in the case of students with the most significant cognitive disabilities, against alternate achievement standards. Therefore, all students taking an alternate assessment are included in calculations of AYP as either proficient (and above) or non-proficient.

An alternate achievement standard is an expectation of performance that differs in complexity from a grade-level achievement standard. These regulations clarify that a State is permitted to use alternate achievement standards to evaluate the performance of students with the most significant cognitive disabilities and to give equal weight to proficient and advanced performance based on the alternate standards in calculating school, district, and State AYP, provided that the number of proficient and advanced scores based on the alternate achievement standards does not exceed 1.0 percent of all students in the grades tested at the State or LEA level. The Secretary may approve an exception for a specified period of time for a State (or a State may approve a higher limit for an LEA.)

If a State chooses to create alternate achievement standards, the State is not limited to setting a single alternate achievement standard. If, however, the State chooses to define multiple alternate achievement standards, it must employ commonly accepted professional practices to define the standards; it must document the relationship among the alternate achievement standards as part of its coherent assessment plan; and it must include in the 1.0 percent cap proficient scores resulting from all assessments based on alternate achievement standards.

Although the 1.0 percent cap is applied to the number of proficient and advanced scores that may be included in AYP determinations, rather than the number of students taking an assessment against alternate achievement standards, this regulation clarifies the Department's position that alternate achievement standards are acceptable only for the small number of students with the most significant cognitive disabilities. In consideration of schools that, for example, are small

schools or provide special services to students with the most significant cognitive disabilities, the numerical cap of 1.0 percent does not apply at the school level. This does not mean, however, that the use of alternate assessments aligned with alternate standards is unlimited at the school level. For most schools, only a small portion of students with disabilities—those with the most significant cognitive disabilities—should appropriately participate in an assessment based on alternate achievement standards, and all other students with disabilities should be assessed against grade-level standards. In general, the Department expects that no more than 9.0 percent of students with disabilities will participate in an assessment based on alternate achievement standards.

The Department expects most students with disabilities to participate in the regular statewide assessment either without accommodations or with appropriate accommodations that are consistent with the accommodations provided during regular instruction. Current § 200.6 requires that the IEP team determine the accommodations necessary to measure the academic achievement of students with disabilities relative to the State's academic content and achievement standards for the grade in which the student is enrolled. Through the IEP process, parents should be informed of the potential consequences, if any, for their child if he or she participates in a regular assessment with particular accommodations, an alternate assessment based on grade-level achievement standards, or an alternate assessment based on alternate achievement standards. (For example, a parent should be informed if a State will not allow a student to graduate with a regular diploma if he or she takes an alternate assessment based on alternate achievement standards.)

Out-of-Level Assessments

In order to improve instruction and achievement for all students with disabilities, the Department expects States to assess as many students as possible with academic assessments aligned to regular achievement standards. To achieve that goal and reduce use of out-of-level assessments, States should work to implement fully the IDEA Amendments of 1997, provide students access to the general curriculum, develop universally designed assessments that measure whether students with disabilities are meeting the State's challenging academic standards, and ensure that both special and regular education teachers set high expectations for students with disabilities and understand the State's academic content standards. The alternate achievement standards associated with an out-of-level assessment used for calculating AYP must meet the requirements of § 200.1(d) and students taking such assessments must be included in AYP calculations. The achievement standards associated with out-of-level assessments may meet the alternate achievement standards under § 200.1(d), only if they are aligned with the State's academic content standards, promote access to the general curriculum, and reflect professional judgment of the highest achievement standards possible. The results from those tests must be included within the 1.0 percent cap for the purposes of calculating AYP, because the achievement standards associated with the content and skills measured by out-of-level assessments are clearly different from the achievement standards in the target grade.

Previous guidance from the Department's Office of Special Education Programs indicated that out-of-level assessments were not alternate assessments. This new guidance, however, recognizes that out-of-level assessments that are administered to students with the most significant cognitive disabilities and that meet the requirements of § 200.1(d) may be considered to be alternate assessments aligned with alternate achievement standards for the purposes of calculating AYP.

1.0 Percent Cap

Alternate achievement standards are appropriate only for students with the most significant cognitive disabilities. The intent of the March 20, 2003, NPRM was not to create a separate category of disability and these regulations do not do so; rather, the intent was to provide for a narrow population of children with disabilities whose proficient and advanced scores based on alternate achievement standards may be included in AYP calculations. Although some commenters argued that no limit should be imposed on the use of scores based on alternate achievement standards in calculating AYP, the Secretary has determined that a cap is warranted both to protect the interests of individual students (by providing an incentive for schools to provide maximum learning opportunities to each student) and to protect the meaningful interpretation and use of State assessment results for determining school, district, and State AYP. This will ensure that States, LEAs, and schools are held accountable for the academic progress of these students and that students with the most significant cognitive disabilities are assigned to a curriculum that is appropriately challenging.

The Secretary welcomes comments and data from States and others about how the regulations are working over time and may consider revising them in the future should the comments indicate a need to do so. In addition, the Department intends to issue a report on the implementation of this regulation after two years of implementation. As data and research on assessing students with disabilities improve, the Department may decide to issue regulations or guidance on other related issues in the future.

Significant Changes From the March 20, 2003, NPRM

Section 200.1 of NPRM proposed defining ''students with the most significant cognitive disabilities'' as students with disabilities under the IDEA whose intellectual functioning and adaptive behavior are three or more standard deviations below the mean. The regulations remove this definition, thereby giving States greater flexibility in applying the provisions for including a limited number of proficient and advanced scores based on alternate achievement standards in calculating AYP.

At the same time, as described in the discussion of comments related to § 200.6, the regulations require States to implement a number of important safeguards to ensure that this flexibility will be used in an appropriate manner.

Section 200.6 of the NPRM proposed allowing States to measure the achievement of students with the most significant cognitive disabilities against alternate achievement standards. In doing so, it proposed requiring States to establish guidelines ensuring that only students with the most significant cognitive disabilities are tested against alternate standards including establishing clear policies for determining when alternate achievement standards may be used. The regulations retain these provisions while clarifying that a State is not required to use alternate achievement standards. If it does, the regulations establish these additional conditions associated with their use: The State must ensure that parents are informed their children will be assessed based on alternate achievement standards, and the State must report on the number and percentage of students with disabilities taking regular assessments (with or without accommodations), alternate assessments based on grade-level

achievement standards, and alternate assessments based on alternate achievement standards. These regulations also require the State to promote the use of appropriate accommodations, provide appropriate guidance to IEP teams, and provide training for teachers and other staff in the administration of assessments to children with the most significant cognitive disabilities. These requirements will encourage States to decrease or eliminate out-of-level testing and other changes in the test that invalidate test results.

Whereas the NPRM proposed requiring reporting on the number and percentage of students with disabilities taking various types of assessments at the school and district levels, these regulations only require reports about the types of assessments used for students with disabilities at the State level. States also must document that students with the most significant cognitive disabilities are, to the extent possible, included in the general curriculum and participating in assessments aligned with content standards. The Department's Office of Special Education Programs, in its regular monitoring, may examine this documentation and the Office of Elementary and Secondary Education may review data during its peer review process for standards and assessments.

In addition, States using alternate achievement standards must promote the use of appropriate accommodations in order to increase the numbers of students with disabilities who can be tested against grade-level academic achievement standards. These regulations promote the use of appropriate testing practices through the dissemination of information about accommodations for regular assessments and ensure that relevant staff know how to administer assessments to students with disabilities.

Section 200.13 of the NPRM proposed providing that the Secretary could permit a State—and a State could permit an LEA—to exceed the 1.0 percent cap on the number of proficient and advanced scores based on alternative achievement standards that can be included in AYP calculations if the State or LEA, as applicable, establishes that the incidence of students with the most significant cognitive disabilities exceeds the limit and if the agency documents circumstances that explain the higher percentage. These regulations retain these provisions but add further requirements to ensure (1) that students who should be assessed against grade-level standards with appropriate accommodations are not being assessed against alternate achievement standards, and (2) that the alternate achievement standards embody challenging academic expectations appropriate for those students who are assessed against them.

Section 200.13(c)(3) of the NPRM proposed requiring a State, in calculating AYP for the State and each LEA, to apply grade-level academic content and achievement standards to assessment results of any students taking alternate assessments that exceeded the percentage limitations. To make the intent of this provision clearer, we are revising § 200.13(c)(4) of these regulations. First, § 200.13(c)(4)(i) clarifies that a State must include the scores of all students with the most significant cognitive disabilities who have been in the LEA or State for a full academic year in calculating AYP. It may not exclude the scores of students who exceed the percentage limitations in § 200.13(c)(1) through (3). Second, § 200.13(c)(4)(ii) requires the State to count as non-proficient, the scores of any such students who exceed the percentage limitations in calculating AYP. In other words, the State must count the scores of these students as not proficient, even if some or all of the students achieved proficiency on the alternate achievement standards. Non-proficient scores are any scores below proficient, as determined by the State accountability plan.

Because the scores of all students must be included, if an LEA or State educational agency (SEA) exceeds their cap, § 200.13(c)(4)(iii) requires the State to determine which proficient scores are counted as non-proficient in the LEAs and schools responsible for students who took alternate assessments aligned to alternate achievement standards. The State has flexibility in determining how to do this.

Section 200.13(c)(4)(iv) through (v) has been added. Section 200.13(c)(4)(iv) clarifies that, in calculating AYP, a State must be consistent in its use of the scores of students with the most significant cognitive disabilities. For example, if there are such students in an LEA who score at the proficient level on the State's alternate assessment but who exceed the 1.0 percent cap, and the State has not granted the LEA an exception, the State may not count those students as proficient in determining AYP at the school, LEA, or State level. Moreover, the State must also count their scores as not proficient in the other subgroups to which they belong. Section 200.13(c)(4)(v), however, emphasizes that the State must ensure that parents are informed of the actual achievement level that a student with the most significant cognitive disabilities attains, even if that student's score is determined to be in the group above the 1.0 percent cap and counted as non-proficient for purposes of calculating AYP.

Multiple Test Administration

The March 20, 2003, NPRM also requested additional comments on § 200.20(c)(3) of the title I regulations published in the **Federal Register** on December 2, 2002. Section 200.20(c)(3) provides that, if a student takes a State assessment for a particular subject or grade level more than once, the State must use the student's results from the first administration to determine AYP. We are not changing § 200.20(c)(3). Through the approval of State accountability systems this year, we have been able to work with States to clarify the intent of these regulations and to implement these requirements in a manner consistent with their test administration policies. We believe these regulations offer more flexibility than commenters understood at the time of the March 20, 2003, NPRM, and that it is not necessary to change § 200.20(c)(3).

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, approximately 100 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix at the end of these regulations.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with these regulations are those we have determined to be necessary for administering the requirements of the statute effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Regulatory Flexibility Act

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities.

These provisions require States and LEAs to take certain actions to improve student academic achievement. The Department believes that these activities will be financed through the appropriations for title I and other Federal programs and that the responsibilities encompassed in the law and regulations will not impose a financial burden that States and LEAs will have to meet from non-Federal resources.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number.

Section 200.6 of the proposed regulation contained an information collection requirement. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education submitted a copy of this section to the Office of Management and Budget (OMB) for its review as part of the paperwork collection titled ''State educational agency, local educational agency, and school data collection and reporting under ESEA, Title I, Part A''.

These regulations remove the requirement that LEAS and schools report data and replace them with a requirement that States report data as part of their report to the Secretary required under section 1111(h)(4) of title I. The Department is currently working on a separate paperwork package (1820–0624), covering the 2002–2003 school year, which includes the requirement in these regulations that States report data on the number of students with disabilities taking regular and alternate assessments. This data collection will not require States to report data on the percentage of students with disabilities taking regular and alternate assessments for the 2002–2003 school year. However, the Department can calculate the percentages based on the data that is included in 1820–0624. States will report on the percent of students with disabilities taking regular and alternate assessments will take place for school year 2003–2004. It will be included as part of an existing paperwork package submitted at that time.

Executive Order 12372

These regulations are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

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(Catalog of Federal Domestic Assistance Number: 84.010 Improving Programs Operated by Local Educational Agencies.)

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Adult education, Children, Education of children with disabilities, Education of disadvantaged children, Elementary and secondary education, Eligibility, Family-centered education, Grant programs—education, Indian education, Institutions of higher education, Local educational agencies, Nonprofit private agencies, Private schools, Public agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies.

Dated: November 26, 2003.

Rod Paige,

Secretary of Education.

■ The Secretary amends part 200 of title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

■ 1. The authority citation for part 200 continues to read as follows:

Authority: 20 U.S.C. 6301 through 6578, unless otherwise noted.

■ 2. In § 200.1, revise paragraph (a)(1), redesignate paragraphs (d) and (e) as (e) and (f), and add new paragraph (d) to read as follows:

§ 200.1 State responsibilities for developing challenging academic standards.

(a) * * *

(1) Be the same academic standards that the State applies to all public schools and public school students in the State, including the public schools and public school students served under subpart A of this part, except as provided in paragraph (d) of this section;

* * * * *

(d) *Alternate academic achievement standards.* For students under section 602(3) of the Individuals with Disabilities Education Act with the most significant cognitive disabilities who take an alternate assessment, a State may, through a documented and validated standards-setting process, define alternate academic achievement standards, provided those standards—

(1) Are aligned with the State's academic content standards;

(2) Promote access to the general curriculum; and

(3) Reflect professional judgment of the highest achievement standards possible.

* * * * *

■ 3. In § 200.6, revise paragraph (a)(2)(ii) and add new paragraph (a)(2)(iii) to read as follows:

§ 200.6 Inclusion of all students.

* * * * *

(a) * * *

(2) * * *

(ii)(A) Alternate assessments must yield results for the grade in which the student is enrolled in at least reading/language arts, mathematics, and, beginning in the 2007–2008 school year, science, except as provided in the following paragraph.

(B) For students with the most significant cognitive disabilities, alternate assessments may yield results that measure the achievement of those students relative to the alternate academic achievement standards the State has defined under § 200.1(d).

(iii) If a State permits the use of alternate assessments that yield results based on alternate academic achievement standards, the State must—

(A)(*1*) Establish and ensure implementation of clear and appropriate guidelines for Individualized Educational Program (IEP) teams to apply in determining when a child's significant cognitive disability justifies assessment based on alternate academic achievement standards; and

(*2*) Ensure that parents of those students are informed that their child's achievement will be based on alternate achievement standards; and

(B) Report separately, under section 1111(h)(4) of the ESEA, the number and percentage of students with disabilities taking—

(*1*) Alternate assessments based on the alternate academic achievement standards defined under § 200.1(d);

(*2*) Alternate assessments based on the academic achievement standards defined under § 200.1(c); and

(*3*) Regular assessments, including those administered with appropriate accommodations.

(C) Document that students with the most significant cognitive disabilities are, to the extent possible, included in the general curriculum and in assessments aligned with that curriculum;

(D) Develop, disseminate information on, and promote use of appropriate accommodations to increase the number of students with the most significant cognitive disabilities who are tested against grade-level academic achievement standards; and

(E) Ensure that regular and special education teachers and other appropriate staff know how to administer assessments, including making appropriate use of accommodations, for students with the most significant cognitive disabilities.

* * * * *

■ 4. In § 200.13, revise the introductory text of paragraph (b) and paragraph (b)(1), redesignate paragraph (c) as paragraph (d), and add new paragraph (c) to read as follows:

200.13 Adequate yearly progress in general.

* * * * *

(b) A State must define adequate yearly progress, in accordance with §§ 200.14 through 200.20, in a manner that—

(1) Applies the same high standards of academic achievement to all public school students in the State, except as provided in paragraph (c) of this section;

* * * * *

(c)(1) In calculating adequate yearly progress for schools, LEAs, and the State, a State—

(i) Must, consistent with § 200.7(a), include the scores of all students with disabilities, even those with the most significant cognitive disabilities; but

(ii) May include the proficient and advanced scores of students with the most significant cognitive disabilities based on the alternate academic achievement standards in § 200.1(d), provided that the number of those students who score at the proficient or advanced level on those alternate achievement standards at the LEA and at the State levels, separately, does not exceed 1.0 percent of all students in the grades assessed in reading/language arts and in mathematics.

(2) An SEA may request from the Secretary an exception permitting it to exceed the 1.0 percent cap. The Secretary will consider granting, for a specified period of time, an exception to a State if the following conditions are met:

(i) The SEA documents that the incidence of students with the most significant cognitive disabilities exceeds 1.0 percent of all students in the grades assessed.

(ii) The SEA explains why the incidence of such students exceeds 1.0 percent of all students in the combined grades assessed, such as school, community, or health programs in the State that have drawn large numbers of families of students with the most significant cognitive disabilities, or such a small overall student population that it would take only a very few students with such disabilities to exceed the 1.0 percent cap.

(iii) The SEA documents that it is fully and effectively addressing the requirements of § 200.6(a)(2)(iii).

(3)(i) A State may grant an exception to an LEA permitting it to exceed the 1.0 percent cap in paragraph (c)(1) of this section only if the State evaluates the LEA's request using conditions consistent with paragraph (c)(2) of this section.

(ii) The State must review regularly whether an LEA's exception to the 1.0 percent cap is still warranted.

(4) In calculating adequate yearly progress, if the percentage of proficient and advanced scores based on alternate academic achievement standards under § 200.1(d) exceeds the caps in paragraph (c)(1) through (3) of this section at the State or LEA level, the State must do the following:

(i) Consistent with § 200.7(a), include all scores of students with the most significant cognitive disabilities.

(ii) Count as non-proficient the proficient and advanced scores above the caps in paragraph (c)(1) through (3) of this section.

(iii) Determine which proficient scores to count as non-proficient in schools and LEAs responsible for students who take an alternate assessment based on alternate achievement standards.

(iv) Include those non-proficient scores in each applicable subgroup at the school, LEA and State level.

(v) Ensure that parents are informed of the actual academic achievement levels of their students with the most significant cognitive disabilities.

Appendix—Analysis of Comments and Changes

Note: The following appendix will not appear in the Code of Federal Regulations.

Section 200.1 State Responsibilities for Developing Challenging Academic Standards

Comment: Several commenters noted that proposed language requiring ''a documented and validated standards-setting process [to] define achievement standards that * * * reflect professional judgment of the highest learning standards possible for those students'' seems to be more rigorous than the process required for general assessments.

Discussion: Title I, as amended by the NCLB Act, requires that, for the general assessment, States establish challenging academic content standards that contain rigorous content and encourage the teaching of advanced skills, and challenging student achievement standards that determine how well students are mastering this content. States must create the achievement standards with all students in mind, so that they are realistic for a wide variety of individuals. The standards should represent a consensus among experienced teachers, parents, and other appropriate individuals regarding the performance expected after appropriate student effort in a challenging instructional program. In addition, the law calls for all schools and districts to attain the long-range goal of all students becoming proficient by 2013–14, thereby eliminating existing achievement gaps. For a school, the challenge is to enable all students to meet this achievement standard.

Students with the most significant cognitive disabilities who participate in an alternate assessment are entitled to the same deliberate approach to defining achievement standards that represent a rigorous but realistic challenge for this heterogeneous group of students and a challenging long-range goal for their school and district. The use of ''highest learning standards possible'' is intended to reflect that the alternate achievement standards should be no less challenging for students with the most significant cognitive disabilities than the standards set for all other students.

Change: None, except that we have deleted the phrase, ''for those students,'' as it was redundant.

Comment: Some commenters expressed confusion regarding the need for achievement standards that are aligned with the State's academic content standards. They questioned what it means for alternate achievement standards to be aligned with the content standards when children with the most significant cognitive disabilities are not working on the same content as their peers.

Discussion: Alternate achievement standards must be aligned with the State's academic content standards, promote access to the general curriculum, and reflect professional judgment of the highest learning standards possible for the group of students with the most significant cognitive disabilities. In practice, alignment with the State's academic content standards means that the State has defined clearly the connection between the instructional content appropriate for non-disabled students and the related knowledge and skills that may serve as the basis for a definition of proficient achievement for students with the most significant cognitive disabilities. One State,

for example, has developed a curriculum framework for students with the most significant cognitive disabilities that moves from grade-level expectations to progressively less complex versions of the standard. This continuum of ''entry points'' provides a range of options at which a student with disabilities can access the content at an appropriately challenging level. It lists, for example, the following skills for grade 3 through 4 content standards under Mathematics Operations: ''Select, use and explain various meanings and models of multiplication and the division of whole numbers. Understand and use the inverse relationship between the two operations.'' The State's standards document also identifies the essence of the standard in several brief statements, *e.g.*, understand the meaning of multiplication and division; and represent multiplication and division problems concretely. The State then provides several illustrations of the knowledge and skills appropriate for use in the alternate assessment. These range from less complex, ''Illustrate the concept of multiplication using groups of objects,'' to more complex knowledge that approaches grade-level expectations such as ''Identify the commutative property of addition and multiplication using number sentences ($3 \times 5 = 5 \times 3$).'' *See http://www.doe.mass.edu/mcas/alt/rg/math.doc.*

The alternate achievement standards may include prerequisite or enabling skills that are part of a continuum of skills that culminate in grade-level proficiency. The use of alternate achievement standards, however, must not result in inappropriate placements or assignment of students to a curriculum that does not include academic content.

Change: None.

Comment: One commenter recommended that § 200.1 be revised to require States to develop alternate achievement standards rather than making this authority permissive

Discussion: Section 1111(b)(1) of title I requires a State to adopt challenging student achievement standards and to apply the same standards ''to all schools and children in the State.'' The Secretary acknowledges, however, that, while *all* children can learn challenging content, evaluating that learning through alternate achievement standards is appropriate for a small, limited percentage of students who are within one or more of the existing categories of disability, and whose cognitive impairments may prevent them from attaining grade-level achievement standards. Therefore, these regulations permit States to measure the achievement of a limited percentage of students—those with the most significant cognitive disabilities—against challenging but alternate achievement standards. Based on the statutory language, the Secretary does not have the authority to *require* a State to adopt alternate achievement standards. The Secretary's interest, however, is in ensuring that if a State adopts such standards, they are rigorous and used only for those students for whom they are appropriate.

Change: None.

Comment: Two commenters indicated a desire for flexibility that would permit individual students to show progress based on IEP goals rather than performance against an additional set of standards.

Discussion: IEP goals address a broad range of individualized instructional needs as well as behavioral and developmental goals. Title I, as amended by the NCLB Act requires that schools be accountable for student achievement only in the content areas of reading/language arts and mathematics and requires assessment of all students in these essential skill areas. To the maximum extent possible, the IEP should provide for student access to, and participation and progress in, the general curriculum. Students with the most significant cognitive disabilities can address many of their IEP goals using materials and activities that are related to the State's reading/language arts and mathematics standards. To ensure that schools are accountable for this group of students, they must be included in the assessment and accountability systems. In order to make confident accountability determinations for schools based on student achievement, including the achievement of students with the most significant cognitive disabilities, alternate achievement standards must ensure consistency in the judgments made about the schools rather than relying on measures that do not permit consistent judgments using comparable measures of achievement across all students. In addition to reporting student successes relative to the achievement standard, well-designed assessments will also show student progress over time.

Change: None.

Comment: Many commenters objected to proposed § 200.1(d)(2) that would define ''students with the most significant cognitive disabilities'' as those ''who have been identified as students with disabilities under IDEA and whose intellectual functioning and adaptive behavior are three or more standard deviations below the mean.'' Some commenters objected to the definition's implicit reliance on IQ test scores. Others expressed concern that the definition is inconsistent with the 1.0 percent cap.

Discussion: The Secretary agrees with the commenters on both issues. He is concerned that the proposed definition would have placed unwarranted reliance on an IQ test to determine three standard deviations below the mean. Moreover, he acknowledges that it was inconsistent to set a 1.0 percent cap while defining students with the most significant cognitive disabilities as those three standards deviations below the mean. A student may be appropriately assessed on the basis of alternate achievement standards even if the child's intellectual functioning and adaptive behavior are fewer than three standard deviations from the mean. The definition in the NPRM thus restricted the use of alternate achievement standards to a more narrowly defined group of students than many educators feel appropriate based on their professional experience. As a result, the Secretary is removing the proposed definition. Removing the definition while maintaining the 1.0 percent cap gives States and LEAs more latitude in identifying the population that should appropriately be evaluated against alternate achievement standards, while ensuring that alternate achievement standards are not used as a loophole to evade accountability for unwarrantedly large numbers of students with disabilities. At the same time, the Secretary believes there are other safeguards that States adopting alternate achievement standards should establish to ensure that the flexibility to use alternate achievement standards for a small population of students with disabilities is exercised appropriately and is not abused.

Change: The definition in proposed § 200.1(d)(2) is removed from the final regulations. New provisions have been added in § 200.6(a)(2)(iii) (C), (D), and (E) requiring States that are using alternate achievement standards to: (1) Document that students with the most significant cognitive disabilities are included in the general curriculum to the extent possible and are participating in assessments aligned with that curriculum; (2) develop, disseminate information on, and promote the use of appropriate accommodations; (3) ensure that regular and special education teachers and other appropriate staff know how to administer assessments to students with the most significant cognitive disabilities; and (4) ensure that parents are informed that their child is going to be measured against alternate achievement standards.

Comment: Several commenters indicated concern that, because the term ''students with the most significant cognitive disabilities'' introduces new terminology, it suggests a new category of disability.

Discussion: The intent of the March 20, 2003, NPRM was not to create a new category of disability. Rather, the Secretary intended the term ''students with the most significant cognitive disabilities'' to include that small number of students, who are (1) within one or more of the 13 existing categories of disability (*e.g.* autism, multiple disabilities, traumatic brain injury, *etc.*), and (2) whose cognitive impairments may prevent them from attaining grade-level achievement standards, even with the very best instruction.

Change: None.

Comment: Several commenters expressed concern that the 1.0 percent cap would unnecessarily limit access of some students with disabilities to alternate assessments.

Discussion: The intent of the NPRM was not to restrict students with disabilities from taking alternate assessments when that is appropriate. The NPRM and this regulation only address the inclusion of scores for AYP calculations. The intent was to provide for a narrow population of children with disabilities whose achievement on alternate assessments is more appropriately measured by alternate achievement standards. The regulations permit the proficient and advanced scores of those students (limited to 1.0 percent of the total population of students in the grades assessed for States and LEAs) to be included in the calculation of AYP, even though their proficient and advanced scores are based on alternate standards. The Secretary developed this policy to ensure that States, LEAs, and schools are held accountable for the progress of *all* students and that students with disabilities—particularly students with the most

significant cognitive disabilities—are not inappropriately assigned to a curriculum that is not appropriately challenging in order to avoid accountability consequences.

Change: None.

Comment: Some commenters indicated that the proposed regulations would require new recordkeeping for students with the most significant cognitive disabilities.

Discussion: By eliminating the proposed definition of students with the most significant cognitive disabilities, these regulations should alleviate the concerns of commenters who were worried about the need for additional documentation of individual students' disabling characteristics. The regulations, however, will require States to report separately on the number and percentage of students taking an alternate assessment based on either grade-level achievement standards, or on alternate achievement standards as well as taking regular assessments (including with accommodations). States are already collecting and reporting on the numbers of students with disabilities taking regular assessments and alternate assessments as a part of performance reporting under the IDEA as well as reporting the results under title I and IDEA. Requiring States to report separately on the number of students taking alternate assessments measured against alternate and regular achievement standards is necessary to ensure that alternate achievement standards are being used consistent with the limitation imposed by these regulations.

Change: The regulations have been amended to require that States report on the number (in addition to percentage) of students with disabilities taking alternate assessments measured against regular and alternate achievement standards, and the number and percentage of students with disabilities taking regular assessments.

Comment: One commenter suggested that some students should be assessed using an alternate assessment based on the same standards as all other students.

Discussion: An important purpose for alternate assessments in State assessment systems is to increase the capacity of large-scale accountability systems to create information about how a school, district, or State is doing in terms of overall student performance. As States have gained experience in developing assessment strategies for students with disabilities, it has become apparent that there can be several kinds of alternate assessments. These may include different strategies for gathering information about what students know and can do; for example, (1) teacher observation of the student, (2) collecting and scoring samples of student work produced during regular classroom instruction that demonstrates mastery of specific instructional strategies, in place of performance on a computer scored multiple choice test covering the same content and skills, or (3) student work produced in an ''on-demand'' setting such as completion of an assigned task on test day. Such variations are permissible under title I as long as the State can to document that the results provide evidence of student knowledge and skills that is comparable to the evidence provided by results from the regular standards-based State assessment.

For a very small group of students with the most significant cognitive disabilities, alternate achievement standards are appropriate. These alternate achievement standards must reflect a set of expectations for students with the most significant cognitive disabilities consistent with the State content standards in reading/language arts and mathematics.

Change: None.

Section 200.6 Inclusion of All Students

Comment: Several commenters suggested that the proposed regulation conflicted with the role of the IEP team in determining how students with disabilities are assessed. Specifically, commenters indicated that it is the responsibility of the IEP team to decide which assessment students with disabilities take and whether students with disabilities take an assessment based on alternate achievement standards. Another commenter recommended that the IEP team develop the alternate assessments.

Discussion: Under the IDEA, a student's IEP team is responsible for determining how that student participates in a State assessment of student achievement. The IEP team is charged with determining whether accommodations for the assessments required under title I are needed by each individual student to enable the student to participate in the assessment. If the IEP team determines that a student will not participate in the regular assessment (or part thereof), the team is required to identify why the assessment is not appropriate for the child and how the child will be assessed, such as through an alternate assessment. IEP teams, however, do not have complete discretion regarding the assessment of students with disabilities. The team decides how a student participates, not whether the student participates in the assessment at all.

For State assessment programs under title I, the State is responsible for establishing the State academic content and achievement standards against which all children in the State will be assessed, including all students with disabilities. In addition, under title I the State is responsible for implementing a system of high-quality, yearly student academic assessments that are aligned with the State's academic content standards, are valid and reliable for the purposes for which they are used, and are consistent with relevant, nationally recognized professional and technical standards. Under the IDEA, the State also is responsible for developing guidelines for the participation of students with disabilities in alternate assessments for those students who cannot participate in the regular State assessments. Thus, for assessments under title I, the IEP team operates in an environment in which the academic content and achievement standards and assessments are set by the State, the technical qualities of the State assessments are well established, (including whether accommodations are valid and do not invalidate test results on all or part of the assessment), and the State has guidelines regarding eligibility for alternate assessments.

Change: None.

Comment: One commenter suggested that the alternate assessment requirement be delayed until 2007–08 to give States time to develop alternate assessments.

Discussion: States have received ample notification of this requirement and should now have alternate assessments in place. Under IDEA, States were required to implement an alternate assessment as of July 1, 2000. The Office of Elementary and Secondary Education notified States in spring 2000 that title I requires that all students with disabilities be included in State assessments, either with accommodations or in an alternate assessment as determined by their IEP team. Further, whatever assessment approach is taken, the scores of students with disabilities must be included in the assessment system for purposes of public reporting and school and district accountability.

Change: None.

Comment: One commenter proposed that alternate assessments include functional life skills in addition to academic content.

Discussion: The purpose of alternate assessments under title I is to measure the progress of schools in increasing the percentage of students who reach or exceed the proficient level on State academic performance standards. While States and LEAs have the authority to develop assessments that measure the acquisition of functional life skills, such assessments are not required by title I and are beyond the scope of these regulations.

Change: None.

Comment: Several commenters requested that the regulation permit the use of out-of-level assessments, although they disagreed about whether out-of-level assessments should be considered as an assessment based on alternate achievement standards or as another form of assessment for which additional flexibility should be permitted.

Discussion: The NCLB Act is based on the premise that holding States, LEAs and schools to high expectations for the learning of all students can significantly improve the educational attainment of all students. Although these regulations recognize that there is a small population of students with disabilities who may not achieve grade-level proficiency, we expect, and State experience indicates, that other students with disabilities can achieve when they are held to high expectations, provided full access to the general curriculum, and taught by teachers highly qualified in the core academic subjects that they teach. Under these regulations, out-of-level assessments are considered to be alternate assessments based on alternate achievement standards to which the cap in § 200.13(c) applies if they are based on alternate achievement standards that meet the requirements of § 200.1(d). If the out-of-level assessment does not meet those requirements, it is not an alternate assessment measuring alternate achievement standards.

Change: None.

Section 200.13 Adequate Yearly Progress in General

Comment: Numerous comments were received on the proposed cap on the

percentage of proficient assessment scores based on alternate achievement standards that may be included in the calculation of AYP. Some commenters said the cap was too high; others said the cap was too low; some said the 1.0 percent cap was appropriate; and still others said there should be no cap at all.

Discussion: The 1.0 percent cap does not restrict the number of students who may participate in an alternate assessment. It does limit the number of proficient and advanced scores based on alternate achievement standards that may be used in the calculation of AYP. A limit is required in order to ensure a thoughtful application of alternate achievement standards and to protect IEP teams from pressure to assign low-performing students to assessments and curricula that are inappropriately restricted in scope, thus limiting educational opportunity for these students.

These regulations maintain the 1.0 percent cap that was included in the proposed regulation. Specifically, § 200.13(c)(1) permits States to use results from assessments aligned to alternate achievement standards for students with the most significant cognitive disabilities in calculating AYP. A State may include the proficient and advanced scores of students with the most significant cognitive disabilities based on the alternate academic achievement standards in § 200.1(d), provided that the number of those students who score at the proficient or advanced level on those alternate achievement standards at the LEA and at the State levels, separately, does not exceed 1.0 percent of all students in the grades assessed. Nationally, 1.0 percent of students in the grades assessed represent approximately 9 percent of students with disabilities, but the actual percent varies across States. Section 200.13(c)(2) permits States to request a slightly higher cap if the State is able to meet the criteria and documentation requirements set forth in this section.

In the discussion of the March 20, 2003, proposed rule, we noted that the 1.0 percent cap was based on current prevalence rates of students with the most significant cognitive disabilities, allowing for reasonable local variation in prevalence. In addition, we cited converging scientific evidence from multiple sources that indicated that the prevalence rates of students with the most significant cognitive disabilities were somewhat less than 1.0 percent. We also noted that these numbers are generally seen as reflecting national rates, and, as a number of commenters on the August 6, 2002, NPRM pointed out, may not account for more localized differences, caused by a number of factors. Factors beyond the control of a school, school district, or even a State may cause the number of students with the most significant cognitive disabilities to exceed a national average percentage of the total student population at the grades assessed. For example, in small schools, a single student may be more than that limit would allow. Moreover, certain schools, districts, or States may have disproportionate numbers of students with the most significant cognitive disabilities because of proximity to special facilities or services.

State data reported to the Department under IDEA also support the 1.0 percent cap. Of the 38 States for which sufficient data are available, 21 States reported 5.0 percent or less of students with disabilities who participated in the State assessment program took an alternate assessment. (Five percent of students with disabilities is roughly equivalent to 0.5 percent of all students.) In 14 other States, between 5.0 and 10.0 percent of students with disabilities participated in State assessment programs through an alternate assessment (Analysis of 2000–2001 Biennial Performance Reports, National Center for Educational Outcomes). In these States, students with disabilities comprise approximately 8.0 to 12.0 percent of the total student population (IDEA Annual Report to Congress, 2001).

The 1.0 percent cap is the limit on the number of proficient or advanced scores based on alternate achievement standards that may count as proficient or advanced for accountability purposes at the LEA and SEA levels. Consequently, in cases where the number of students taking an alternate assessment based on alternate achievement standards exceeds 1.0 percent, it may not be necessary to apply for a higher cap. For example, if 1.0 percent equals 200 students and 400 students are assessed with an alternate assessment based on alternate achievement standards, but only half of the students assessed are ''proficient,'' the LEA would not exceed the cap.

In summary, the Secretary believes that the 1.0 percent cap is consistent with disability incidence rates and the States' use of alternate assessments. It provides sufficient flexibility for States to measure the achievement of students with the most significant cognitive disabilities for accountability purposes, while meeting the spirit and intent of the law that all students be held to high standards.

Change: None.

Comment: None.

Discussion: If a State chooses not to use alternate achievement standards, it must still incorporate the assessment scores of all students with disabilities in AYP determinations, including those with the most significant cognitive disabilities.

Change: Section 200.13(c)(1)(i) has been added to clarify this requirement.

Comment: A number of commenters raised questions about how the 1.0 percent cap would work in practice and how it would be applied at the LEA and State levels. In particular, there were questions about what effect this limitation would have on schools and their AYP calculations.

Discussion: The cap applies at the State and LEA levels, but not at individual schools, and is based on the number of students enrolled in the grade(s) tested. Some districts may deliver special services for students with the most significant cognitive disabilities in one or a few schools. Additionally, the enrollment patterns of students across districts may not result in an even distribution of students with the most significant cognitive disabilities among schools, even if there are not special centers for these students. In these cases, a limitation on the number of students who may score proficient on alternate assessments based on alternate achievement standards may prove unworkable at a school level and not be in the best interests of those students.

The actual enrollment of students who are appropriately assessed with the alternate assessment based on alternate achievement standards may not be evenly distributed across a district. One school may have 2.0 percent of its students score proficient or better on an alternate assessment based on alternate achievement standards, while another school may not have even a single student assessed using alternate achievement standards. The flexibility offered by the Secretary in these regulations is meant to accommodate such distributions. Working through the IEP development process, the district should determine how best to ensure that students with the most significant cognitive disabilities participate in the general curriculum, are assessed appropriately, and, quite importantly, are provided with an education in the least restrictive environment.

All scores based on alternate achievement standards must be included in school, LEA, and State AYP calculations. An individual student's results from such assessments are counted in all appropriate subgroups. Consequently, in those circumstances when a district has more than 1.0 percent of its students score proficient or advanced on an alternate assessment based on alternate achievement standards, the State must determine which proficient scores are counted as non-proficient at schools in the district responsible for students who took an alternate assessment based on alternate achievement standards. This ensures that schools do not have an incentive to inappropriately increase the number of students assessed with an assessment based on alternate achievement standards. To implement this process, each student's score used for calculating AYP must remain the same at each level of the educational system—school, district, and State, and for each group and subgroup of which the student is a member for which AYP is calculated. However, regardless of how an individual student's score is treated in AYP calculations, the parent must be informed of the actual academic achievement level earned by the student.

The LEA is responsible for managing this process at the local level in three ways. First, the LEA must provide information to school personnel and IEP teams about the state assessment, the use of accommodations, and assessment against alternate achievement standards. State guidelines for use of alternate achievement standards should be communicated to local schools early in the school year to ensure consistency between instruction and assessment and to prevent confusion at the time of test administration. A reasonable expectation is that, in most cases, about 9 percent of the students receiving special education services would be tested against alternate achievement standards, unless a school provides special services to students with the most significant disabilities or is particularly small. An LEA may choose to provide individual schools with preliminary estimates of the number of

students to be tested against alternate achievement standards based on the characteristics of the school's student population and existing State guidelines for participation. Second, the LEA should ensure appropriate staff receive training to support sound IEP decisions about which students participate in an alternate assessment based on alternate achievement standards. These decisions should always be made on a case-by-case basis and should support access to the most challenging curriculum possible for the individual student. Finally, the LEA should monitor implementation of assessments based on alternate achievement standards in schools throughout the district to ensure that alternate achievement standards are being used in a manner consistent with the best instructional practices known for students with the most significant cognitive disabilities.

These regulations provide new flexibility to LEAs and schools and will increase the number of schools and LEAs that can make AYP. If an LEA manages the process well, AYP determinations should withstand appeal under the State's accountability system. If an LEA does not manage the cap well, however, and permits schools to assess an inappropriately large number of students with an alternate assessment aligned to alternate achievement standards, the LEA may significantly exceed the cap and, thus, a large number of non-proficient scores would have to be allocated among the schools that administered the alternate assessment aligned with alternate achievement standards. This would potentially create negative consequences for schools that administer the alternate assessment. States should ensure that these regulations are implemented appropriately throughout the State to ensure schools benefit from this new flexibility.

The following example illustrates how the policy works in practice. As determined by its cap, a district may count for AYP purposes no more than 100 students scoring at proficient or advanced on an alternate assessment based on alternate achievement scores. If this district has 150 students scoring at proficient or advanced on an alternate assessment based on alternate achievement scores, and has not received an exception from the State to exceed the 1.0 percent cap, it must (1) count the excess 50 scores as non-proficient, and (2) determine which proficient and advanced scores will be considered not proficient because they exceed the district's 1.0 percent cap when determining AYP for schools responsible for students who took the alternate assessment aligned with alternate achievement standards. To illustrate further, in this particular district there are four schools responsible for students who take alternate assessments aligned to alternate achievement standards.

- In school A, there are 50 proficient scores
- In school B, there are 50 proficient scores
- In school C, there are 25 proficient scores
- In school D, there are 25 proficient scores

The LEA needs to determine which 50 of the 150 ''proficient'' scores will be counted as ''non-proficient'' at schools A, B, C and/or D. This district would follow the State's procedures for allocating the scores among its schools. One State might identify a particular method that all districts would use. Another State might permit districts to select among several methods approved by the State.

If a State requests an exception to the 1.0 percent cap, the Secretary believes that the State should be able to document that it is fully and effectively implementing the procedural safeguards set out in § 200.6(a)(2)(iii), as a means of showing that it is appropriately including students with disabilities in its assessment system. Because of these safeguards, the Secretary expects that it will be necessary to grant exceptions only for small increments above the 1.0 percent cap.

Change: Section 200.13(c)(2)(iii) has been added, requiring a State requesting an exception to the cap to document that it is fully and effectively addressing the procedural safeguards of § 200.6(a)(2)(iii). Section 200.13(c)(4)(iv) now includes a provision that requires States to apply the academic achievement level (*e.g.*, advanced, proficient, basic) of students with the most significant cognitive disabilities consistently in calculating AYP for the State, LEA, and school. A new § 200.13(c)(4)(i)–(iii) has been added to explain that States must determine which proficient scores that exceed the cap must count as non-proficient in calculating AYP in LEAs and schools responsible for students who take an alternate assessment based on alternate achievement standards.

Comment: Several commenters expressed concern that a school with the capacity to provide effective services for students with the most significant cognitive disabilities may suffer negative consequences as a result of exceeding the 1.0 percent cap.

Discussion: The 1.0 percent cap on proficient and advanced scores based on alternate achievement standards applies specifically at the State and district levels, although scores must be treated the same for AYP purposes at the State, district and school levels. An extraordinarily effective school that draws students from across the district, or from outside the district may exceed the limit so long as the total number of proficient and advanced scores based on alternate achievement standards does not exceed the 1.0 percent cap within the district. The LEA has considerable discretion to accommodate such schools in determining how to meet the 1.0 percent cap at the LEA level. The responsibility for establishing guidelines to inform local practice and for monitoring the use of alternate achievement standards for AYP rests with the State and LEA. This responsibility is consistent with the typical organization of special education programs at the State and district levels.

Change: None.

Comment: None.

Discussion: The Secretary was concerned that these regulations may lead to confusion between the use of scores based on alternate achievement standards in AYP calculations, and reporting results to parents.

Change: The regulation clarifies in § 200.13(c)(4)(v) that regardless of how a score is used for AYP, the actual score of a child must be reported to parents.

General Comments

Comment: One commenter said that the proposed rule should be subject to negotiated rulemaking.

Discussion: The statutory requirements for negotiated rulemaking apply to regulations initially implementing the NCLB Act, not to subsequent regulatory amendments such as those contained in these regulations. The Secretary previously issued regulations for standards and assessments through a negotiated rulemaking process. (*See* 34 CFR part 200).

Change: None.

Comment: Several commenters recommended that the Department closely monitor the cap to ensure it is being used appropriately.

Discussion: The Secretary agrees with the importance of monitoring State and LEA implementation of these requirements as they relate to students with disabilities. The Department's Office of Special Education Programs and the Student Achievement and School Accountability Programs office in the Office of Elementary and Secondary Education will coordinate their efforts in monitoring States for these requirements, and will establish internal mechanisms to share student achievement data and other pertinent information necessary to assess States' progress in this area. In addition, the Secretary believes that it is crucial that SEAs closely monitor how districts are using the 1.0 percent cap both generally and specifically in the case of an LEA that receives an exception to the 1.0 percent cap.

Change: A new provision is added in § 200.13(c)(3)(ii) that requires States to review annually whether an LEA's exception to the 1.0 percent cap is still warranted.

Section 200.20(c)(3)

Comment: Several commenters suggested that States be able to determine which administration of an assessment counts for AYP purposes, and in cases where a particular assessment is given more than once, the best result from students should be used for determining AYP.

Discussion: States have the authority and responsibility to design assessments that measure what students should know and be able to do at a given point in their schooling. States have an expectation, as evident in the assessments, for when students should learn the content standards. Accordingly, for AYP purposes States must count the assessment results that reflect when they expect all students to have learned the content standards. In other words, the ''first administration'' is the first time an assessment is officially administered to measure a student's achievement of the State's content standards in the grade or subject for which the State expects the student to have achieved proficiency of those standards. Scores from this first official administration must be used for calculating AYP. Students who have scored at proficient or higher on assessments taken earlier than the first official administration, however, may ''bank'' those scores, and would not have to retake the test at a later date. Consider the following example: A State administers a third-grade reading test in the

fall and spring, while expecting all students to have learned the material by the spring administration. In this case, the State may use the scores from students who were proficient on the fall administration for calculating AYP and these students would not be required to take the assessment a second time.

Through the accountability review process, we were able to work with States and clarify the intent of the regulation. Consequently we do not believe a change to these regulations is necessary to address the concerns that were submitted earlier this year.

Change: None.

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Federal Register

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December 9, 2003

Part III

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2510

Electronic Registration Requirements for Investment Advisers To Be Investment Managers Under Title I of ERISA; Proposed Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2510

RIN 1210-AA94

Electronic Registration Requirements for Investment Advisers To Be Investment Managers Under Title I of ERISA

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation relating to the definition of investment manager in section 3(38)(B) of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Under the proposed regulation, in lieu of filing a copy of their state registration forms with the Secretary of Labor, state-registered investment advisers seeking to obtain or maintain investment manager status under Title I of ERISA would have to electronically register through the Investment Adviser Registration Depository (IARD) as an investment adviser with the state in which they maintain their principal office and place of business. The IARD is a centralized electronic filing system, established by the Securities and Exchange Commission (SEC) in conjunction with state securities authorities. The IARD enables investment advisers to satisfy SEC and state registration obligations through the use of the Internet, and current filing information in the IARD database is readily available to the Department and the general public via the Internet. If adopted, the proposed regulation would make electronic registration through the IARD the exclusive method for state-registered investment advisers to satisfy filing requirements for investment manager status under section 3(38)(B)(ii) of Title I of ERISA. The proposed regulation would affect plan trustees, investment managers, other fiduciaries, and plan participants and beneficiaries.

DATES: Written comments (either in print or electronic format) are invited and must be submitted to the Department of Labor on or before February 9, 2004.

ADDRESSES: Interested persons are invited to submit written comments (preferably with three copies) to the Office of Regulations and Interpretations, Room N–5669, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210, Attention: ERISA Investment Manager Electronic Registration NPRM. Written comments may also be sent by Internet to the following address: *E–ORI.EBSA@dol.gov.* All submissions received will be available for public inspection and copying from 8:30 a.m. to 4:30 p.m. at the Public Disclosure Room, Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Ave. NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Florence M. Novellino, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210, telephone (202) 693–8518 (not a toll free number).

SUPPLEMENTARY INFORMATION:

A. Background

Under Title I of the Employee Retirement Income Security Act of 1974 (ERISA), named fiduciaries of plans may appoint investment managers to manage assets of the plan. If the investment manager is a registered investment adviser, bank or insurance company, and meets the other requirements for being an ''investment manager'' as defined in section 3(38) of ERISA, the plan trustees are relieved from certain liabilities relating to the investment manager's performance.[1]

In 1996, the National Securities Market Improvement Act (NSMIA) amended the Investment Advisers Act of 1940 (Advisers Act) to divide certain investment adviser regulatory responsibilities, including the registration requirements, between the Securities and Exchange Commission (SEC) and the states. Prior to 1996, most investment advisers were required to register with the SEC and in each state in which they were doing business. Pursuant to paragraph (1) of section 203A(a) of the Advisers Act, and SEC rule at 17 CFR 275.203A–1, certain investment advisers are prohibited from registering with the SEC but must register with the state in which the adviser maintains it principal office and place of business.[2] The legislative history of NSMIA indicates that this division of regulatory responsibilities was intended, among other things, to encourage the SEC and state regulators to create a uniform system for ''one-stop'' filing that would benefit investors, reduce regulatory and paperwork burdens for registered investment advisers, and facilitate supervision of investment advisers.[3]

The SEC implemented that legislative intent at the federal level by publishing a final rule in September of 2000 at 17 CFR 275.203–1 which made electronic filing with the Investment Adviser Registration Depository (IARD) mandatory for SEC-registered advisers. Additionally, all states accept forms filed via the IARD to satisfy state registration requirements, and many mandate state registration via the IARD.[4] Accordingly, the IARD has become a ''one-stop'' Internet-based centralized filing system that enables investment advisers to satisfy filing obligations with both federal and state securities regulators. Pertinent state registration information in the IARD database is available on the Internet to the general public through the Investment Adviser Public Disclosure (IAPD) Web site that may be directly accessed through the SEC's Web site or through links from various state and investor Web sites. The IAPD Web site contains investment adviser registration data, including information about current registration forms, registration status, services provided, fees charged, and disclosures about certain conflicts of interest and disciplinary events, if any. The IAPD Web site includes information on investment advisers that currently are registered with the SEC or a state, and also contains information on investment advisers that were registered

[1] Section 402(c)(3) of ERISA states that a plan may provide that with respect to control or management of plan assets a named fiduciary may appoint an investment manager or managers to manage (including the power to acquire and dispose of) plan assets. Section 405(d) of ERISA provides in part that, if an investment manager or managers have been appointed under section 402(c)(3), then no trustee shall be liable for the acts or omissions of such investment manager or managers, or be under an obligation to invest or otherwise manage any asset of the plan which is subject to the management of such investment manager.

[2] Specifically, subject to certain exceptions, investment advisers fall into three categories under the NSMIA amendments. First, investment advisers having assets under management of less than $25 million generally are prohibited from registering with the SEC but must register with the state regulatory authority in the state where the investment adviser maintains its principal office and place of business. Those with at least $25 million but less than $30 million may register with the SEC in lieu of filing with state authorities. Those with $30 million or more must register with the SEC. Section 203A(a) of the Advisers Act is codified at 15 U.S.C. 80b–3a(a). *See also* 17 CFR 275.203A–2 for exemptions from the prohibition for certain investment advisers registering with the SEC.

[3] S. Rep. No. 104–293, at 5 (1996).

[4] The State of Wyoming has not promulgated a state investment adviser regulation requirement; therefore all Wyoming-based investment advisers are required to register under the Advisers Act with the SEC via the IARD. *See* 65 FR 57438, 57445 (Sept. 22, 2000).

in the previous two years but are no longer registered.

Section 3(38)(B) of Title I of ERISA was also amended to reflect the above-described changes to the investment adviser registration requirements under the Advisers Act.[5] Specifically, section 3(38)(B) of ERISA requires that, to be an investment manager under Title I, an investment adviser must: (i) be registered with the SEC under the Advisers Act of 1940, or (ii) if not registered under such Act by reason of paragraph (1) of section 203A(a) of such Act, be registered as an investment adviser under the laws of the state in which it maintains its principal office and place of business and, at the time the investment adviser last filed the registration form it most recently filed with such state in order to maintain its registration under the laws of such state, it also filed a copy of such form with the Secretary of Labor.

To implement the filing requirements in section 3(38)(B)(ii) of ERISA, the Department announced on January 14, 1998, that state-registered investment advisers seeking to qualify, or remain qualified, as investment managers must file a copy of their most recent state registration form for the state in which it maintains its principal office and place of business with the Department prior to November 10, 1998, and thereafter file with the Department copies of any subsequent filings with that state. The ongoing obligation to file copies with the Department was, however, to be temporary in nature and remain in effect until a centralized database containing the state registration forms, or substantially similar information, was available to the Department.[6]

The current requirement to file with the Department copies of state registration filings already accessible to the Department and the general public via the IAPD Web site places an unnecessary administrative burden on the regulated community. The requirement also results in the Department allocating resources to receive, sort, and store paper copies of information readily available in electronic form. It is the Department's view that use of the IARD as a centralized electronic database would improve the ability of the Department, plan fiduciaries, and plan participants and beneficiaries to readily access registration information regarding investment advisers eligible to be investment managers of ERISA-covered plans. As noted above, not only does the SEC require electronic filing through the IARD for registration under the Advisers Act, but most states also require IARD filing for compliance with state investment adviser registration requirements. While a few states do not make electronic filing through the IARD mandatory, as noted above, all states permit investment advisers to use the IARD to satisfy registration requirements. As described more fully below, the Department believes the majority of investment managers of ERISA-covered plans already file registration forms electronically through the IARD under the Advisers Act or under applicable state securities laws. In the Department's view, the benefits to plan trustees, plan participants and beneficiaries, and the Department of this proposed regulation outweigh the relatively small incremental cost that some investment managers may incur to file state registration filings through the IARD.

B. Summary of the Proposed Regulation

The proposed regulation would add § 2510.3–38 to title 29 of the Code of Federal Regulations. Section 2510.3–38(a) would describe the general filing requirement with the Secretary set forth in section 3(38)(B)(ii) applicable to state-registered investment advisers seeking to become or remain investment managers under Title I of ERISA. The regulation would also make clear that its purpose is to establish the exclusive means to satisfy that filing obligation. Section 2510.3–38(b) would provide that, for a state-registered investment adviser to satisfy the filing requirement in section 3(38)(B)(ii) of ERISA, it must electronically file the required registration forms through the IARD. Section 2510.3–38(b) would also provide that submitting a copy of state registration forms to the Secretary does not constitute compliance with section 3(38)(B)(ii) of ERISA. Section 2510.3–38(c) would define the term ''Investment Adviser Registration Depository'' and ''IARD'' for purposes of the regulation as the centralized electronic depository described in 17 CFR 275.203–1. Finally, § 2510.3–38(d) would provide a cross-reference to the SEC Internet site at *http://www.sec.gov/iard* for information on filing investment advisor registration forms with the IARD.

C. Effective Date and Interim Reliance

This regulation is proposed to be effective 60 days after publication of a final rule in the **Federal Register.** If adopted, the proposed regulation would be applicable to investment adviser registration filings due after the effective date of the final regulation. Until the effective date of the final regulation, investment advisers seeking to obtain or maintain investment manager status under Title I of ERISA will be treated as having met the filing obligations with the Secretary of Labor described in section 3(38)(B)(ii) of ERISA for any registration filing due on or after the date the proposed regulation is published in the **Federal Register** if they satisfy the conditions of the proposed regulation.

D. Regulatory Impact Analysis

Summary

The Department has undertaken this proposed rulemaking for the purpose of establishing a single and readily accessible source of consistent information about the registration of investment advisers that are investment managers by virtue of meeting the requirements of section 3(38)(B)(ii) of ERISA. The Department believes the regulation, if implemented as proposed, would benefit plan fiduciaries, investment advisers, and ultimately the participants and beneficiaries of employee benefit plans. Although the anticipated benefits of the proposal are not quantified here, they are expected to more than justify its relatively modest estimated cost.

The estimated cost of the implementation of electronic registration through the IARD for approximately 500 advisers that submitted copies of their state registrations to the Secretary of Labor, and that currently register in only those states that do not mandate IARD filing, is just under $400,000. Ongoing annual costs are estimated at $50,000. These costs will be offset by efficiency gains for plan fiduciaries and for investment advisers that wish to be appointed by plan fiduciaries. As a result of the electronic registration requirement, plan fiduciaries will be able to access a single source of registration information regardless of the size or location of the adviser, and advisers may more readily demonstrate their eligibility to be investment managers in order to gain appointments by plan fiduciaries. Over time, these investment managers may also reduce the handling of paper and the time required to complete the Form ADV, which is the joint SEC and state registration form that is also currently

[5] *See* sec. 308(b)(1) of Title III of NSMIA and Act of November 10, 1997, Sec. 1, Pub. L. 105–72, 111 Stat. 1457.

[6] Pub. L. 105–72 provided that a fiduciary shall be treated as meeting the requirement for filing a copy of the required state registration form with the Secretary if a copy of the form (or substantially similar information) is available to the Secretary from a centralized electronic or other record-keeping database. See Act of November 10, 1997, Sec. 1(b), Pub. L. 105–72, 111 Stat. 1457.

accepted by all the states for State registration purposes. Electronic availability of registration information will also support better and more transparent decision making with respect to the appointment of investment managers, which ultimately benefits the participants and beneficiaries of the plans involved.

Discussion

The proposal would benefit plan fiduciaries that wish to appoint an investment manager pursuant to section 402(c)(3) of ERISA. Under section 405(d)(1) of ERISA, plan fiduciaries are not liable for the acts or omissions of the investment manager, and have no obligation to invest assets subject to management by the investment manager. The centralized source of readily accessible registration information offered by the IARD will help plan fiduciaries more efficiently locate information needed to determine whether advisers they may consider appointing are eligible to be an investment manager under ERISA. The source and format of information will no longer differ based on the size or principal business location of the adviser.

Uniform use of the IARD for all advisers who wish to be or remain as investment managers under ERISA will benefit these advisers as well. The change to electronic filing will not change the incentives for investment advisers to become investment managers under ERISA, but should promote increased efficiency for doing so. Advisers are not required to be an investment manager to conduct advisory activities for any customer. The Department assumes that an adviser's decision whether to meet the definition of investment manager under ERISA is based on factors unrelated to the form or format of their registration. It is therefore expected that those state-registered advisers who filed paper copies of their state registration forms with the Secretary chose to do so to gain an advantage in securing appointments by plan fiduciaries.

In any case, this proposed regulation will not change the content of the filings for these advisers because all states accept the joint SEC and state filing form (Form ADV) for state registration, and with certain exceptions, all of the copies submitted to the Secretary were made on Form ADV.[7] Mandatory use of the IARD will, however, change the format and manner in which the information is transmitted. While the Department expects advisers to incur a cost to establish a procedure for electronic filing through the IARD plus an annual fee, the change to an electronic format and transmission method is expected to be more efficient and less costly over time. Use of the IARD will reduce the paper handling, filing, and mailing costs associated with providing copies to the State or States as well as to the Secretary, and reduce handling to obtain and reproduce signatures. The SEC cited similar efficiency gains in its regulatory impact analysis of the final rule implementing mandatory electronic filing for federally regulated advisers. Securities and Exchange Commission, Electronic Filing by Investment Advisers; Final Rule, 65 FR 57438, Sept. 22, 2000.

The proposed regulation will directly affect only those investment advisers who wish to become or remain as investment managers under section 3(38) of ERISA, who generally have $25 million or less under management and consequently do not register with the SEC, and who register only in states that do not mandate use of the IARD to satisfy state registration requirements. Copies of registration forms submitted to the Secretary by State-registered investment advisers indicate that about 500 State-registered advisers have registered in only a non-IARD state.[8] Prior to the implementation of the IARD and many States' decisions to mandate use of the IARD to meet state adviser registration requirements, about 1,500 advisers provided paper copies of their state registration forms to the Secretary. Based on the data contained in those filings, about 1,000 of these already have the capability to file electronically because they are required to register in states that mandate use of the IARD. The Department therefore assumes that this proposed regulation would affect only those advisers that register only in non-IARD states.

Under existing requirements, State-registered advisers incur a State registration filing fee with every State in which they are required to register, plus postage and handling fees for their submissions. Such fees vary by State. Most if not all of the 500 advisers potentially affected by this proposed regulation now register in only one state. When advisers registered only in non-IARD States register through the IARD, the appropriate state registration fee will be forwarded to the state, such that there will be no net change in state filing fees.

The Advisers Act and Form ADV allow for the requirement that states be provided registration statements. To facilitate state registration, the registrant checks the appropriate boxes on the form for each applicable state, and the IARD then distributes the required information electronically to those states. States will be unaffected because they will continue to receive existing fees, although they will be transmitted in a different manner.

These advisers would, however, newly incur the IARD initial filing fee of $150 for advisers of the size under consideration here, and an annual filing fee of $100. It is also expected that the 500 state-registered advisers will incur a cost for the set-up of the electronic filing capability, and an expenditure of time to adjust internal procedures and put existing information into an electronic format. Filing fees for the first year are expected to total $75,000 in the first year and $50,000 in each subsequent year for these advisers.

The cost of the electronic filing set-up is not known. The SEC did not quantify the cost of set-up in the final rule cited above that pertained to mandatory use of the IARD for registration with the SEC. However, for the purpose of this discussion, the cost for establishment of electronic filing capability has been estimated to be $500, or $250,000 for the 500 advisers affected. This is a one-time cost based on available information on annual fees charged to SEC registrants by commercial providers of service in the industry.[9] An examination of a sample of the 500 individual filings showed that many of the advisers in question already use the software of a single provider for completing their Form ADV. Because this provider performs services to IARD filers who are currently SEC registrants as well, we have assumed that their range of services includes a method of facilitating electronic filing. It is also assumed that all advisers make use of electronic technology in the normal course of business and will not be required to make substantial technological changes as a result of this proposal.

A one-time cost is also estimated for the time required for the adviser to adjust its internal procedures to input data electronically, if necessary. A comparison of a sample of the paper

[7] Several exceptions were observed; in those cases, the adviser submitted a copy of the State's action on their registration, such as a license or approval form, rather than the registration form itself. In each case, other advisers' filings for the same State were examined to confirm that the state did accept Form ADV filings.

[8] California, Florida, Kentucky, South Carolina, and West Virginia at the time of this writing.

[9] Such fees are used here as a proxy only; the fees do not pertain specifically to electronic set-up or transmission.

filings received with IARD data indicated that these advisers had not also filed electronically with IARD. It seems likely that many advisers already prepare the forms electronically, regardless of whether they submit them electronically. To account for preparation for electronic transmission, it has been estimated that the advisers will incur the cost of two hours of a financial professional's time at $68 per hour, for a cost of $136 per adviser and a total of $68,000.

The estimated one-time cost of this proposal totals $393,000. The ongoing cost of maintaining registration information and completing and filing Form ADV is not accounted for here because the advisers prepare and file such forms to meet state registration requirements and would continue to do so without regard to this proposed regulation. The ongoing incremental cost of this proposal is therefore $100 per adviser per year, or $50,000.

The Department considered alternatives to this proposal, including issuing no guidance and implementing a standard that would provide the adviser an option to either file a print copy of its state registration or make use of the IARD. The value of greater efficiency through the elimination of dual sources of registration information and promotion of greater accessibility of consistent information through electronic methods was considered to outweigh the relatively modest estimated cost of about $800 per adviser in the first year, and $100 per adviser in each subsequent year. As a result, the Department elected to issue this proposal and seek public comment on its views.

Executive Order 12866

Under Executive Order 12866, the Department must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this action is ''significant'' within the meaning of section 3(f)(4) of the Executive Order and has therefore been reviewed by OMB. The Department has also undertaken the assessment of the costs and benefits of this regulatory action presented above.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, EBSA is soliciting comments concerning the proposed information collection request (ICR) included in this Notice of Proposed Rulemaking concerning Electronic Registration Requirements for Investment Advisers to be Investment Managers Under Title I of ERISA (ERISA Investment Manager Electronic Registration). A copy of the ICR may be obtained by contacting the individual identified in the PRA Addresses section below.

The Department has submitted a copy of the proposed information collection to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are 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 collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration. Although comments may be submitted through February 9, 2004, OMB requests that comments be received within 30 days of publication of the Notice of Proposed Rulemaking to ensure their consideration.

PRA Addresses: Address requests for copies of the ICR to Joseph S. Piacentini, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210. Telephone (202) 693–8410; Fax: (202) 219–5333. These are not toll-free numbers.

The Department is issuing these proposed rules to establish the uniform availability of investment adviser registration information in a centralized electronic database. The proposed rule would affect investment advisers that register with the states rather than SEC by virtue of the requirements of NSMIA, who do not currently register electronically through the IARD, and who wish to fall within the definition of investment manager for purposes of ERISA section 3(38)(B). Such advisers currently file a paper copy of the applicable state registration form with the Secretary of Labor pursuant to section 3(38)(B)(ii) of the statute. The information collection is found in the proposed regulation at section 2520.3–38(b). The basis for the burden estimates is found in the discussion above.

Type of Review: New collection.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: ERISA Investment Manager Electronic Registration.

OMB Number: 1210–0NEW.

Affected Public: Individuals or households; Business or other for-profit.

Respondents: 500.

Frequency of Response: Annually.

Responses: 500.

Estimated Total Burden Hours: 1,000.

Total Annualized Capital/Startup Costs: $275,000.

Total Burden Cost (Operating and Maintenance): $50,000.

Total Annualized Cost: $325,000.

After the year of implementation, the startup cost will be fully defrayed.The ongoing annual operating and maintenance cost will be $50,000.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this proposed rule does not include any federal mandate that may result in expenditures by State, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million.

Small Business Regulatory Enforcement Fairness Act

The rule being issued here is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and, if finalized, will be transmitted to Congress and the Comptroller General for review. The rule is not a ''major rule'' as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a proposed rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of analysis under the RFA, EBSA normally considers a small entity to be an employee benefit plan with fewer than 100 participants, on the basis of the definition found in section 104(a)(2) of ERISA. However, this proposed regulation pertains to investment advisers that are prohibited from registering with the SEC pursuant to section 203(A) of the Advisers Act and SEC rules. This generally includes those advisers that have assets of less than $25 million under management. In its final rule relating to Electronic Filing by Investment Advisers (65 FR 57445, note 86), the SEC states that for purposes of the Advisers Act and the RFA, an investment adviser generally is a small entity if (a) it manages assets of less than $25 million reported on its most recent Schedule I to Form ADV, (b) it does not have total assets of $5 million or more on the last day of the most recent fiscal year, and (c) it is not in a control relationship with another investment adviser that is not a small entity (Rule 0–7 under the Advisers Act).

Because the entities potentially affected by this rule are similar if not identical to those that fall within the SEC definition of small entity for RFA purposes, and because the regulation is expected to have a direct impact on an existing cost of doing business that investment advisers would assume without regard to this proposal, but no economic impact that would be passed on to employee benefit plans, the Department considers it appropriate in this limited circumstance to use the SEC definition for evaluating potential impacts on small entities. The Department invites comments on its election to use this definition. Using this definition, the Department certifies that this proposed regulation would not have a significant economic impact on a substantial number of small entities. The factual basis for this conclusion is described below.

The SEC States that of about 20,000 investment advisers in the United States, some 12,000 do not file with them. As discussed above, approximately 500 investment advisers are expected to incur costs under this regulation. This represents 2.5 percent of the approximately 20,000 advisers doing business in the U.S., or 4 percent of the 12,000 small advisers that do not currently file with the SEC. Thus the number of advisers that will incur costs under this regulation is substantial neither in absolute terms nor as a fraction of the universe of all or of small advisers.

In addition, the economic impact of the proposal is not expected to be significant for any small entity. Seeking investment manager status for purposes of ERISA is not mandatory; small advisers presumably make efforts to meet the terms of the ERISA investment manager definition only when they compute a net benefit for doing so. The proposed regulation will mandate electronic submission of small adviser's registration information, but will not change the content or other requirements for those registrations. The average cost for affected advisers is estimated to be small: about $800 in the initial year, and $100 in each following year. It is possible that some portion of this cost will be passed on to plans.

On this basis, the Department certifies that this proposed regulation would not have a significant economic impact on a substantial number of small entities. The Department invites comments on the potential impact of this proposed regulation on small entities, and on ways in which costs may be limited within the stated objectives of this proposal.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule does not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. Although the requirements in this proposed rule do alter the fundamental reporting and disclosure requirements of section 3(38)(B) of ERISA with respect to state-registered investment managers, because the duty of these state-registered advisers to report to the states exists independently of ERISA, and the proposed rule merely prescribes that investment advisers seeking ERISA investment manager status use a specific filing method that is accepted by all states and available as a choice in all states for registration purposes, there is

neither a direct implication for the States, nor is there a direct effect on the relationship or distribution of power between the national government and the States. This proposal only affects those State-registered investment advisers who choose to seek investment manager status under section 3(38) of ERISA, advisers not seeking such status are unaffected by this proposed regulation.

Statutory Authority

The proposed regulation would be adopted pursuant to the authority contained in section 505 of ERISA (Pub. L. 93–406, 88 Stat. 894; 29 U.S.C. 1135), and the Act of November 10, 1997, Sec. 1, Pub. L. 105–72, 111 Stat. 1457, and under Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003).

List of Subjects in 29 CFR Part 2510

Employee benefit plans, Employee Retirement Income Security Act, Pensions, Plan assets.

PART 2510—[AMENDED]

1. The authority citation for part 2510 is revised to read as follows:

Authority: 29 U.S.C. 1002(2), 1002(21), 1002(37), 1002(38), 1002(40), 1031, and 1135; Secretary of Labor's Order 1–2003, 68 FR 5374; Sec. 2510.3–101 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp., p. 332 and E.O. 12108, 44 FR 1065, 3 CFR, 1978 Comp., p. 275, and 29 U.S.C. 1135 note. Sec. 2510.3–102 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp., p. 332 and E.O. 12108, 44 FR 1065, 3 CFR, 1978 Comp., p. 275. Section 2510.3–38 is also issued under Sec. 1, Pub. L. 105–72, 111 Stat. 1457.

2. Add § 2510.3–38 to read as follows:

2510.3–38 Filing requirements for State registered investment advisers to be investment managers.

(a) *General.* Section 3(38) of the Act sets forth the criteria for a fiduciary to be an investment manager for purposes of section 405 of the Act. Subparagraph (B)(ii) of section 3(38) of the Act provides that, in the case of a fiduciary who is not registered under the Investment Advisers Act of 1940 by reason of paragraph (1) of section 203A(a) of such Act, the fiduciary must be registered as an investment adviser under the laws of the State in which it maintains its principal office and place of business, and, at the time the fiduciary files registration forms with such State to maintain the fiduciary's registration under the laws of such State, also files a copy of such forms with the Secretary of Labor. The purpose of this section is to set forth the exclusive means for investment advisers to satisfy the filing obligation with the Secretary described in subparagraph (B)(ii) of section 3(38) of the Act.

(b) *Filing requirement.* To satisfy the filing requirement with the Secretary in section 3(38)(B)(ii) of the Act, a fiduciary must be registered as an investment adviser with the State in which it maintains its principal office and place of business and file through the Investment Adviser Registration Depository (IARD), in accordance with applicable IARD requirements, the information required to be registered and maintain the fiduciary's registration as an investment adviser in such State. Submitting to the Secretary investment adviser registration forms filed with a State does not constitute compliance with the filing requirement in section 3(38)(B)(ii) of the Act.

(c) *Definitions.* For purposes of this section, the term ''Investment Adviser Registration Depository'' or ''IARD'' means the centralized electronic depository described in 17 CFR 275.203–1.

(d) *Cross reference.* Information for investment advisers on how to file through the IARD is available on the Securities and Exchange Commission Web site at *http://www.sec.gov/iard.*

Signed at Washington, DC this 3rd day of December, 2003.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 03–30435 Filed 12–8–03; 8:45 am]

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H.R. 23/P.L. 108–146

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To designate the facility of the United States Postal Service located at 514 17th Street in Moline, Illinois, as the ''David Bybee Post Office Building''. (Dec. 3, 2003; 117 Stat. 1916)

H.R. 3175/P.L. 108–150

To designate the facility of the United States Postal Service located at 2650 Cleveland Avenue, NW in Canton, Ohio, as the ''Richard D. Watkins Post Office Building''. (Dec. 3, 2003; 117 Stat. 1917)

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Florida National Forest Land Management Act of 2003 (Dec. 3, 2003; 117 Stat. 1919)

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To provide for Federal court proceedings in Plano, Texas. (Dec. 3, 2003; 117 Stat. 1947)

S. 1824/P.L. 108–158

Overseas Private Investment Corporation Amendments Act of 2003 (Dec. 3, 2003; 117 Stat. 1949)

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