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Contents

Federal Register

Vol. 69, No. 7

Monday, January 12, 2004

Advisory Council on Historic Preservation
See Historic Preservation, Advisory Council

Agricultural Marketing Service
RULES
Egg products inspection; voluntary inspections, 1647–1654
Milk marketing orders:
Pacific Northwest et al., 1654–1655

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Food Safety and Inspection Service
See Foreign Agricultural Service
See Forest Service
NOTICES
Emergency declarations:
Washington; bovine spongiform encephalopathy; threat to U.S. livestock, 1694

Animal and Plant Health Inspection Service
NOTICES
Reports and guidance documents; availability, etc.:
Fresh commercial citrus importation from Peru; pest risk analysis, 1694–1695

Army Department
See Engineers Corps

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Human immunodeficiency virus (HIV)—
Africa and Caribbean; blood transfusion services; rapid strengthening, 1747

Children and Families Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 1747–1748

Commerce Department
See Industry and Security Bureau
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 1696

Defense Department
See Engineers Corps
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 1697
Meetings:
Defense Acquisition University Board of Visitors, 1697
Science Board task forces; cancellation, 1697–1698
Scientific Advisory Board, 1698

Defense Nuclear Facilities Safety Board
NOTICES
Meetings; Sunshine Act, 1699–1700

Delaware River Basin Commission
NOTICES
Meetings and hearings, 1700–1701

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 1701

Energy Department
See Federal Energy Regulatory Commission
See Western Area Power Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 1701–1702
Meetings:
Environmental Management Site-Specific Advisory Board—
Savannah River Site, SC, 1702–1703
International Energy Agency Industry Advisory Board, 1703

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Washington Aqueduct, DC; water treatment residuals management process, 1698–1699

Environmental Protection Agency
RULES
Air pollution; standards of performance for new stationary sources:
Monitoring requirements, 1785–1821
Air pollution control; new motor vehicles and engines:
New spark-ignition ononroad handheld engines at or below 19 kilowatts; Phase 2 emission standards, etc., 1823–1835
Air quality implementation plans; approval and promulgation; various States:
California, 1682–1684
Kentucky, 1677–1682
PROPOSED RULES
Air pollution control; new motor vehicles and engines:
New spark-ignition nonroad handheld engines at or below 19 kilowatts; Phase 2 emission standards, etc., 1835–1837
Air quality implementation plans; approval and promulgation; various States:
California, 1685
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 1738–1743
Water pollution; discharge of pollutants (NPDES):
Gulf of Mexico OCS operations—
Eastern portion, oil and gas extraction category, general permits, 1743–1746

Executive Office of the President
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Air carrier certification and operations:
Antidrug and alcohol misuse prevention programs for personnel engaged in specified aviation activities, 1839–1860
Airworthiness directives:
Cessna, 1657–1659
McDonnell Douglas, 1659–1661
Class E airspace, 1661–1674
Class E airspace; correction, 1783
Standard instrument approach procedures, 1674–1675
NOTICES
Airport noise compatibility program:
Guam International Airport, GU, 1774–1775
Meetings:
Aviation Weather Technology Transfer Board, 1775–1776
RTCA , Inc., 1776–1778

Federal Communications Commission
NOTICES
Common carrier services:
Payphone customer definition, non-dominant carriers tariff notice requirements, NYNEX access charges waiver, etc.; proceedings terminated, 1746

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 1746

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Micronesia, 1751–1752
Puerto Rico, 1752

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
CNC/SEGS, Inc., et al., 1711–1712
Duke Energy Trading and Marketing, L.L.C., et al., 1712–1714
Environmental statements; availability, etc.:
Weaver's Cove Energy, L.L.C., et al., 1714–1716
Hydroelectric applications, 1716–1720
Meetings:
Regional Transmission Organizations—ISO New England Inc, et al., 1720
Practice and procedure:
Off-the-record communications, 1720–1721
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 1703–1704
Allegheny Power System Operating Co., et al., 1704
Colorado Interstate Gas Co., 1704
Consolidated Edison Company of New York, Inc., 1704
Corpus Christi LNG, LP, et al., 1705
Detroit Edison Co., 1705–1706
Eastern Shore Natural Gas Co., 1706–1707
East Tennessee Natural Gas Co., 1706
Egan Hub Storage, L.L.C., 1707
El Paso Natural Gas Co., 1707
Fidelity Exploration & Production Co., et al., 1707–1708
Georgia Strait Crossing Pipeline LP, 1708
Maritimes & Northeast Pipeline, L.L.C., 1708
Northern Natural Gas Co., 1708–1709
Pacific Gas and Electric Co., 1709
Portland General Electric Co., 1709
Sabine Pass LNG, L.P. et al., 1709–1710
Texas Eastern Transmission, LP, 1710
Wolverine Power Supply Cooperation, Inc., 1710

Federal Highway Administration
NOTICES
Environmental statements; availability, etc.:
San Diego County, CA, 1778

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 1746–1747

Federal Reserve System
RULES
Availability of funds and collection of checks (Regulation CC):
Check processing operations restructuring; amendments, 1655–1657

Fish and Wildlife Service
PROPOSED RULES
Migratory bird hunting:
Alaska; spring/summer migratory bird subsistence harvest, 1686–1693
NOTICES
Environmental statements; notice of intent:
Big Branch Marsh National Wildlife Refuge, LA, 1756
Jurisdictional transfers:
Midway Atoll National Wildlife Refuge, 1756–1757
Meetings:
Endangered Species of Wild Fauna and Flora International Trade Convention, 1757–1761

Food and Drug Administration
RULES
Reports and guidance documents; availability, etc.:
Registration of food facilities; questions and answers regarding interim final rule, 1675
NOTICES
Meetings:
Anti-Infective Drugs Advisory Committee, 1748
Psychopharmacologic Drugs Advisory Committee, 1748–1749

Food Safety and Inspection Service
RULES
Egg products inspection; voluntary inspections, 1647–1654
Meat and poultry inspection:
Bovine spongiform encephalopathy policies—
Advanced meat/bone separation machinery and meat recovery systems; use criteria, 1873–1885
Specified risk materials use for human food, prohibition; and non-ambulatory disabled cattle, disposition requirements, 1861–1874
Stunning devices used to immobilize cattle during slaughter; prohibition, 1884–1891
NOTICES
Meat and poultry inspection:
Bovine Spongiform Ecephalopathy Surveillance Program, 1891–1892

Foreign Agricultural Service
NOTICES
Trade adjustment assistance; applications, petitions, etc.:
Organized Seafood Association of Alabama, Inc., 1695
Southeastern Fisheries Association, Inc., 1695–1696

Forest Service
NOTICES
Meetings:
Resource Advisory Committees—
Glenn/Colusa County, 1696

General Services Administration
NOTICES
Acquisition regulations:
State Department (OF 140); form cancellation, 1747

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health

Historic Preservation, Advisory Council
NOTICES
Meetings, 1694

Homeland Security Department
See Federal Emergency Management Agency

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 1752–1754
Mortgage and loan insurance programs:
Federal Housing Administration Credit Watch Termination Initiative; revisions, 1754–1756

Industry and Security Bureau
PROPOSED RULES
Export administration regulations:
Simplified Network Application Processing system; mandatory use, 1685

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service
NOTICES
Meetings:
Taxpayer Advocacy Panels, 1781–1782

International Trade Commission
NOTICES
Import investigations:
Zero-mercury-added alkaline batteries, parts, and products containing same, 1761–1762

Justice Department
NOTICES
Privacy Act:
Systems of records, 1762–1763

Land Management Bureau
NOTICES
Committees; establishment, renewal, termination, etc.:
Gila Box Advisory Committee, 1761
Meetings:
Resource Advisory Councils—
Utah, 1761

National Archives and Records Administration
NOTICES
Reports and guidance documents; availability, etc.:
Title VI national origin discrimination prohibition affecting limited English proficient persons, 1763–1768

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
General Motors Corp., 1778–1779

National Institutes of Health
NOTICES
Meetings:
National Center for Research Resources, 1749
National Institute of Allergy and Infectious Diseases, 1749–1750
National Institute of General Medical Sciences, 1750
National Library of Medicine, 1750–1751
Warren Grant Magnuson Clinical Center—
Scientific Counselors Board, 1751

National Labor Relations Board
RULES
Practice and procedure:
Summary and default judgments; applicability of rules governing motions, 1675–1677

National Oceanic and Atmospheric Administration
NOTICES
Reports and guidance documents; availability, etc.:
National Weather Service; weather, water, climate, and related environmental information partnerships; policy statement, 1696–1697

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Army Department; Jefferson Proving Ground, 1768

Office of United States Trade Representative
See Trade Representative, Office of United States

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 1768–1769
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 1769–1771
Pacific Exchange, Inc., 1771–1773

Surface Transportation Board
NOTICES
Rail carriers:
Cost recovery procedures, 1779–1780
Railroad services abandonment:
A & R LIne, Inc., et al., 1780
Illinois Central Railroad Co., 1780–1781
Norfolk Southern Railway Co., 1781

Tennessee Valley Authority
NOTICES
Meetings; Sunshine Act, 1773–1774

Trade Representative, Office of United States
NOTICES
Meetings:
Industry Sector Advisory Committees—
Aerospace Equipment, 1774

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Inventions, Government-owned; availability for licensing, 1782

Western Area Power Administration
NOTICES
Environmental statements; availability, etc.:
Sacramento Area Voltage Support Project, CA; preferred alternative configuration, 1721–1723
Power rates:
Loveland Area Projects, CO, 1723–1738

Separate Parts In This Issue

Part II
Environmental Protection Agency, 1785–1821

Part III
Environmental Protection Agency, 1823–1837

Part IV
Transportation Department, Federal Aviation Administration, 1839–1860

Part V
Agriculture Department, Food Safety and Inspection Service, 1861–1892

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
55 1647
1124 1654

9 CFR
301 1874
309 1862
310 (2 documents) 1862, 1885
311 1862
313 1885
318 (2 documents) 1862, 1874
319 1862
320 1874
592 1647

12 CFR
229 1655

14 CFR
39 (2 documents) 1657, 1659
71 (12 documents) 1661, 1662, 1663, 1664, 1666, 1667, 1668, 1669, 1670, 1671, 1672, 1783
97 1674
121 1840

15 CFR
Proposed Rules:
740 1685
742 1685
748 1685
754 1685
772 1685

21 CFR
1 1675

29 CFR
102 1675

40 CFR
52 (2 documents) 1677, 1682
60 1786
90 1824
Proposed Rules:
52 1685
90 1836

50 CFR
Proposed Rules:
92 1686

Rules and Regulations

Federal Register
Vol. 69, No. 7
Monday, January 12, 2004

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

Food Safety and Inspection Service

9 CFR Part 592

Agricultural Marketing Service

7 CFR Part 55

[Docket No.01–031F]

RIN 0583–AC94

Transfer of Voluntary Inspection of Egg Products Regulations

AGENCY: Food Safety and Inspection Service and Agricultural Marketing Service, USDA.

ACTION: Final rule, with an opportunity to comment.

SUMMARY: The Food Safety and Inspection Service (FSIS) and the Agricultural Marketing Service (AMS) are transferring the regulations governing the voluntary inspection of egg products from 7 CFR part 55 to 9 CFR part 592 to reflect that this program has been transferred to FSIS. This transfer occurred at the time the Secretary of Agriculture delegated all functions under the Egg Products Inspection Act to the Administrator of FSIS. FSIS is updating the regulations to better reflect current inspection practices. FSIS is providing the public with an opportunity to comment on the clarity and technical accuracy of the amended regulations.

DATES: This rule is effective January 12, 2004. Please submit comments by February 11, 2004.

ADDRESSES: Submit one original and two copies of written comments to the FSIS Docket Room, Docket #01–031F, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. All comments submitted in response to this proposal will be available for public inspection in the Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For further information, contact Lynn Dickey, Ph.D., Director, Regulations and Petitions Policy Staff, Office of Policy and Program Development, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700, (202) 720–5627, fax number (202) 690–0486.

SUPPLEMENTARY INFORMATION:

Background

FSIS and AMS are transferring the regulations governing the voluntary inspection of egg products from 7 CFR part 55 to 9 CFR part 592. Several years ago, the Secretary of Agriculture delegated to the FSIS Administrator all functions under the Egg Products Inspection Act (21 U.S.C. 1041, *et seq.*). On December 31, 1998, the regulations governing the mandatory inspection of egg products were transferred from Title 7 to Title 9 of the CFR (63 FR 72352). The regulations governing the voluntary inspection of egg products were not transferred and remained in 7 CFR part 55. However, FSIS provides the voluntary inspection of egg products under the Agriculture Marketing Act of 1946, as amended (7 U.S.C. 1621 *et. seq.*). This rule transfers the regulations in 7 CFR part 55 to 9 CFR 592.

Further, FSIS is updating the regulations to better reflect current inspection practices. The Agency is eliminating any references to grading, which the Agency does not perform, and deleting any mention of licensing.

To improve the marketing of egg products, FSIS provides a voluntary egg products inspection program on a fee for service basis. Egg products may be certified as acceptable for identification with the inspection mark according to class, quality, quantity, and condition. Voluntary egg products inspection service is used for certification to Federal, State, and Commercial Item Specifications requirements. Examples of such specifications include those of the USDA Commodity Purchase Program (needy family and school lunch programs), the Department of Defense, exports, and of other government institutions (Veterans Administration hospitals and State hospitals and prisons). Voluntary inspection may also include certification of further processed egg products that are not amenable to the EPIA, *e.g.*, fully cooked egg patties or omelets.

Final Rule With an Opportunity To Comment

FSIS and AMS have determined that the notice and comment and delayed effective date requirements of the Administrative Procedure Act (5 U.S.C. 533(b) and (d)) do not apply to this final rule. The amendments made by this rule reflect FSIS'' responsibilities regarding voluntary egg products inspection and technical and minor changes made to the regulations. Therefore, FSIS and AMS conclude that good cause exists to find that notice and public procedure are unnecessary, and they are issuing these amendments as a final rule, effective upon publication.

Because the transfer of the regulations has necessitated making a number of changes to the regulations, FSIS is providing the public with an opportunity to comment on the clarity and technical accuracy of the amended regulations. The Agency requests that those with comments submit them during the 30 days that follow publication of the rule.

Executive Order 12866 and Regulatory Flexibility Act

Because this final rule has been determined to be not significant, the Office of Management and Budget (OMB) did not review it under Executive Order 12866.

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact, as defined by the Regulatory Flexibility Act (5 U.S.C. 601), on a substantial number of small entities.

Small establishments and plants will not be affected adversely by the transfer of the voluntary inspection of egg products regulations because there are no costs or change in services associated with this rule.

Economic Effects

The transfer of the Voluntary Egg Products Inspection regulations from Title 7 to Title 9 will not impose any costs to consumers, industry, or any Federal, State, or local government agency. FSIS has been conducting the voluntary inspection of egg products under 7 CFR 55 for several years.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule: (1) preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this final rule, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience than would otherwise be possible.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the ''Constituent Update'' page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update/update.htm.* Click on the ''Subscribe to the Constituent Update Listserv'' link, then fill out and submit the form.

List of Subjects

7 CFR Part 55

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

9 CFR Part 592

Eggs and egg products, Exports, Food labeling, Imports, Reporting and recordkeeping requirements.

7 CFR CHAPTER I—AGRICULTURAL MARKETING SERVICE

Authority and Issuance

■ For the reasons set forth in the preamble and under authority of 7 U.S.C. 1625, AMS is amending 7 CFR Chapter I as follows:

PART 55—[REMOVED]

■ 1. Remove 7 CFR part 55.

Done at Washington, DC, on: January 2, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

9 CFR CHAPTER III—FOOD SAFETY AND INSPECTION SERVICE

■ For the reasons set forth in the preamble, FSIS amends 9 CFR Chapter III as follows:

■ 2. Revise part 592 by removing §§ 592.1 through 592.4 and by adding new §§ 592.1 through 592.650. As revised, part 592 reads as follows:

PART 592—VOLUNTARY INSPECTION OF EGG PRODUCTS

Definition

Sec.
592.1 Meaning of words.
592.2 Terms defined.
592.5 Designation of official certificates, memoranda, marks, other identifications, and devices for purposes of the Agricultural Marketing Act.

Administration

592.10 Authority.

General

592.20 Kinds of services available.
592.22 Where service is offered.
592.24 Basis of service.

Performance of Services

592.70 Identification.
592.80 Political activity.
592.90 Authority and duties of inspection program personnel performing service.
592.95 Facilities and equipment to be furnished for use of inspection program personnel in performing service.
592.96 Schedule of operation of official plants.

Application for Service

592.100 Who may obtain service.
592.120 Authority of applicant.
592.130 How application for service may be made.
592.140 Application for inspection in official plants; approval.
592.150 When application may be rejected.
592.160 When application may be withdrawn.
592.170 Order of service.
592.180 Suspension of plant approval.

Denial of Service

592.200 Debarment.
592.220 Other applicable regulations.
592.240 Report of violations.
592.260 Reuse of containers bearing official identification prohibited.

Identifying and Marking Products

592.300 Approval of official identification.
592.310 Form of official identification symbol and inspection mark.
592.320 Products that may bear the inspection mark.
592.330 Unauthorized use or disposition of approved labels.
592.340 Supervision of marking and packaging.
592.350 Accessibility of product.
592.360 Certificates.
592.370 Certificate issuance.
592.380 Disposition of certificates.
592.390 Advance information.

Appeals

592.400 Who may request an appeal inspection or review of an inspection program employee's decision.
592.410 Where to file an appeal.
592.420 How to file an appeal.
592.430 When an application for an appeal inspection may be refused.
592.440 Who shall perform the appeal.
592.450 Procedures for selecting appeal samples.
592.460 Appeal certificates.

Fees and Charges

592.500 Payment of fees and charges.
592.510 Base Time Rate.
592.520 Overtime Inspection Service.
592.530 Holiday Inspection Service.

Sanitary and Processing Requirements

592.600 General.
592.650 Inspection.

Authority: 7 U.S.C. 1621–1627.

Definitions

§ 592.1 Meaning of words.

Under the regulations in this part words in the singular shall be deemed to import the plural and vice versa, as the case may demand.

§ 592.2 Terms defined.

For the purpose of the regulations in this part, unless the context otherwise requires, the following terms shall be construed, respectively:

Act means the applicable provisions of the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U.S.C. 1621 *et seq.*), or any other Act of Congress conferring like authority.

Administrator means the Administrator of the Food Safety and Inspection Service (FSIS) of the Department or any other officer or employee of the Department to whom there has been delegated, or to whom there may be delegated the authority to act in the Administrator's stead.

Applicant means any interested party who requests any inspection service, or

appeal inspection, with respect to any product.

Class means any subdivision of a product based on essential physical characteristics that differentiate between major groups of the same kind, species, or method of processing.

Condition means any condition (including, but not being limited to, the state of preservation, cleanliness, soundness, wholesomeness, or fitness for human food) of any product which affects its merchantability; or any condition, including, but not being limited to, the processing, or packaging which affects such product.

Department means the United States Department of Agriculture.

District Manager means the manager in charge of a district, which is a designated geographical area.

Eggs of Current Production means shell eggs that have moved through the usual marketing channels since the date of lay and are not in excess of 60 days old.

Holiday or Legal holiday means the legal public holidays specified by the Congress in paragraph (a) of section 6103, Title 5, of the United States Code.

Inspection means the act by inspection program personnel of:

(1) Determining, according to these regulations, the class, quality, quantity, or condition of any product by examining each unit thereof or a representative sample drawn by inspection program personnel;

(2) Issuing a certificate; or

(3) Identifying, when requested by the applicant, any product by means of official identification pursuant to the Act and this part.

Inspection certificate or *certificate* means a statement, either written or printed, issued by inspection program personnel pursuant to the Act and this part, relative to the class, quality, quantity, and condition of products.

Inspection program personnel (employee) means employees of the Department authorized by the Secretary to investigate and certify, in accordance with the Act and this part, to shippers of products and other interested parties the class, quality, quantity, and condition of such products.

Interested party means any person financially interested in a transaction involving any inspection or appeal inspection of any product.

Official plant means any plant in which the facilities and methods of operation therein have been found by the Administrator to be suitable and adequate for inspection in accordance with this part and in which such service is carried on.

Person means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.

Product or *products* means eggs (whether liquid, frozen, or dried), egg products, and any food product that is prepared or manufactured and contains eggs as an ingredient.

Program employee means any person employed by the Department or any cooperating agency who is authorized by the Secretary to do any work or perform any duty in connection with the program.

Quality means the inherent properties of any product that determine its relative degree of excellence.

Regulations mean the provisions in this part.

Sampling means the act of taking samples of any product for inspection.

Secretary means the Secretary of the Department or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in the Secretary's stead.

Service means: (1) Any inspection, in accordance with the Agriculture Marketing Act and the regulations in this part, of any product,

(2) Supervision, in any official plant, of the processing, packaging and identification, or

(3) Any appeal inspection of any previously inspected product.

Shell eggs mean the shell eggs of the domesticated chicken, turkey, duck, goose, and guinea.

§ 592.5 Designation of official certificates, memoranda, marks, other identifications, and devices for purposes of the Agricultural Marketing Act.

Subsection 203(h) of the Agricultural Marketing Act of 1946, as amended by Public Law 272, 84th Congress, provides criminal penalties for various specified offenses relating to official certificates, memoranda, marks or other identifications, and devices for making such marks or identifications, issued or authorized under section 203 of said Act, and certain misrepresentations concerning the inspection of agricultural products under said section. For the purposes of said subsection and the provisions in this part, the terms listed below shall have the respective meanings specified:

(a) *Official certificate* means any form of certification, either written or printed, used under this part to certify with respect to the sampling, inspection, class, quality, quantity, or condition of products (including the compliance of products with applicable specifications).

(b) *Official memorandum* means any initial record of findings made by an authorized person in the process of inspecting, or sampling pursuant to this part, any processing or plant-operation report made by an authorized person in connection with inspecting, or sampling under this part and any report made by an authorized person of services performed pursuant to this part.

(c) *Official mark* means the inspection mark, and any other mark or symbol formulated pursuant to the regulations in this part, stating that the product was inspected, or for the purpose of maintaining the identity of the product.

(d) *Official identification* means any United States (U.S.) standard designation of class, quality, quantity, or condition specified in this part or any symbol, stamp, label, or seal indicating that the product has been officially inspected or indicating the class, quality, quantity, or condition of the product approved by the Administrator and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product.

(e) *Official device* means a printed label, or other method as approved by the Secretary for the purpose of applying any official mark or other identification to any product of the packaging material thereof.

Administration

§ 592.10 Authority.

The Administrator shall perform, for and under the supervision of the Secretary, such duties as the Secretary may require in the enforcement or administration of the provisions of the Act and this part. The Administrator is authorized to waive for a limited period any particular provisions of the regulations in this part to permit experimentation so that new procedures, equipment, and processing techniques may be tested to facilitate definite improvements and at the same time to determine full compliance with the spirit and intent of the regulations in this part. The Food Safety Inspection Service and its officers and employees shall not be liable in damages through acts of commission or omission in the administration of this part.

General

§ 592.20 Kinds of services available.

The regulations in this part provide for the following kinds of services:

(a) Inspection of the processing in official plants of products containing eggs;

(b) Sampling of products; and

(c) Quantity and condition inspection of products.

§ 592.22 Where service is offered.

Any product may be inspected wherever inspection program personnel are available and the facilities and the conditions are satisfactory for the conduct of the service.

§ 592.24 Basis of service.

(a) Products shall be inspected in accordance with such standards, methods, and instructions as may be issued or approved by the Administrator. All service shall be subject to supervision at all times by the applicable FSIS designated supervisor. Whenever the supervisor of an inspection program person has evidence that such inspection program employee incorrectly inspected a product, such supervisor shall take such action as is necessary to correct the inspection and to cause any improper official identification that appears on the product or containers thereof to be corrected prior to shipment of the product from the place of the initial inspection.

(b) Whenever service is performed on a sample basis, such sample shall be drawn in accordance with the instructions as issued by the Administrator.

Performance of Services

§ 592.70 Identification.

All inspection program personnel and supervisors shall have in their possession at all times while on duty and present upon request the means of identification furnished by the Department to such person.

§ 592.80 Political activity.

All inspection program personnel are forbidden during the period of their respective appointments, to take an active part in political management or in political campaigns. Political activity in city, county, State, or national elections, whether primary or regular, or in behalf of any party or candidate is prohibited, except as authorized by law or regulation of the Department. This applies to all appointees, including, but not being limited to, temporary and cooperative employees and employees on leave of absence with or without pay. Willful violation of this section will constitute grounds for dismissal.

§ 592.90 Authority and duties of inspection program personnel performing service.

(a) Inspection program personnel are authorized:

(1) To make such observations and inspections as they deem necessary to enable them to certify that products have been prepared, processed, stored, and otherwise handled in conformity with the regulations in this part;

(2) To supervise the marking of packages containing products that are eligible to be identified with official identification;

(3) To retain in their custody, or under their supervision, labels with official identification, marking devices, samples, certificates, seals, and reports of inspection program personnel;

(4) To deface or remove, or cause to be defaced or removed under their personal supervision, any official identification from any package containing products whenever the program employee determines that such products were not processed in accordance with the regulations in this part or are not fit for human food;

(5) To issue a certificate upon request on any product processed in the official plant; and

(6) To use retention tags or other devices and methods as may be approved by the Administrator for the identification and control of products that are not in compliance with the regulations in this part or are held for further examination, and any equipment, utensils, rooms or compartments that are found to be unclean or otherwise in violation of any of the regulations in this part. No product, equipment, utensil, room, or compartment shall be released for use until it has been made acceptable. Such identification shall not be removed by anyone other than inspection program personnel.

(b) Inspection program personnel shall prepare such reports and records as may be prescribed by the Administrator.

§ 592.95 Facilities and equipment to be furnished for use of inspection program personnel in performing service.

(a) Facilities and equipment for proper sampling, weighing, examination of products, and monitoring processing procedures shall be furnished by the official plant for use by inspection program personnel. Such facilities and equipment shall include but not be limited to a room or area suitable for sampling product and stationary or adequately secured storage box or cage (capable of being locked only by inspection program personnel) for holding official samples.

(b) Acceptable furnished office space and equipment, including but not being limited to, a desk, lockers or cabinets (equipped with a satisfactory locking device) suitable for the protection and storage of supplies, and with facilities for inspection program personnel to change clothing.

§ 592.96 Schedule of operation of official plants.

Inspection operating schedules for services performed pursuant to this part shall be requested in writing and approved by the appropriate District Office. Normal operating schedules for a full-week consist of a continuous 8-hour period per day (excluding but not to exceed 1 hour for lunch), 5 consecutive days per week, within the administrative workweek, Sunday through Saturday, for each shift required. Less than 8-hour schedules may be requested and will be approved if inspection program personnel are available. Clock hours of daily operations need not be specified in the request, although as a condition of continued approval, the hours of operation shall consist of a continuous 10-hour period per day (excluding but not to exceed 1 hour for lunch), 4 consecutive days per week, within the administrative workweek, Sunday through Saturday for each full shift required. Inspection program personnel are to be given reasonable advance notice by management of any change in the hours the inspection service is requested.

Application for Service

§ 592.100 Who may obtain service.

(a) An application for service may be made by any interested person, including, but not being limited to, the United States, any State, county, municipality, or common carrier, and any authorized agent of the foregoing.

(b) Where service is offered: Any product may be inspected, wherever an inspection program employee is available and the facilities and the conditions are satisfactory for the conduct of the service.

(c) The applicant must have a tax identification number for billing purposes.

§ 592.120 Authority of applicant.

Proof of the authority of any person applying for any service may be required at the discretion of the Administrator.

§ 592.130 How application for service may be made.

(a) On a fee basis. An application for service may be made with any inspection program personnel at or nearest the place where the service is desired. Such application for service may be made orally (in person or by telephone), in writing or by transmission. If an application for inspection service is made orally, the inspection program personnel with whom such application is made, or the

Administrator, may require that the application be confirmed in writing.

(b) Form of application. Each application for inspection of a specified lot of any product shall include such information as may be required by the Administrator in regard to the product and the premises where such product is to be inspected.

§ 592.140 Application for inspection in official plants; approval.

Any person desiring to process products under inspection service must receive approval of such plant and facilities as an official plant prior to the installation of such service. The initial survey, drawings, and specifications to be submitted, changes and revisions in the official plant, and final survey and procedure for plant approval shall be in accordance with and conform to the applicable provisions of Part 590 of this chapter.

§ 592.150 When an application may be rejected.

(a) Any application for service may be rejected by the Administrator:

(1) Whenever the applicant fails to meet the requirements of the regulations in this part prescribing the conditions under which the service is made available;

(2) Whenever the product is owned by or located on the premises of a person currently denied the benefits of the Act;

(3) Where any individual holding office or a responsible position with or having a substantial financial interest or share in the applicant is currently denied the benefits of the Act or was responsible in whole or in part for the current denial of the benefits of the Act to any person;

(4) Where the Administrator determines that the application is an attempt on the part of a person currently denied the benefits of the Act to obtain service;

(5) Whenever the applicant, after an initial survey has been made in accordance with Part 590, fails to bring the plant, facilities, and operating procedures into compliance with the regulations in this part within a reasonable period of time;

(6) Notwithstanding any prior approval whenever, before inauguration of service, the applicant fails to fulfill commitments concerning the inauguration of the service;

(7) When it appears that to perform the services specified in this part would not be to the best interests of the public welfare or of the Government; or

(8) When it appears to the Administrator that prior commitments of the Department necessitate rejection of the application.

(b) Each such applicant shall be promptly notified by registered mail of the reasons for the rejection. A written petition for reconsideration of such rejection may be filed by the applicant with the Administrator if postmarked or delivered within 10 days after receipt of notice of the rejection. Such petition shall state specifically the errors alleged to have been made by the Administrator in rejecting the application. Within 20 days following the receipt of such a petition for reconsideration, the Administrator shall approve the application or notify the applicant by registered mail of the reasons for the rejection thereof.

§ 592.160 When an application may be withdrawn.

An application for service may be withdrawn by the applicant at any time before the service is performed upon payment, by the applicant, of all expenses incurred by the Agency in connection with such application.

§ 592.170 Order of service.

Service shall be performed, insofar as practicable, in the order in which applications therefor are made except that precedence may be given to any application for an appeal.

§ 592.180 Suspension of plant approval.

(a) Any plant approval pursuant to the regulations in this part may be suspended for:

(1) Failure to maintain plant and equipment in a satisfactory state of repairs;

(2) The use of operating procedures that are not in accordance with the regulations in this part; or

(3) Alterations of buildings, facilities, or equipment that cannot be approved in accordance with the regulations in this part.

(b) During such period of suspension, inspection service shall not be rendered. However, the other provisions of the regulations in this part pertaining to providing service will remain in effect unless service is terminated in accordance with the terms thereof. If the plant facilities or methods of operation are not brought into compliance within a reasonable period of time to be specified by the Administrator, the application and service shall be terminated. Upon termination of service in an official plant pursuant to the regulations in this part, the plant approval shall also become terminated, and all labels, seals, tags, or packaging material bearing official identification shall, under the supervision of a person designated by the Administrator, either be destroyed, or if to be used at another location, modified in a manner acceptable to the Agency.

Denial of Service

§ 592.200 Debarment.

(a) The following acts or practices or the causing thereof may be deemed sufficient cause for the debarment by the Administrator of any person, including any agents, officers, subsidiaries, or affiliates of such person, from any or all benefits of the Act for a specified period.

(1) Misrepresentation, or deceptive or fraudulent act or practice. Any willful misrepresentation or any deceptive or fraudulent act or practice found to be made or committed by any person in connection with:

(i) The making or filing of an application for any service or appeal;

(ii) The making of the product accessible for sampling or inspection;

(iii) The making, issuing, or using, or attempting to issue or use, any certificate, symbol, stamp, label, seal, or identification authorized pursuant to the regulations in this part;

(iv) The use of the terms ''United States,'' ''U.S.,'' ''U.S. Inspected,'' ''Government Inspected,'' or terms of similar import in the labeling or advertising of any product;

(v) The use of any official stamp, symbol, label, seal, or identification in the labeling or advertising of any product.

(2) Use of facsimile forms. Using or attempting to use a form that simulates in whole or in part any certificate, symbol, stamp, label, seal, or identification authorized to be issued or used under the regulations in this part.

(3) Willful violation of the regulations. Any willful violation of the regulations in this part or of the Act.

(4) Interfering with inspection program personnel or program employee of the Agency. Any interference with or obstruction or any attempted interference or obstruction of or assault upon any inspection program personnel or program employee of the Agency in the performance of their duties. The giving or offering, directly or indirectly, of any money, loan, gift, or anything of value to a program employee of the Agency, or the making or offering of any contribution to or in any way supplementing the salary, compensation or expenses of a program employee of the Agency, or the offering or entering into a private contract or agreement with a program employee of the Agency for any services to be rendered while employed by the Agency.

(5) Miscellaneous. The existence of any of the conditions set forth in

§ 592.150 constituting the basis for the rejection of an application for inspection service.

§ 592.220 Other applicable regulations.

Compliance with the regulations in this part shall not excuse failure to comply with any other Federal or any State or municipal applicable laws or regulations.

§ 592.240 Report of violations.

Each inspection program employee shall report, in the manner prescribed by the Administrator, all violations and noncompliance under the Act and this part of which such inspection program employee has knowledge.

§ 592.260 Reuse of containers bearing official identification prohibited.

The reuse, by any person, of containers bearing official identification is prohibited unless such identification is applicable in all respects to product being packed therein. In such instances, the container and label may be used provided the packaging is accomplished under the supervision of inspection program personnel or program employee, and the container is in clean, sound condition and lined with a suitable inner liner.

Identifying and Marking Products

§ 592.300 Approval of official identification.

Labeling procedures, required information on labels, and method of label approval, shall be in accordance with and conform to the applicable provisions of part 590 of this chapter.

§ 592.310 Form of official identification symbol and inspection mark.

(a) The shield set forth in Figure 1, containing the letters ''USDA,'' shall be the official identification symbol for the purposes of this part and when used, imitated, or simulated in any manner in connection with a product shall be deemed to constitute a representation that the product has been officially inspected for the purpose of § 592.5.

FIGURE 1.

(b) The inspection marks that are permitted to be used on products shall be contained within the outline of a shield and with the wording and design set forth in Figure 2 of this section, except the plant number may be followed by the letter ''G'' in lieu of the word ''plant.'' Alternatively, it may be omitted from the official shield if applied on the container's principal display panel or other prominent location and preceded by the word ''Plant'' or followed by the letter ''G.''

FIGURE 2.

§ 592.320 Products that may bear the inspection mark.

Products that are permitted to bear the inspection mark shall be processed in an official plant from edible shell eggs or other edible egg products eligible to bear the inspection mark and may contain other edible ingredients. The official mark, when used, shall be printed or lithographed and applied as a part of the principal display panel of the container, but shall not be applied to a detachable cover.

§ 592.330 Unauthorized use or disposition of approved labels.

(a) Containers or labels that bear official identification approved for use pursuant to § 592.300 shall be used only for the purpose for which approved. Any unauthorized use or disposition of approved containers or labels that bear any official identification may result in cancellation of the approval and denial of the use of containers or labels bearing official identification or denial of the benefits of the Act pursuant to the provisions of § 592.200;

(b) The use of simulations or imitations of any official identification by any person is prohibited;

(c) Upon termination of inspection service in an official plant pursuant to the regulations in this part, all labels or packaging material bearing official identification to be used to identify product packed by the plant shall either be destroyed, or have the official identification completely obliterated under the supervision of a USDA representative, or, if to be used at another location, modified in a manner acceptable to the Agency.

§ 592.340 Supervision of marking and packaging.

(a) Evidence of label approval. Inspection program personnel shall authorize the use of official identification on any inspected product when they have evidence that such official identification or packaging material bearing such official identification has been approved in accordance with the provisions of § 592.300.

(b) Affixing of official identification. No official identification may be affixed to or placed on or caused to be affixed to or placed on any product or container thereof except by an inspection program employee or under the supervision of an inspection program employee or other person authorized by the Administrator. All such products shall have been inspected in accordance with the regulations in this part. Inspection program personnel shall have supervision over the use and handling of all material bearing any official identification.

(c) Labels for products sold under Government contract. Inspectors-in-charge may approve labels for containers of product sold under a contract specification to governmental agencies when such product is not offered for resale to the general public: Provided, that the contract specifications include complete specific requirements with respect to labeling, and are made available to inspection program personnel.

§ 592.350 Accessibility of product.

Each product for which service is requested shall be so placed as to disclose fully its class, quality, quantity, and condition as the circumstances may warrant.

§ 592.360 Certificates.

Certificates (including appeal certificates) shall be issued on forms approved by the Administrator.

§ 592.370 Certificate issuance.

When performing inspection service at locations other than an official establishment, inspection program personnel shall issue a certificate covering each product inspected. An applicant may request issuance of a certificate for each production lot inspected.

§ 592.380 Disposition of certificates.

The original and a copy of each certificate issued pursuant to § 592.370, and not to exceed two additional copies

thereof if requested by the applicant prior to issuance, shall, immediately upon issuance, be delivered or mailed to the applicant or designee. Other copies shall be filed and retained in accordance with the disposition schedule for inspection program records.

§ 592.390 Advance information.

Upon request of an applicant, all or part of the contents of any certificate issued to such applicant may be telephoned or transmitted to the applicant or designee, at the applicant's expense.

Appeals

§ 592.400 Who may request an appeal inspection or review of an inspection program employee's decision.

An appeal inspection may be requested by any interested party who is dissatisfied with the determination by an inspection program employee of the class, quality, quantity, or condition of any product, as evidenced by the USDA inspection mark and accompanying label, or as stated on a certificate and a review may be requested by the operator of an official plant with respect to a inspection program personnel decision or on any other matter related to inspection in the official plant.

§ 592.410 Where to file an appeal.

(a) Appeal of inspection program personnel decision in an official plant. Any interested party who is not satisfied with the determination of the class, quality, quantity, or condition of product that was inspected by inspection program personnel in an official plant and has not left such plant, and the operator of any official plant who is not satisfied with a decision by inspection program personnel on any other matter relating to inspection in such plant, may request an appeal inspection or review of the decision by the inspection program employee by filing such request with the inspection program employee's immediate supervisor.

(b) All other appeal requests. Any interested party who is not satisfied with the determination of the class, quality, quantity, or condition of product that has left the official plant where it was inspected or inspected other than in an official plant may request an appeal inspection by filing such request with the District Manager in the district where the product is located.

§ 592.420 How to file an appeal.

The request for an appeal inspection or review of a inspection program employee's decision may be made orally or in writing. If made orally, written confirmation may be required. The applicant shall clearly state the identity of the product, the decision which is questioned, and the reasons for requesting the appeal service. If such appeal request is based on the results stated on an official certificate, the original and all copies of the certificate available at the appeal inspection site shall be provided to the appeal inspection program employee assigned to make the appeal inspection.

§ 592.430 When an application for an appeal inspection may be refused.

When it appears to the official with whom an appeal request is filed that the reasons given in the request are frivolous or not substantial, class, quality, quantity, or that the condition of the product has undergone a material change since the original inspection, or that the original lot has changed in some manner, or the Act or the regulations in this part have not been complied with, the applicant's request for the appeal inspection may be refused. In such case, the applicant shall be promptly notified of the reason(s) for refusal.

§ 592.440 Who shall perform the appeal.

(a) An appeal inspection or review of a decision requested under § 592.410(a) shall be made by the inspection program employee's immediate supervisor or by an inspection program employee assigned by the immediate supervisor other than the inspection program employee whose inspection or decision is being appealed.

(b) Appeal inspections requested under § 592.410(b) shall be performed by an inspection program employee other than the inspection program employee who originally inspected the product.

(c) Whenever practical, an appeal inspection shall be conducted jointly by two inspection program employees. The assignment of the inspection program personnel who will make the appeal inspection under § 592.410(b) shall be made by the District Manager.

§ 592.450 Procedures for selecting appeal samples.

(a) Prohibition on movement of product. Products shall not have been moved from the place where the inspection being appealed was performed and must have been maintained under adequate refrigeration, when applicable.

(b) Laboratory analyses. The appeal sample shall consist of product taken from the original sample containers plus an equal number of containers selected at random. When the original sample containers cannot be located, the appeal sample shall consist of product taken at random from double the number of original sample containers.

(c) Condition inspection. The appeal sample shall consist of product taken from the original sample containers plus an equal number of containers selected at random. A condition appeal cannot be made unless all originally sampled containers are available.

§ 592.460 Appeal certificates.

Immediately after an appeal inspection is completed, an appeal certificate shall be issued to show that the original inspection was sustained or was not sustained. Such certificate shall supersede any previously issued certificate for the product involved and shall clearly identify the number and date of the superseded certificate. The issuance of the appeal certificate may be withheld until any previously issued certificate and all copies have been returned when such action is deemed necessary to protect the interest of the Government. When the appeal inspection program employee assigns a different class to the lot or determines that a net weight shortage exists, the lot shall be retained pending correction of the labeling or approval of the product disposition by the District Office.

Fees and Charges

§ 592.500 Payment of fees and charges.

(a) Fees and charges for voluntary base time rate, overtime inspection service, and holiday inspection service shall be paid by the interested party making the application for such service, in accordance with the applicable provisions of this section and § 592.510 through § 592.530, both inclusive. If so required by the Inspection program personnel, such fees and charges shall be paid in advance.

(b) Fees and charges for any service shall, unless otherwise required pursuant to paragraph (c) of this section, be paid by check, draft, or money order payable to the Food Safety Inspection Service and remitted promptly to FSIS.

(c) Fees and charges for any service under a cooperative agreement with any State or person shall be paid in accordance with the terms of such cooperative agreement.

§ 592.510 Base time rate.

The base time rate for voluntary inspection services of egg products is $43.64 per hour per program employee.

§ 592.520 Overtime inspection service.

When operations in an official plant require the services of inspection personnel beyond their regularly

assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant must give reasonable advance notice to the inspection program personnel of any overtime service necessary and must pay the Agency for such overtime at an hourly rate of $50.04.

§ 592.530 Holiday inspection service.

When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant must, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period and must pay the Agency for such holiday work at an hourly rate of $50.04.

Sanitary and Processing Requirements

§ 592.600 General.

Except as otherwise approved by the Administrator, the sanitary, processing, and facility requirements, as applicable, shall be the same for the product processed under this part as for egg products processed under part 590 of this chapter.

§ 592.650 Inspection.

Examinations of the ingredients, processing, and the product shall be made to ensure the production of a wholesome, unadulterated, and properly labeled product. Such examinations include, but are not being limited to:

(a) Sanitation checks of plant premises, facilities, equipment, and processing operations.

(b) Checks on ingredients and additives used in products to ensure that they are not adulterated, are fit for use as human food, and are stored, handled, and used in a sanitary manner.

(c) Examination of the eggs or egg products used in the products to ensure they are wholesome, not adulterated, and comply with the temperature, pasteurization, or other applicable requirements.

(d) Inspection during the processing and production of the product to determine compliance with any applicable standard or specification for such product.

(e) Examination during processing of the product to ensure compliance with approved formulas and labeling.

(f) Test weighing and organoleptic examinations of finished product.

Done at Washington, DC, on: December 23, 2003.

Garry L. McKee,

Administrator, Food Safety and Inspection Service.

[FR Doc. 04–403 Filed 1–9–04; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1124

[Docket No. AO–368–A30; DA–01–08–PNW]

Milk in the Pacific Northwest Marketing Area; Interim Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This order amends the *Producer milk* provision of the Pacific Northwest milk marketing order to eliminate the ability to simultaneously pool the same milk on the order and on a State-operated order that provides for marketwide pooling. More than the required number of producers on the Pacific Northwest order have approved the issuance of the interim order as amended.

EFFECTIVE DATE: February 1, 2004.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, Stop 0231, Room 2971, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–1366, e-mail address *gino.tosi@usda.gov.*

SUPPLEMENTARY INFORMATION: This administrative rule is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule 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 the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this interim rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees.

For the purposes of determining which dairy farms are ''small businesses'', the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

In the Pacific Northwest Federal milk order, 805 of the 1,164 dairy producers (farmers), or about 69 percent, whose milk was pooled under the Pacific Northwest Federal milk order at the time of the hearing, April 2002, would meet the definition of small businesses. On the processing side, 9 of the 20 milk plants associated with the Pacific Northwest milk order during April 2002 would qualify as ''small businesses,'' constituting about 45 percent of the total.

Based on these criteria, at least 69 percent of the producers in the order would be considered as small businesses. The adoption of the proposed pooling standard serves to

revise established criteria that determine the producer milk that has a reasonable association with—and consistently serves the fluid needs of—the Pacific Northwest milk marketing area and is not associated with other marketwide pools concerning the same milk. Criteria for pooling are established on the basis of performance levels that are considered adequate to meet the Class I fluid needs and by doing so determine those that are eligible to share in the revenue that arises from the classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The established criteria are applied in an identical fashion to both large and small businesses and do not have any different economic impact on small entities as opposed to large entities. Therefore, the proposed amendment will not have a significant economic impact on a substantial number of small entities.

Prior documents in this proceeding:

Notice of Hearing: Issued February 26, 2002; published March 4, 2002 (67 FR 9622).

Correction to Notice of Hearing: Issued March 14, 2002; published March 19, 2002 (67 FR 12488).

Tentative Final Decision: Issued August 8, 2003; published August 18, 2003 (68 FR 49375).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Pacific Northwest order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Mideast order:

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Pacific Northwest marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The Pacific Northwest order, as hereby amended on an interim basis, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the order, as hereby amended on an interim basis, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Pacific Northwest order, as hereby amended on an interim basis, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional Findings.* It is necessary and in the public interest to make these interim amendments to the Pacific Northwest order effective February 1, 2004. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing area.

The interim amendments to this order are known to handlers. The final decision containing the proposed amendments to this order was issued on August 8, 2003.

The changes that result from these interim amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these interim order amendments effective on February 1, 2004. It would be contrary to the public interest to delay the effective date of these amendments for 30 days after their publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in § 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the specified marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this interim order amending the Pacific Northwest order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended;

(3) The issuance of the interim order amending the Pacific Northwest order is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1124

Milk marketing orders.

Order Relative to Handling

■ *It is therefore ordered,* that on and after the effective date hereof, the handling of milk in the Pacific Northwest marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended on an interim basis, as follows:

The authority citation for 7 CFR part 1124 reads as follows:

Authority: 7 U.S.C. 601–674.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

■ 1. Section 1124.13 is amended by:
■ a. Revising the introductory text; and
■ b. Adding a new paragraph (f).

The revision and addition read as follows:

§ 1124.13 Producer milk.

Except as provided for in paragraph (f) of this section, *Producer milk* means the skim milk (or skim milk equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

* * * * *

(f) Producer milk shall not include milk of a producer that is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program imposed under the authority of a State government maintaining marketwide pooling of returns.

Dated: January 5, 2004.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 04–399 Filed 1–9–04; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1179]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendment.

SUMMARY: The Board of Governors is amending appendix A of Regulation CC

to delete the reference to the Miami check processing office of the Federal Reserve Bank of Atlanta and reassign the Federal Reserve routing symbols currently listed under that office to the Jacksonville office of the Federal Reserve Bank of Atlanta. These amendments reflect the restructuring of check processing operations within the Federal Reserve System.

DATES: The final rule will become effective on March 13, 2004.

FOR FURTHER INFORMATION CONTACT: Jack K. Walton II, Assistant Director (202/452–2660), or Jeffrey S. H. Yeganeh, Manager (202/728–5801), Division of Reserve Bank Operations and Payment Systems; or Adrianne G. Threatt, Counsel (202/452–3554), Legal Division. For users of Telecommunications Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: Regulation CC establishes the maximum period a depositary bank may wait between receiving a deposit and making the deposited funds available for withdrawal.[1] A depositary bank generally must provide faster availability for funds deposited by a ''local check'' than by a ''nonlocal check.'' A check drawn on a bank is considered local if it is payable by or at a bank located in the same Federal Reserve check processing region as the depositary bank. A check drawn on a nonbank is considered local if it is payable through a bank located in the same Federal Reserve check processing region as the depositary bank. Checks that do not meet the requirements for ''local'' checks are considered ''nonlocal.''

Appendix A to Regulation CC contains a routing number guide that assists banks in identifying local and nonlocal banks and thereby determining the maximum permissible hold periods for most deposited checks. The appendix includes a list of each Federal Reserve check processing office and the first four digits of the routing number, known as the Federal Reserve routing symbol, of each bank that is served by that office. Banks whose Federal Reserve routing symbols are grouped under the same office are in the same check processing region and thus are local to one another.

As explained in detail in the Board's final rule published in the **Federal Register** on May 28, 2003, the Federal Reserve Banks decided in early 2003 to reduce the number of locations at which they process checks.[2] As part of this restructuring process, the Miami office of the Federal Reserve Bank of Atlanta will cease processing checks on March 13, 2004. As of that date, banks with routing symbols currently assigned to the Miami office for check processing purposes will be reassigned to the Atlanta Reserve Bank's Jacksonville office. As a result of this change, some checks that are drawn on and deposited at banks located in the Miami and Jacksonville check processing regions and that currently are nonlocal checks will become local checks subject to faster availability schedules.

The Board accordingly is amending the list of routing symbols assigned to Sixth District check processing offices to reflect the transfer of operations from Miami to Jacksonville and to assist banks in identifying local and nonlocal banks. These amendments are effective March 13, 2004, to coincide with the effective date of the underlying check processing changes. The Board is providing advance notice of these amendments to give affected banks ample time to make any needed processing changes. The advance notice will also enable affected banks to amend their availability schedules and related disclosures, if necessary, and provide their customers with notice of these changes.[3] The Federal Reserve routing symbols assigned to all other Federal Reserve branches and offices will remain the same at this time. The Board of Governors, however, intends to issue similar notices at least sixty days prior to the elimination of check operations at some other Reserve Bank offices, as described in the May 2003 **Federal Register** document.

Administrative Procedure Act

The Board has not followed the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of this final rule. The revisions to the appendix are technical in nature, and the routing symbol revisions are required by the statutory and regulatory definitions of ''check-processing region.'' Because there is no substantive change on which to seek public input, the Board has determined that the section 553(b) notice and comment procedures are unnecessary.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320, Appendix A.1), the Board has reviewed the final rule under authority delegated to the Board by the Office of Management and Budget. This technical amendment to appendix A of Regulation CC will delete the reference to the Miami check processing office of the Federal Reserve Bank of Atlanta and reassign the routing symbols listed under that office to the Jacksonville office of the Federal Reserve Bank of Atlanta. The depository institutions that are located in the affected check processing regions and that include the routing numbers in their disclosure statements would be required to notify customers of the resulting change in availability under § 229.18(e). However, because all paperwork collection procedures associated with Regulation CC already are in place, the Board anticipates that no additional burden will be imposed as a result of this rulemaking.

12 CFR Chapter II

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 229 to read as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001 *et seq.*

■ 2. The Sixth Federal Reserve District routing symbol list in appendix A is revised to read as follows:

* * * * *

Appendix A to Part 229—Routing Number Guide to Next-Day Availability Checks and Local Checks

Sixth Federal Reserve District

[Federal Reserve Bank of Atlanta]

Head Office

0610	2610
0611	2611
0612	2612
0613	2613

Birmingham Branch

0620	2620

[1] For purposes of Regulation CC, the term ''bank'' refers to any depository institution, including commercial banks, savings institutions, and credit unions.

[2] See 68 FR 31592, May 28, 2003. In addition to the general advance notice of future amendments previously provided by the Board, as well as the Board's notices of final amendments, the Reserve Banks are striving to inform affected depository institutions of the exact date of each office transition at least 120 days in advance. The Reserve Banks' communications to affected depository institutions are available at *www.frbservices.org.*

[3] Section 229.18(e) of Regulation CC requires that banks notify account holders who are consumers within 30 days after implementing a change that improves the availability of funds.

0621	2621
0622	2622

Jacksonville Branch

0630	2630
0631	2631
0632	2632
0660	2660
0670	2670

Nashville Branch

0640	2640
0641	2641
0642	2642

New Orleans Branch

0650	2650
0651	2651
0652	2652
0653	2653
0654	2654
0655	2655

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, January 6, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–534 Filed 1–9–04; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–18–AD; Amendment 39–13406; AD 2003–09–09 R1]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 441 and F406 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule

SUMMARY: This amendment revises Airworthiness Directive (AD) 2003–09–09, which applies to certain Cessna Aircraft Company (Cessna) Models 441 and F406 airplanes. AD 2003–09–09 currently requires repetitively inspecting the fuel boost pump wiring inside and outside the boost pump reservoir and repair or replacement of the wiring as necessary. AD 2003–09–09 also requires eventual installation of an improved design wire harness and fuel boost pump as terminating action for the repetitive inspections. The way the compliance time is currently written puts certain airplane owners/operators in non-compliance with the AD. Also, the terminating action for the repetitive inspections did not provide the option of installing the protective sleeving modification for boost pump lead wires. This document clarifies and corrects the compliance time and provides the option of installing the protective sleeving modification for boost pump lead wires. The actions specified by this AD are intended to detect, correct, and prevent chafing and/or arcing of the fuel boost pump wiring, which could result in arcing within the wing fuel storage system. This condition could lead to ignition of explosive vapor within the fuel storage system.

DATES: This AD becomes effective on January 22, 2004.

The Director of the Federal Register previously approved the incorporation by reference of certain publications listed in the regulations as of June 24, 2003 (68 FR 23186, May 1, 2003).

ADDRESSES: You may get the service information referenced in this AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–18–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Adamson, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4145; facsimile: 316–946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

What Prior AD Action Did FAA Take on This Subject?

We issued AD 2003–09–09, Amendment 39–13138 (68 FR 23186, May 1, 2003), in order to detect, correct, and prevent chafing and/or arcing of the fuel boost pump wiring on certain Cessna Models 441 and F406 airplanes. This AD currently requires repetitively inspecting the fuel boost pump wiring inside and outside the boost pump reservoir and repair or replacement of the wiring as necessary, and requires eventual installation of an improved design wire harness and fuel boost pump as terminating action for the repetitive inspections. AD 2003–09–09 superseded AD 2002–09–13, which required only a one-time inspection and repair or replacement of the wiring as necessary on Model 441 airplanes.

What Has Happened To Necessitate Further AD Action?

We established the compliance time of AD 2003–09–09 to coincide with the initial inspection of AD 2002–09–13. The compliance time is currently written as:

> ''Initially at whichever occurs first, unless already accomplished: Within the next 25 hours time-in-service (TIS) or 60 days after May 31, 2002 (the effective date of AD 2002–09–13): Repetitively thereafter at intervals not to exceed 200 hours TIS.''

The FAA has found that there are a few airplanes that have already accumulated more than 200 hours TIS after the last inspection required by AD–2002–09–13. The way the compliance time is currently written puts these airplane owners/operators in non-compliance with the AD.

This was not FAA's intent. Our intent was to give every owner/operator of the affected airplanes a grace period for accomplishing the AD without jeopardizing the safety of these airplanes.

The option of installing the protective sleeving modification for boost pump lead wires is included in the service information. However, AD 2003–09–09 did not address this option. It is FAA's intent that the AD provide this option for the affected airplanes.

Consequently, FAA sees a need to clarify and correct AD 2003–09–09 to assure that every owner/operator of the affected airplanes is able to comply with the AD action.

Correction of Publication

What Is the Purpose of This Document?

This document clarifies the intent of the compliance time of AD 2003–09–09, adds the option of installing the protective sleeving modification, and adds the amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

Is It Necessary To Seek Public Input?

Since this action only clarifies the intent of the compliance time and provides a compliance option, it has no adverse economic impact and imposes no additional burden on any person than would have been necessary to comply with AD 2003–09–09. Therefore, FAA has determined that prior notice and opportunity for public comment are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by removing airworthiness Directive (AD) 2003–09–09, Amendment 39–13138 (68 FR 23186, May 1, 2003), and by adding a new AD to read as follows:

2003–09–09 R1 Cessna Aircraft Company: Amendment 39–13406; Docket No. 2002–CE–18–AD; Revises AD 2003–09–09; which superseded AD 2002–09–13, Amendment 39–12746.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial numbers
441	0001 through 0362 and 698
F406	0001 through 0089

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect, correct, and prevent chafing and/or arcing fuel boost pump wiring, which could result in arcing within the wing fuel system. This condition could lead to ignition of explosive vapor within the fuel storage system.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) For Model 441 airplanes: Inspect the part number (P/N) 5718106–1 wire harness and fuel boost pump lead wires for chafing or damage.	Initially inspect at whichever occurs later, unless already accomplished: Within the next 200 hours time-in-service (TIS) after the last inspection required by AD 2002–09–13 or within the next 25 hours TIS after June 24, 2003 (the effective date of AD 2003–09–09). Repetitively inspect thereafter at intervals not to exceed 200 hours TIS.	Follow Cessna Conquest Service Bulletin No.: CQB02–1, Revision 2, dated October 7, 2002.
(2) For Model F406 airplanes: Inspect the P/N 5718106–4 wire harness and fuel boost pump lead wires for chafing or damage.	Initially inspect at whichever occurs later, unless already accomplished: within the next 25 hours TIS or 60 days after June 24, 2003 (the effective date of AD 2003–0–09). Repetitively inspect thereafter at intervals not to exceed 200 hours TIS.	Follow Reims/Cessna Caravan Service Bulletin No.: CAB02–8, dated June 3, 2002.
(3) If chafing or damage is found during any inspection required in paragraph (d)(1) or (d)(2) of this AD: (i) For Model 441 airplanes, replace the wire harnesses, repair fuel boost pump lead wires, or replace of fuel boost pump, as applicable (ii) For Model F406 airplanes, repair or replace the wire harnesses or lead wires, or fuel boost pump, as applicable	Before further flight after any inspection required in paragraphs (d)(1) and (d)(2) of this AD in which damage is found. If the improved design or repaired components are not installed per paragraphs (d)(3)(i), (d)(3)(ii), (d)(4)(i), and (d)(4)(ii), as applicable, then you must continue to repetitively inspect per paragraph (d)(1) or (d)(2) of this AD.	For Model 441 airplanes: Follow Cessna Conquest Service Bulletin No.: CQB02–1, Revision 2, dated October 7, 2002. For Model F406 airplanes: Follow Reims/Cessna Caravan Service Bulletin No.: CAB2–8, dated June 3, 2002.
(4) Perform the installations of paragraph (d)(4)(i) or (d)(4)(ii) of this AD for Model 441 airplanes:. (i) Install improved design fuel boost pump (P/N 1C12–17 or FAA-approved equivalent P/N) and improved design wire harness (P/N 5718106–6 or FAA-approved equivalent P/N) (ii) Install the protective sleeving modification for boost pump lead wires that are not damaged or any lead wires that exhibit any chafing of the sleeve or outer jacket (iii) Installing both improved part numbers in each wing tank or protective sleeving modification for the existing fuel boost pump lead wires terminates the repetitive inspection requirements of paragraph (d)(1) of this AD	Within the next 400 hours TIS after June 24, 2003 (the effective date of AD 2003–09–09), unless already accomplished.	Follow Cessna conquest Service Bulletin No.: CQB02–1, Revision 2, dated October 7, 2002.

Actions	Compliance	Procedures
(5) Perform the installation in either (d)(5)(i) or (d)(5)(ii) of this AD for Model F406 airplanes: (i) Install improved design fuel boost pump (P/N 1C12–17 or FAA-approved equivalent P/N) and improved design wire harness (P/N 406 28 01 or FAA-approved equivalent P/N) (ii) Install the protective sleeving modification for boost pump lead wires that are not damaged or any lead wires that exhibit any chafing of the sleeve or outer jacket must be modified by installing a protective sleeving over the boost pump lead wires (iii) Installing both improved part numbers in each wing tank or protective sleeving modification for the existing fuel boost pump lead wires terminates the repetitive inspection requirements of paragraph (d)(2) of this AD	Within the next 400 hours TIS after June 24, 2003 (the effective date AD 2003–09–09), unless already accomplished.	Follow Reims/Cessna Caravan Service Bulletin No.: CAB02–8, dated June 3, 2002.
(6) Removing the following warnings for Model 441 airplanes after compliance with Cessna Conquest Service Bulletin No.: CQB02–1, Revision 2, dated October 7, 2002: (i) ''PRIOR TO THE INITIAL INSPECTION: THE AIRPLANE SHOULD NOT BE OPERATED WITH LESS THAN 300 POUNDS OF FUEL IN EACH WING.'' (ii) ''AFTER THE INITIAL INSPECTION: THE AIRPLANE SHOULD NOT BE OPERATED WHENEVER THE LEFT OR RIGHT LOW FUEL ANNUNCIATOR IS ILLUMINATED	As of June 24, 2003 (the effective date AD 2003–09–09).	Not applicable.
(7) Install only improved design wire harnesses and fuel boost pumps as specified in paragraphs (d)(4) and (d)(5) of this AD.	As of June 24, 2003 (the effective date of AD 2003–09–09).	Not applicable.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

(2) Alternative methods of compliance approved in accordance with AD 2003–09–09 or AD 2002–09–13 are approved as alternative methods of compliance for all inspection requirements of this AD. Regardless, you still must comply with the replacement requirements of this AD.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Robert Adamson, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4145; facsimile: 316–946–4107.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done following Cessna Conquest Service Bulletin No.: CQB02–1, Revision 2, dated October 7, 2002; and Reims Cessna Caravan Service Bulletin No.: CAB02–8, dated June 3, 2002. The Director of the Federal Register previously approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51 on June 24, 2003 (68 FR 23186, May 1, 2003). You may get copies from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *Does this AD action affect any existing AD actions?* This amendment revises AD 2002–09–13, Amendment 39–12746.

(j) *When does this amendment become effective?* This amendment becomes effective on January 22, 2004.

Issued in Kansas City, Missouri, on January 5, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–475 Filed 1–9–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–55–AD; Amendment 39–13429; AD 2004–01–15]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD),

applicable to certain McDonnell Douglas Model 717–200 airplanes, that requires repetitive inspections of the electric motor of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage; and corrective actions, if necessary. This action is necessary to prevent various failures of the electric motor of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure. This action is intended to address the identified unsafe condition.

DATES: Effective February 17, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of February 17, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 98046, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Albert Lam, Aerospace Engineer; Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5346; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model 717–200 airplanes was published in the **Federal Register** on October 1, 2003 (68 FR 56594). That action proposed to require repetitive inspections of the electric motor of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated wiring resistance/voltage; and corrective actions, if necessary.

Comments

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

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

There are approximately 95 airplanes of the affected design in the worldwide fleet. The FAA estimates that 67 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,355, or $65 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–01–15 McDonnell Douglas: Amendment 39–13429. Docket 2003–NM–55–AD.

Applicability: Model 717–200 airplanes, manufacturer's fuselage numbers 5002 through 5200 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent various failures of electric motor of the auxiliary hydraulic pump and associated wiring, which could result in fire at the auxiliary hydraulic pump and consequent damage to the adjacent electrical equipment and/or structure, accomplish the following:

Service Bulletin References

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Alert Service Bulletin 717–29A0005, dated July 31, 2002. Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Initial Inspection and Testing

(b) Prior to the accumulation of 3,000 total flight hours, or within 12 months after the effective date of this AD, whichever occurs later, do an inspection of the electric motor of the auxiliary hydraulic pump for electrical resistance, continuity, mechanical rotation, and associated writing resistance/voltage per the service bulletin.

Condition 1, No Failures: Repetitive Inspections

(c) If no failures are detected during any inspection required by paragraph (b) of this AD, repeat the inspection thereafter at intervals not to exceed 5,000 flight hours.

Condition 2, Failure of Any Pump Motor: Replacement and Repetitive Inspections

(d) If any pump motor fails during any inspection required by paragraph (b) of this AD, before further flight, replace the failed auxiliary hydraulic pump with a serviceable pump, per the service bulletin. Repeat the inspection required by paragraph (b) of this AD at intervals not to exceed 5,000 flight hours.

Condition 3, Failure of Any Wiring: Repair and Repetitive Inspection

(e) If any wiring fails during any inspection required by paragraph (b) of this AD, before further flight, troubleshoot and repair the failed wiring, per the service bulletin. Repeat the inspection at intervals not to exceed 5,000 flight hours.

Alternative Methods of Compliance

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

Incorporation by Reference

(g) The actions shall be done in accordance with Boeing Alert Service Bulletin 717–29A0005, dated July 31, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 98046, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on February 17, 2004.

Issued in Renton, Washington, on December 31, 2003.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–424 Filed 1–9–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16749; Airspace Docket No. 03–ACE–93]

Modification of Class E Airspace; Beloit, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace area at Beloit, KS by changing the name of the airport in the legal description from Beloit Municipal Airport to Moritz Memorial Airport. It also modifies the dimensions of this Class E airspace area. A review of controlled airspace for Moritz Memorial Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures. The area is modified and enlarged to conform to the criteria in 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 February 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 the docket number FAA–2003–16749/ Airspace Docket No. 03–ACE–93, 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 at Beloit, KS. The name of the airport at Beloit, KS has been changed from Beloit Municipal Airport to Moritz Memorial Airport. An examination of controlled airspace for Moritz Memorial Airport reveals it does not meet the criteria for 700 feet 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 each 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 action changes the name of the airport in the legal description, increases the dimensions of the Class E airspace area from a 6-mile radius to a 6.5-mile radius of the airport and brings the legal description of the Beloit, KS 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–2003–16749/Airspace Docket No. 03–ACE–93.'' 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 Beloit, KS

Moritz Memorial Airport, IA
(Lat. 39°28′16″ N., long. 98°07′44″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Moritz Memorial Airport.

* * * * *

Issued in Kansas City, MO, on December 30, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–483 Filed 1–9–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16747; Airspace Docket No. 03–ACE–91]

Modification of Class E Airspace; Iowa Falls, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace area at Iowa Falls, IA. A review of controlled airspace for Iowa Falls Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures. A discrepancy in the airspace extension was also detected. The area is modified and enlarged to conform to the criteria in 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 February 20, 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–2003–16747/Airspace Docket No. 03–ACE–91, 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 at Iowa Falls, IA. An examination of controlled airspace for Iowa Falls Municipal Airport reveals it does not meet the criteria for 700 feet 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 Iowa Falls, IA Class E airspace area by defining it with the 153° bearing from the Iowa Falls nondirectional radio beacon (NDB) versus the current 154° bearing, decreasing its length from 7.4 to 7 miles and describing it in relation to the NDB versus the airport. This amendment brings the legal description of the Iowa Falls, 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–2003–16747/Airspace Docket No. 03–ACE–19.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have 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 IA E5 Iowa Falls, IA

Iowa Falls Municipal Airport, IA
(Lat. 42°28′15″ N., long 93°16′12″ W.)
Iowa Falls NDB
(Lat. 42°28′36″ N., long 93°15′56″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Iowa Falls Municipal Airport and within 2.6 miles each side of the 153° bearing from the Iowa Falls NDB extending from the 6.4-mile radius of the airport to 7 miles southeast of the NDB.

* * * * *

Issued in Kansas City, MO, on December 30, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–484 Filed 1–9–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16762; Airspace Docket No. 03–ACE–99

Modification of Class E Airspace; Marysville, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace area at Marysville, KS. A review of controlled airspace for Marysville Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures. Discrepancies in the Marysville Municipal Airport airport reference point (ARP) and in airspace extension were also detected. The area is modified and enlarged to conform to the criteria in 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 February 26, 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–2003–16762/Airspace Docket No. 03–ACE–99, 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 at Marysville, KS. An examination of controlled airspace for Marysville Municipal Airport revealed 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 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 examination also revealed discrepancies in the Marysville Municipal Airport ARP used in the legal description for the Marysville, KS Class E airspace area and an incorrect definition of the extension of controlled airspace for aircraft executing Instrument Approach Procedures. This amendment expands the Marysville, KS Class E airspace area from a 6-mile radius to a 6.5 mile radius of Marysville Municipal Airport, incorporates the revised Marysville Municipal Airport ARP in the Class E airspace legal description, defines the extension to the airspace relative to the Marysville nondirectional radio beacon (NDB) and brings the legal description of the Marysville, KS 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–2003–16762/Airspace Docket No. 03–ACE–99.'' The postcard will be date/time stamped and returned to the commenters.

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 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 Marysville, KS

Marysville Municipal Airport, IA
(Lat. 39°51′19″ N., long. 96°37′50″ W.)
Marysville NDB
(Lat. 39°51′10″ N., long. 96°38′00″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Marysville Municipal Airport and within 2.6 miles each side of the 146° bearing from the Marysville NDB extending from the 6.6-mile radius of the airport to 7 miles southeast of the NDB.

* * * * *

Issued in Kansas City, MO, on December 30, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–485 Filed 1–9–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16748; Airspace Docket No. 03–ACE–92]

Modification of Class E Airspace; Anthony, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace area at Anthony, KS. A review of controlled airspace for Anthony Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL)

airspace required for diverse departures as specified. The area is modified and enlarged to conform to the criteria in 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 February 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 the docket number FAA–2003–16748/ Airspace Docket No. 03–ACE–92, 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 at Anthony, KS. An examination of controlled airspace for Anthony Municipal Airport reveals it does not meet the criteria for 700 feet 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 brings the legal description of the Anthony, KS 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 its 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–2003–16748/Airspace Docket No. 03–ACE–92.'' 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. There, 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 above the surface of the earth.

* * * * *

ACE KS E5 Anthony, KS

Anthony Municipal Airports, KS
(Lat. 37°09′31″ N., long. 98°04′47″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Anthony Municipal Airport.

* * * * *

Issued in Kansas City, MO, on December 30, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–486 Filed 1–9–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16761; Airspace Docket No. 03–ACE–98]

Modification of Class E Airspace; Fort Scott, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace area at Fort Scott, KS. A review of controlled airspace for Fort Scott Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures. The controlled airspace extension for protecting arriving aircraft was also found to be inaccurately defined. The area is modified to conform to the criteria in 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 February 26, 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–2003–16761/ Airspace Docket No. 03–ACE–98, 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 at Fort Scott, KS. An examination of controlled airspace for Fort Scott Municipal Airport revealed it does not meet the criteria for 700 feet 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. The examination also revealed that the extension of controlled airspace for aircraft executing Instrument Approach Procedures to Fort Scott Municipal Airport is incorrectly defined. This amendment expands the Fort Scott, KS Class E airspace area from a 6-mile radius to a 6.4 mile radius of Fort Scott Municipal Airport, defines the extension to the airspace area relative to the Fort Scott nondirectional radio beacon (NDB), defines the centerline of the extension by the 350° bearing from the NDB versus the current 349° bearing, and brings the legal description of the Fort Scott, KS 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 **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–2003–16761/Airspace Docket No. 03–ACE–98.'' 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 Fort Scott, KS

Fort Scott Municipal Airport, KS
(Lat. 37°47′54″ N., long. 94°46′10″ W.)
Fort Scott NDB
(Lat. 37°47′40″ N., long. 94°45′55″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Fort Scott Municipal Airport and within 2.6 miles each side of the 350° bearing from Fort Scott NDB extending from the 6.4-mile radius of the airport to 7 miles north of the NDB.

* * * * *

Issued in Kansas City, MO, on December 30, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–487 Filed 1–9–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16756; Airspace Docket No. 03–ACE–94]

Modification of Class E Airspace; Benton, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace area at Benton, KS. A review of controlled airspace for Benton Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures. The area is modified and enlarged to conform to the criteria in 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 February 24, 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–2003–16756/ Airspace Docket No. 03–ACE–94, 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 at Benton, KS. An examination of controlled airspace for Benton Airport reveals it does not meet the criteria for 700 feet 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 expands the airspace area from a 6-mile radius to a 6.3 mile radius of Benton Airport and brings the legal description of the Benton, KS 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–2003–16756/Airspace Docket No. 03–ACE–94'' 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 Benton, KS

Benton Airport, KS

(Lat. 37°46′40″ N., long. 97°06′49″ W

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Benton Airport.

* * * * *

Issued in Kansas City, MO, on December 30, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–488 Filed 1–9–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16746; Airspace Docket No. 03–ACE–90]

Modification of Class E Airspace; Independence, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace area at Independence, IA. A review of controlled airspace for Independence Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures. The area is modified and enlarged to conform to the criteria in 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 February 20, 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–2003–16746/ Airspace Docket No. 03–ACE–90, 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 Independence, IA. An examination of controlled airspace for Independence Municipal Airport reveals it does not meet the criteria for 700 feet 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 brings the legal description of the Independence, 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–2003–16746/Airspace Docket No. 03–ACE–90.'' 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 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 IA E5 Independence, IA

Independence Municipal Airport, IA
(Lat. 42°27′13″ N., long. 91°56′51″ W.)
Wapsie NDB
(Lat. 42°27′08″ N., long. 91°57′04″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Independence Municipal Airport and within 2.6 miles each side of the 008° bearing from the Wapsie NDB extending from the 6.4-mile radius to 7.9 miles north of the airport.

* * * * *

Dated: Issued in Kansas City, MO, on December 30, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–489 Filed 1–9–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16410; Airspace Docket No. 03–ACE–79]

Establishment of Class E2 Airspace; and Modification of Class E5 Airspace; Hutchinson, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a Class E surface area at Hutchinson, KS for those times when the air traffic control tower (ATCT) is closed. It also modifies the Class E airspace area extending upward from 700 feet above the surface at Hutchinson, KS by correcting the identified type of one navigational aid and the location of another.

The effect of this rule is to provide appropriate controlled Class E airspace for aircraft executing instrument approach procedures to Hutchinson Municipal Airport and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

EFFECTIVE DATE: 0901 UTC, February 19, 2004.

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 Thursday, November 20, 2003, the FAA proposed to amend 14 CFR part 71 to establish a Class E surface area and to modify other Class E airspace at Hutchinson, KS (68 FR 65417). The proposal was to establish a Class E surface area at Hutchinson, KS, for those times when the air traffic control tower (ATCT) is closed. It was also to modify the Class E5 airspace and its legal description by revising the identified type of one navigational aid and the location of another navigational aid serving Hutchinson Municipal Airport and used in the Class E airspace legal description. 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 E airspace designated as a surface area for an airport at hutchinson, KS. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures. This airspace will be in effect during those times when the ATCT is closed. Weather observations will be provided by an Automated Surface Observing System (ASOS) and communications will be directed with Wichita ATCT.

This rule also revises the Class E airspace area extending upward from 700 feet above the surface at Hutchinson, KS. An examination of this Class E airspace area for Hutchinson, KS revealed a discrepancy in the identified type of one navigational aid and a discrepancy in the location of another navigational aid serving Hutchinson Municipal Airport and used in the Class E airspace legal description. The Hutchinson Very High Frequency Omni-Directional Range (VOR)/Distance Measuring Equipment (DME) is misidentified as a VHF Omni-Directional Range/Tactical Air Navigation (VORTAC). The location of the SALTT Outer Compass Locator (LOM) is erroneous. This action corrects these discrepancies. The areas will be depicted on appropriate aeronautical charts.

Class E airspace areas designated as surface areas are published in Paragraph

6002 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

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 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).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of 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 6002 Class E airspace designated as surface areas.

* * * * *

ACE KS E2 Hutchinson, KS

Hutchinson Municipal Airport, KS
(Lat. 38°03′56″ N., long. 97°51′38″ W.)

Within a 4.3-mile radius of Hutchinson Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time 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.

* * * * *

ACE KS E5 Hutchinson, KS

Hutchinson Municipal Airport, KS
(Lat. 38°03′56″ N., long. 97°51′38″ W.)
Hutchinson VOR/DME
(Lat. 37°59′49″ N., long. 97°56′03″ W.)
SALTT LOM
(Lat. 38°07′25″ N., long. 97°55′37″ W.)
Hutchinson ILS Localizer
(Lat. 38°03′31″ N., long. 97°51′12″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Hutchinson Municipal Airport, and within 4 miles each side of the Hutchinson ILS localizer northwest course extending to 16 miles northwest of the SALTT LOM, and within 4 miles each side of the ILS localizer back course extending from the 6.8-mile radius to 7.4 miles southeast of the airport, and within 4 miles each side of the Hutchinson VOR/DME 042° radial extending from the 6.8-mile radius to 7.4 miles northeast of the airport, and within 4 miles each side of the Hutchinson VOR/DME 222° radial extending from the 6.8-mile radius to 11.2 miles southwest of the airport.

* * * * *

Issued in Kansas City, MO, on December 30, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–490 Filed 1–9–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16760; Airspace Docket No. 03–ACE–97]

Modification of Class E Airspace; Colby, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace area at Colby, KS. A review of controlled airspace for Shaltz Field indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures. The dimensions of controlled airspace for protecting arriving aircraft were also found to be inaccurate. The area is modified 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 February 25, 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–2003–16760/ Airspace Docket No. 03–ACE–97, 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 Docket 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 Colby, KS. An examination of controlled airspace for Shaltz Field reveals it does not meet the criteria for 700 feet 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. The examination also revealed that appropriate controlled airspace for aircraft executing Instrument Approach Procedures to Shaltz Field is adequate without the extension to the Colby, KS Class E airspace area. This amendment expands the Colby, KS Class E airspace area from a 6-mile radius to a 6.5-mile radius of Shaltz Field, eliminates the extension to the airspace area, deletes the Colby nondirectional radio beacon (NDB) from the legal description and

brings the legal description of the Colby, KS 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–2003–16760/Airspace Docket No. 03–ACE–97.'' 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 Colby, KS

Colby, Shaltz Field, KS
(Lat. 39°25′39″ N., long. 101°02′48″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Shaltz Field.

* * * * *

Issued in Kansas City, MO, on December 30, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–492 Filed 1–9–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16759; Airspace Docket No. 03–ACE–96]

Modification of Class E Airspace; Clay Center, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace area at Clay Center, KS. A review of controlled airspace for Clay Center Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures. The area is modified and enlarged to conform to the criteria in 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 February 25, 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–2003–16759/Airspace Docket No. 03–ACE–96, 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 at Clay Center, KS. An examination of controlled airspace for Clay Center Municipal Airport reveals it does not meet the criteria for 700 feet 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 expands the airspace area from a 6-mile radius to a 6.4 mile radius of Clay Center Municipal Airport and brings the legal description of the Clay Center, KS 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 FA 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–2003–16759/Airspace Docket No. 03–ACE–96.'' 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 Clay Center, KS

Clay Center Municipal Airport, KS
(Lat. 39° 23′14″ N., long. 97°09′26″ W.)
Clay Center NDB
(Lat. 39° 22′51″ N., long. 97°09′40″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Clay Center Municipal Airport and within 2.6 miles each side of the 167° bearing from the Clay Center NDB extending from the 6.4-mile radius to 7 miles southeast of the airport and within 2 miles each side of the 001° bearing from the Clay Center Municipal Airport extending from the 6.4-mile radius to 10 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on December 30, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–493 Filed 1–9–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16757; Airspace Docket No. 03–ACE–95]

Modification of Class E Airspace; Chanute, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace area at Chanute, KS. A review of controlled airspace for Chanute

Martin Johnson Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures. The area is modified and enlarged to conform to the criteria in 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 February 24, 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–2003–16757/ Airspace Docket No. 03–ACE–95, at the beginning of your comments. Your 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 on 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 at Chanute, KS. An examination of controlled airspace for Chanute Martin Johnson Airport reveals it does not meet the criteria for 700 feet 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 expands the airspace area from a 6-mile radius to a 6.5 mile radius of Chanute Martin Johnson Airport and brings the legal description of the Chanute, KS Class E airspace area into compliance with FAA Order 7200.2E. 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 lised 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–2003–16757/Airspace Docket No. 03–ACE–95.'' 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. [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 Chanute, KS

Chanute Martin Johnson Airport, KS
(Lat. 37°40′08″ N., long. 95°29′06″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Chanute Martin Johnson Airport.

* * * * *

Issued in Kansas City, MO, on December 30, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–494 Filed 1–9–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30401; Amdt. No. 3087]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 12, 2004. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 12, 2004.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The Flight Inspection Area Office which originated the SIAP; or
4. The Office of **Federal Register**, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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. 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. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on January 2, 2004.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is

amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97— STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

*** * * Effective February 19, 2004**

Palm Springs, CA, Bermuda Dunes, RNAV (GPS) RWY 10, Orig
Baker City, OR, Baker City Muni, VOR/DME RWY 13, Amdt 11
Baker City, OR, Baker City Muni, RNAV (GPS) RWY 13, Orig

[FR Doc. 04–389 Filed 1–9–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 2003D–0545]

Guidance for Industry: Questions and Answers Regarding the Interim Final Rule on Registration of Food Facilities; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability of guidance.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised guidance entitled ''Questions and Answers Regarding the Interim Final Rule on Registration of Food Facilities.'' The guidance responds to various questions raised about section 305 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) and the agency's implementing regulation, which require facilities that manufacture/process, pack, or hold food for consumption in the United States to register with FDA by December 12, 2003.

DATES: Submit written or electronic comments on the agency guidance at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Registration Help Desk, 1–800–216–7331 or 301–575–0156, or FAX: 301–210–0247. (See **SUPPLEMENTARY INFORMATION**) for electronic access to the guidance document.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Melissa S. Scales, Office of Regulations and Policy (HFS–24), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1720.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 10, 2003 (68 FR 58894), FDA issued an interim final rule to implement section 305 of the Bioterrorism Act. The registration regulation requires facilities that manufacture/process, pack, or hold food (including animal feed) for consumption in the United States to register with FDA by December 12, 2003.

On December 4, 2003, FDA issued the first edition of a guidance entitled ''Questions and Answers Regarding the Interim Final Rule on Registration of Food Facilities.'' This guidance, (''Questions and Answers Regarding the Interim Final Rule on Registration of Food Facilities (Edition 2)'') is a revision of the December 4, 2003, document and responds to additional questions about the interim final rule on registration. It is intended to help the industry better understand and comply with the regulation in 21 CFR part 1, subpart H.

FDA is issuing the guidance entitled ''Questions and Answers Regarding the Interim Final Rule on Registration of Food Facilities (Edition 2)'' as a Level 1 guidance. Consistent with FDA's good guidance practices (GGPs) regulation § 10.115(g)(2) (21 CFR 10.115), the agency will accept comments, but it is implementing the guidance document immediately, in accordance with § 10.115(g)(2), because the agency has determined that prior public participation is not feasible or appropriate. As noted, the Bioterrorism Act requires covered facilities to be registered with FDA by December 12, 2003. Clarifying the provisions of the interim final rule will facilitate prompt registration by covered facilities and thus, complete implementation of the interim final rule.

FDA continues to receive a large number of questions regarding the registration interim final rule, and is responding to these inquires under § 10.115 as promptly as possible, using a question-and-answer format. The agency believes that it is reasonable to maintain all responses to questions concerning food facilities registration in a single document that is periodically updated as the agency receives and responds to additional questions. The following indicators will be employed to help users of the guidance identify revisions: (1) The guidance will be identified as a revision of a previously issued document, (2) the revision date of the guidance will appear on its cover, (3) the edition number of the guidance will be included in its title, and (4) new questions and answers will be identified as such in the body of the guidance.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.cfsan.fda.gov/guidance.html.*

Dated: January 7, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–598 Filed 1–8–04; 10:33 am]

BILLING CODE 4160–01–S

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Revisions of Regulations Concerning Applicability of Rules Governing Motions for Summary Judgment or Dismissal to Motions for Default Judgment

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The Board is revising its Rules and Regulations (Motions), (Duties and Powers of Administrative Law Judges), and (Filing and Service of Papers), to clarify, consistent with longstanding Board policy, that the provisions of those sections applicable

to motions for summary judgment or dismissal also generally apply to motions for default judgment.

DATES: Effective January 12, 2004.

FOR FURTHER INFORMATION CONTACT: Lester A. Heltzer, Executive Secretary, 202–273–1067.

SUPPLEMENTARY INFORMATION: Sections 102.24, 102.35, and 102.114 of the Board's Rules and Regulations contain provisions governing the filing of motions for summary judgment or dismissal with the Board prior to the hearing, authorizing administrative law judges to rule on motions for summary judgment or dismissal, and prohibiting the filing of motions for summary judgment or dismissal by facsimile transmission. Historically, the Board has applied those provisions to motions for judgment based on the respondent's failure to file an answer to the complaint or compliance specification, referring to such motions as motions for ''summary judgment.'' However, the term ''default judgment'' more accurately describes a judgment issued for failure to file an answer,[1] and the Board has consistently used that term in its more recent decisions and orders.[2] Accordingly, the Board is revising the above sections of its rules to incorporate that term and thereby clarify that those sections apply to motions for default judgment.

The revisions to the Board's rules are purely changes of nomenclature and do not effect any substantive or procedural change in the way that the Board processes or resolves motions for summary judgment based on the respondent's failure to file an answer to the complaint. The one exception is that motions for default judgment will not be subject to the requirement in Section 102.24(b) that motions for summary judgment or dismissal be filed no later than 28 days before the hearing. The Board's experience is that this time limitation is unnecessary in situations where the respondent has failed to file an answer to the complaint.

Administrative Procedure Act

Because the change involves rules of agency organization, procedure or practice, no notice of proposed rulemaking is required under Section 553 of the Administrative Procedure Act (5 U.S.C. 553).

[1] *See NLRB* v. *Aaron Convalescent Home,* 479 F.2d 736, 739 (6th Cir. 193).

[2] *See, e.g.,* Rosedale Fabricators, LLC, 340 NLRB No. 67 (2003); Hawk One Security, 339 NLRB No. 65 (2003); and Malik Roofing Corp., 338 NLRB No. 141 (2003).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for procedural rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) pertaining to regulatory flexibility analysis do not apply to these rules. However, even if the Regulatory Flexibility Act were to apply, the NLRB certifies that these changes will not have a significant economic impact on small business entities since the changes are purely changes of nomenclature and merely clarify the rules to conform to the actual practice under the existing rules.

Small Business Regulatory Enforcement Fairness Act

Because the rule changes relate to agency procedure and practice and merely clarify the rules to conform to existing practices, the NLRB has determined that the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801) do not apply.

Paperwork Reduction Act

This part does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

■ For the reasons set forth above, the NLRB amends 29 CFR Part 102 as follows:

PART 102—RULES AND REGULATIONS

■ 1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended {(29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

■ 2. Section 102.24 is revised to read as follows:

§ 102.24 Motions; where to file; contents; service on other parties; promptness in filing and response; default judgment procedures; summary judgment procedures.

(a) All motions under §§ 102.22 and 102.29 made prior to the hearing shall be filed in writing with the Regional Director issuing the complaint. All motions for default judgment, summary judgment, or dismissal made prior to the hearing shall be filed in writing with the Board pursuant to the provisions of § 102.50. All other motions made prior to the hearing, including motions to reschedule the hearing under circumstances other than those set forth in § 102.16(a), shall be filed in writing with the chief administrative law judge in Washington, DC, with the associate chief judge in San Francisco, California, with the associate chief judge in New York, New York, or with the associate chief judge in Atlanta, Georgia, as the case may be. All motions made at the hearing shall be made in writing to the administrative law judge or stated orally on the record. All motions filed subsequent to the hearing, but before the transfer of the case to the Board pursuant to § 102.45, shall be filed with the administrative law judge, care of the chief administrative law judge in Washington, DC, the deputy chief judge in San Francisco, California, the associate chief judge in New York, New York, or the associate chief judge in Atlanta, Georgia, as the case may be. Motions shall briefly state the order or relief applied for and the grounds therefor. All motions filed with a Regional Director or an administrative law judge as set forth in this paragraph shall be filed therewith by transmitting three copies thereof together with an affidavit of service on the parties. All motions filed with the Board, including motions for default judgment, summary judgment, or dismissal, shall be filed with the Executive Secretary of the Board in Washington, DC, by transmitting eight copies thereof together with an affidavit of service on the parties. Unless otherwise provided in 29 CFR part 102, motions and responses thereto shall be filed promptly and within such time as not to delay the proceeding.

(b) All motions for summary judgment or dismissal shall be filed with the Board no later than 28 days prior to the scheduled hearing. Where no hearing is scheduled, or where the hearing is scheduled less than 28 days after the date for filing an answer to the complaint or compliance specification, whichever is applicable, the motion shall be filed promptly. Upon receipt of a motion for default judgment, summary judgment, or dismissal, the Board may deny the motion or issue a notice to show cause why the motion should not be granted. If a notice to show cause is issued, the hearing, if scheduled, will normally be postponed indefinitely. If a party desires to file an opposition to the motion prior to issuance of the notice to show cause in order to prevent postponement of the hearing, it may do so; Provided however, That any such

opposition shall be filed no later than 21 days prior to the hearing. If a notice to show cause is issued, an opposing party may file a response thereto notwithstanding any opposition it may have filed prior to issuance of the notice. The time for filing the response shall be fixed in the notice to show cause. It is not required that either the opposition or the response be supported by affidavits or other documentary evidence showing that there is a genuine issue for hearing. The Board in its discretion may deny the motion where the motion itself fails to establish the absence of a genuine issue, or where the opposing party's pleadings, opposition and/or response indicate on their face that a genuine issue may exist. If the opposing party files no opposition or response, the Board may treat the motion as conceded, and default judgment, summary judgment, or dismissal, if appropriate, shall be entered.

■ 3. In § 102.35 paragraph (a) introductory text is republished and (a)(8) is revised to read as follows:

§ 102.35 Duties and powers of administrative law judges; stipulations of cases to administrative law judges or to the Board; assignment and powers of settlement judges.

(a) It shall be the duty of the administrative law judge to inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice affecting commerce as set forth in the complaint or amended complaint. The administrative law judge shall have authority, with respect to cases assigned to him, between the time he is designated and transfer of the case to the Board, subject to the Rules and Regulations of the Board and within its powers:

* * * * *

(8) To dispose of procedural requests, motions, or similar matters, including motions referred to the administrative law judge by the Regional Director and motions for default judgment, summary judgment, or to amend pleadings; also to dismiss complaints or portions thereof; to order hearings reopened; and upon motion order proceedings consolidated or severed prior to issuance of administrative law judge decisions;

* * * * *

■ 4. Section 102.114(g) is revised to read as follows:

§ 102.114 Filing and service of papers by parties; form of papers; manner and proof of filing or service; electronic filings.

* * * * *

(g) Facsimile transmissions of the following documents will not be accepted for filing: Showing of Interest in Support of Representation Petitions, including Decertification Petitions; Answers to Complaints; Exceptions or Cross-Exceptions; Briefs; Requests for Review of Regional Director Decisions; Administrative Appeals from Dismissal of Petitions or Unfair Labor Practice Charges; Objections to Settlements; EAJA Applications; Motions for Default Judgment; Motions for Summary Judgment; Motions to Dismiss; Motions for Reconsideration; Motions to Clarify; Motions to Reopen the Record; Motions to Intervene; Motions to Transfer, Consolidate or Sever; or Petitions for Advisory Opinions. Facsimile transmissions in contravention of this rule will not be filed.

* * * * *

Dated: January 6, 2004.

By direction of the Board.

Lester A. Heltzer,

Executive Secretary.

[FR Doc. 04–504 Filed 1–9–04; 8:45 am]

BILLING CODE 7540–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–200404; FRL–7601–2]

Approval and Promulgation of Air Quality Implementation Plans; Kentucky Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is updating the materials submitted by Kentucky that are incorporated by reference (IBR) into the Kentucky State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the state agency and approved by EPA. In this document, EPA is updating the material being IBRed, modifying the IBR table format, and correcting erroneous dates. EPA is also revising the ''EPA-Approved Kentucky Non-regulatory Provisions'' table by removing provisions which are no longer in effect and provisions which were later revised and are listed elsewhere in the table. This table now lists the most current, approved non-regulatory provision rather than tracking the approval history of individual provisions. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), Office of Air and Radiation Docket and Information Center, and the Regional Office.

EFFECTIVE DATE: This action is effective January 12, 2004.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303; Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460, and Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni at the above Region 4 address, by phone at (404) 562–9031, or via e-mail at: *notarianni.michele@epa.gov.*

SUPPLEMENTARY INFORMATION: The SIP is a living document which the State can revise as necessary to address the unique air pollution problems in the State. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997, (62 FR 27968) EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and OFR. The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997, **Federal Register** document. On May 27, 1999, EPA published a document in the **Federal Register** (64 FR 28750) with the new IBR procedure for Kentucky. In this document, EPA is updating the material being IBRed, modifying the IBR table format, and correcting erroneous dates. EPA is also revising the ''EPA-Approved Kentucky Non-regulatory Provisions'' table by removing provisions which are no longer in effect and provisions which were later revised and are listed elsewhere in the table. This table now lists the most current, approved non-regulatory provision rather than tracking the approval history of individual provisions.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed

effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

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 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.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 12, 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: December 4, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

■ 2. Section 52.920 paragraphs (b), (c), and (d) are revised to read as follows:

§ 52.920 Identification of plan.

* * * * *

(b) Incorporation by reference.

(1) Material listed in paragraph (c) of this section with an EPA approval date prior to October 1, 2003, for the Commonwealth of Kentucky (Table 1) and November 23, 2001, for Jefferson County, Kentucky (Table 2) was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraph (c), Table 1, and paragraph (d) of this section with EPA approval dates after October 1, 2003, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the State and Local Implementation Plans listed in paragraph (b)(1) of this section.

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street, SW., Atlanta, GA 30303; the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.; or at the EPA, Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460.

(c) EPA-approved regulations.

TABLE 1.—EPA-APPROVED KENTUCKY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Chapter 50 Division for Air Quality; General Administrative Procedures				
401 KAR 50:005	General application	06/06/79	07/12/82, 47 FR 30059.	
401 KAR 50:010	Definitions and abbreviations of terms used in Title 401, Chapters 50, 51, 53, 55, 57, 59, 61, 63, and 65.	06/06/96	01/21/97, 62 FR 2915.	
401 KAR 50:012	General application	11/12/97	07/24/98, 63 FR 39739.	
401 KAR 50:015	Documents incorporated by reference	04/14/88	02/07/90, 55 FR 4169.	
401 KAR 50:020	Air quality control regions	06/06/79	07/12/82, 47 FR 30059.	
401 KAR 50:025	Classification of counties	06/01/83	04/02/96, 61 FR 14489.	
401 KAR 50:030	Registration of sources	06/06/79	07/12/82, 47 FR 30059.	
401 KAR 50:032	Prohibitory rule for hot mix asphalt plants	04/13/98	03/10/00, 65 FR 12948.	
401 KAR 50:035	Permits	09/28/94	09/27/95, 60 FR 49775.	
401 KAR 50:040	Air quality models	06/06/79	07/12/82, 47 FR 30059.	
401 KAR 50:042	Good engineering practice stack height	06/10/86	09/04/87,52 FR 33592.	
401 KAR 50:045	Performance tests	06/06/79	07/12/82, 47 FR 30059.	
401 KAR 50:047	Test procedures for capture efficiency	06/24/92	06/23/94, 59 FR 32343.	
401 KAR 50:050	Monitoring	06/06/79	07/12/82, 47 FR 30059.	
401 KAR 50:055	General compliance requirements	09/22/82	05/04/89, 54 FR 19169.	
401 KAR 50:060	Enforcement	06/06/79	07/12/82, 47 FR 30059.	
401 KAR 50:065	Conformity of general federal actions	10/11/95	07/27/98, 63 FR 40044.	
Chapter 51 Attainment and Maintenance of the National Ambient Air Quality Standards				
401 KAR 51:001	Definitions for 401 KAR Chapter 51	12/18/02	06/24/03, 68 FR 37418.	
401 KAR 51:005	Purpose and general provisions	06/06/79	07/12/82, 47 FR 30059.	
401 KAR 51:010	Attainment status designations	11/12/97	07/24/98, 63 FR 39739.	
401 KAR 51:017	Prevention of significant deterioration of air quality	03/12/97	07/24/98, 63 FR 39741.	
401 KAR 51:052	Review of new sources in or impacting upon nonattainment areas.	02/08/93	06/23/94, 59 FR 32343.	
401 KAR 51:160	NO_X requirements for large utility and industrial boilers	12/18/02	06/24/03, 68 FR 37418.	
401 KAR 51:170	NO_X requirements for cement kilns	08/15/01	04/11/02, 67 FR 17624.	
401 KAR 51:180	NO_X credits for early reduction and emergency	08/15/01	04/11/02, 67 FR 17624.	
401 KAR 51:190	Banking and trading NO_X allowances	08/15/01	04/11/02, 67 FR 17624.	
401 KAR 51:195	NO_X opt-in provisions	08/15/01	04/11/02, 67 FR 17624.	
Chapter 53 Ambient Air Quality				
401 KAR 53:005	General provisions	04/14/88	02/07/90, 55 FR 4169.	
401 KAR 53:010	Ambient air quality standards	04/14/88	02/07/90 55 FR 4169.	
Chapter 55 Emergency Episodes				
401 KAR 55:005	Significant harm criteria	04/14/88	02/07/90, 55 FR 4169.	
401 KAR 55:010	Episode criteria	04/14/88	02/07/90, 55 FR 4169.	
401 KAR 55:015	Episode declaration	06/06/79	01/25/80, 45 FR 6092.	
401 KAR 55:020	Abatement strategies	06/06/79	01/25/80, 45 FR 6092.	
Chapter 59 New Source Standards				
401 KAR 59:001	Definitions and abbreviations of terms used in Title 401, Chapter 59.	06/06/96	01/21/97, 62 FR 2915.	
401 KAR 59:005	General provisions	12/01/82	12/04/86, 51 FR 43742.	
401 KAR 59:010	New process operations	04/14/88	02/07/90, 55 FR 4169.	
401 KAR 59:015	New indirect heat exchangers	01/07/81	03/22/83, 48 FR 11945.	
401 KAR 59:020	New incinerators	06/06/79	07/12/82, 47 FR 30059.	
401 KAR 59:046	Selected new petroleum refining processes and equipment	06/29/79	08/07/81, 46 FR 40188.	
401 KAR 59:050	New storage vessels for petroleum liquids	02/04/81	03/30/83, 48 FR 13168.	
401 KAR 59:080	New kraft (sulfate) pulp mills	06/06/79	01/25/80, 45 FR 6092.	
401 KAR 59:085	New sulfite pulp mills	06/06/79	07/12/82, 47 FR 30059.	
401 KAR 59:090	New ethylene producing plants	06/06/79	07/12/82, 47 FR 30059.	
401 KAR 59:095	New oil-effluent water separators	06/29/79	08/07/81, 46 FR 40188.	
401 KAR 59:101	New bulk gasoline plants	09/28/94	06/28/96, 61 FR 33674.	
401 KAR 59:105	New process gas steams	04/07/82	03/22/83, 48 FR 11945.	
401 KAR 59:174	Stage II controls at gasoline dispensing facilities	01/12/98	12/08/98, 63 FR 67586	
401 KAR 59:175	New service stations	02/08/93	06/23/94, 59 FR 32343.	
401 KAR 59:185	New solvent metal cleaning equipment	06/24/92	06/23/94, 59 FR 32343.	
401 KAR 59:190	New insulation of magnet wire operations	06/24/92	06/23/94, 59 FR 32343.	
401 KAR 59:210	New fabric, vinyl and paper surface coating operations	06/24/92	06/23/94, 59 FR 32343.	
401 KAR 59:212	New graphic arts facilities using rotogravure and flexography	06/24/92	06/23/94, 59 FR 32343.	

TABLE 1.—EPA-APPROVED KENTUCKY REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
401 KAR 59:214	New factory surface coating operations of flat wood paneling	06/24/92	06/23/94, 59 FR 32343.	
401 KAR 59:225	New miscellaneous metal parts and products surface coating operation.	06/24/92	06/23/94, 59 FR 32343.	
401 KAR 59:230	New synthesized pharmaceutical product manufacturing operations.	06/24/92	06/23/94, 59 FR 32343.	
401 KAR 59:235	New pneumatic rubber tire manufacturing plants	02/04/81	03/30/83, 48 FR 13168.	
401 KAR 59:240	New perchloroethylene dry cleaning systems	06/24/92	06/23/94, 59 FR 32343.	
401 KAR 59:315	Specific new sources	06/24/92	06/23/94, 59 FR 32343.	
Chapter 61 Existing Source Standards				
401 KAR 61:001	Definitions and abbreviations of terms used in 401 KAR Chapter 61.	06/06/96	01/21/97, 62 FR 2915.	
401 KAR 61:005	General provisions	12/01/82	05/04/89, 54 FR 19169.	
401 KAR 61:010	Existing incinerators	06/06/79	05/04/89, 54 FR 19169.	
401 KAR 61:015	Existing indirect heat exchangers	06/01/83	04/02/96, 61 FR 14489.	
401 KAR 61:020	Existing process operations	04/14/88	02/07/90, 55 FR 4169.	
401 KAR 61:025	Existing kraft (sulfate) pulp mills	06/06/79	05/26/82, 47 FR 22955	
401 KAR 61:030	Existing sulfuric acid plants	06/06/79	03/22/83, 48 FR 11945.	
401 KAR 61:035	Existing process gas streams	04/07/82	03/22/83, 48 FR 11945.	
401 KAR 61:040	Existing ethylene producing plants	06/06/79	01/25/80, 45 FR 6092.	
401 KAR 61:045	Existing oil-effluent water separators	06/29/79	08/07/81, 46 FR 40188.	
401 KAR 61:050	Existing storage vessels for petroleum liquids	06/24/92	06/23/94, 59 FR 32345.	
401 KAR 61:055	Existing loading facilities at bulk gasoline terminals	08/24/82	03/30/83, 48 FR 13168.	
401 KAR 61:056	Existing bulk gasoline plants	09/28/94	06/28/96, 61 FR 33674.	
401 KAR 61:060	Existing sources using organic solvents	06/29/79	01/25/80, 45 FR 6092.	
401 KAR 61:065	Existing nitric acid plants	06/06/79	07/12/82, 47 FR 30059.	
401 KAR 61:070	Existing ferroalloy production facilities	06/06/79	05/03/84, 49 FR 18833.	
401 KAR 61:075	Steel plants and foundries using existing electric arc furnaces	12/01/82	05/04/89, 54 FR 19169.	
401 KAR 61:080	Steel plants using existing basic oxygen process furnaces	04/01/84	05/04/89, 54 FR 19169.	
401 KAR 61:085	Existing service stations	02/08/93	06/23/94, 59 FR 32343.	
401 KAR 61:090	Existing automobile and light-duty truck surface coating operations.	06/24/92	06/23/94, 59 FR 32343.	
401 KAR 61:095	Existing solvent metal cleaning equipment	06/24/92	06/23/94, 59 FR 32343.	
401 KAR 61:100	Existing insulation of magnet wire operations	06/24/92	06/23/94, 59 FR 32343.	
401 KAR 61:105	Existing metal furniture surface coating operations	06/24/92	06/23/94, 59 FR 32343.	
401 KAR 61:110	Existing large appliance surface coating operations	06/24/92	06/23/94, 59 FR 32343.	
401 KAR 61:120	Existing fabric, vinyl and paper surface coating operations	06/24/92	06/23/94, 59 FR 32343.	
401 KAR 61:122	Existing graphic arts facilities using rotogravure and flexography.	06/24/92	06/23/94, 59 FR 32343.	
401 KAR 61:124	Existing factory surface coating operations of flat wood paneling.	06/24/92	06/23/94 59 FR 32343.	
401 KAR 61:125	Existing can surface coating operations	06/24/92	06/23/94, 59 FR 32343.	
401 KAR 61:130	Existing coil surface coating operations	06/24/92	06/23/94, 59 FR 32343.	
401 KAR 61:132	Existing miscellaneous metal parts and products surface coating operations.	06/24/92	06/23/94, 59 FR 32343.	
401 KAR 61:135	Selected existing petroleum refining processes and equipment	06/29/79	01/25/80, 45 FR 6092.	
401 KAR 61:137	Leaks from existing petroleum refinery equipment	06/24/92	06/23/94, 59 FR 32343.	
401 KAR 61:140	Existing by-product coke manufacturing plants	09/04/86	05/04/89, 54 FR 19169.	
401 KAR 61:145	Existing petroleum refineries	01/07/81	03/22/83, 48 FR 11945.	
401 KAR 61:150	Existing synthesized pharmaceutical product manufacturing operations.	06/24/92	06/23/94, 59 FR 32343.	
401 KAR 61:155	Existing pneumatic rubber tire manufacturing plants	06/24/92	06/23/94, 59 FR 32343.	
401 KAR 61:160	Existing perchloroethylene dry cleaning systems	06/24/92	06/23/94, 59 FR 32343.	
401 KAR 61:165	Existing primary aluminum reduction plants	06/04/85	12/02/86, 51 FR 43395.	
401 KAR 61:170	Existing blast furnace casthouses	04/14/88	02/07/90, 55 FR 4169.	
401 KAR 61:175	Leaks from existing synthetic organic chemical and polymer manufacturing equipment.	06/24/92	06/23/94, 59 FR 32343.	
Chapter 63 General Standards of Performance				
401 KAR 63:001	Definitions and abbreviations of terms used in 401 KAR Chapter 63.	06/06/96	01/21/97, 62 FR 2915.	
401 KAR 63:005	Open burning	01/12/98	12/08/98, 63 FR 67586.	
401 KAR 63:010	Fugitive emissions	06/06/79	07/12/82, 47 FR 30059.	
401 KAR 63:015	Flares	06/06/79	12/24/80, 45 FR 84999.	
401 KAR 63:020	Potentially hazardous matter or toxic substances	06/06/79	12/24/80, 45 FR 84999.	
401 KAR 63:025	Asphalt paving operations	06/24/92	06/23/94, 59 FR 32343.	
401 KAR 63:031	Leaks from gasoline tank trunks	02/08/93	06/23/94, 59 FR 32343.	

TABLE 1.—EPA-APPROVED KENTUCKY REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Chapter 65 Mobile Source-Related Emissions				
401 KAR 65:001	Definitions and abbreviations of terms used in 401 KAR Chapter 65.	08/15/01	09/24/02, 67 FR 59785.	
401 KAR 65:005	Liquefied petroleum gas carburetion systems	06/06/79	01/25/80, 45 FR 6092.	
401 KAR 65:010	Vehicle emission control programs	08/15/01	09/24/02, 67 FR 59785.	

(d) EPA-approved source-specific requirements.

EPA-APPROVED KENTUCKY SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanations
Bubble action at Kentucky Utilities Green River Plant.	N/A	12/01/80	06/15/81, 46 FR 31260.	
Bubble action at Corning Glassworks	N/A	05/18/81	10/29/81, 46 FR 53408.	
Bubble action at National Distillers Company's, Old Crow Plant.	N/A	12/24/80	09/14/81, 46 FR 45610.	
Bubble action at General Electric in Louisville	N/A	08/07/81	01/12/82, 47 FR 1291.	
Bubble action at Borden Chemical CO in Jefferson CO..	N/A	03/05/82	05/11/82, 47 FR 20125.	
Variance for seven perchloroethylene dry cleaners.	N/A	08/04/82	05/02/83, 48 FR 19176.	
Variance for two dry cleaners	N/A	01/27/83	05/05/83, 48 FR 20233.	
Variance for Jiffy and Hiland Dry Cleaners	N/A	04/25/84	04/18/85, 50 FR 15421.	
TVA Paradise Permit	KDEPDAQ Permit 0–87–012	06/29/87	08/25/89, 54 FR 35326.	
Opacity variance for boiler Units 1 and 2 of TVA's Paradise Steam Plant.	KDEPDAQ Permit 0–86–75	07/24/96	08/17/88, 53 FR 30998.	
Operating Permits for nine presses at the Alcan Foil Products facility—Louisville.	APCDJC Permits 103–74, 104–74, 105–74, 103–74, 110–74, 111–74.	02/28/90	05/16/90, 55 FR 20269.	
Operating Permit requiring VOC RACT for Calgon CO.	KDEPDAQ Permit 0–94–020	11/17/94	05/24/95, 60 FR 27411.	
Reynolds Metals Company	APCDJC Permits 103–74, 104–74, 016–74, 110–74, 111–74.	04/16/97	01/13/98, 63 FR 1929.	
Alternative Averaging Period for American Greetings Corporation.	KDEPDAQ Permit V–98–049	07/07/99	05/09/01, 66 FR 23617.	
Title V permit requiring VOC RACT for Publisher's Printing, Inc., Bullitt County.	KDEPDAQ Permit 21–029–00019.	07/20/01	10/23/01, 66 FR 53664.	
Board Order American Synthetic Rubber Company.	NO_X RACT Plan 12/20/00	01/01/01	10/23/01, 66 FR 53684.	
Board Order E.I. du Pont de Nemours & Company.	NO_X RACT Plan 02/21/01	03/01/01	10/23/01, 66 FR 53684.	
Board Order Ford Louisville Assembly Plant	NO_X RACT Plan 11/08/99	01/01/00	10/23/01, 66 FR 53684.	
Board Order General Electric Company	NO_X RACT Plan 01/17/01	03/01/01	10/23/01, 66 FR 53684.	
Board Order Kosmos Cement Company	NO_X RACT Plan 11/15/00	01/01/01	10/23/01, 66 FR 53684.	
Board Order Louisville Gas and Electric Company, Cane Run Generating Station.	NO_X RACT Plan 10/18/00	01/01/01	10/23/01, 66 FR 53684.	
Board Order Louisville Gas and Electric Company, Mill Creek Generating Station.	NO_X RACT Plan 10/18/00	01/01/01	10/23/01, 66 FR 53684.	
Board Order Louisville Medical Center Steam Plant.	NO_X RACT Plan 02/21/01	04/01/01	10/23/01, 66 FR 53685.	
Board Order Oxy Vinyls, LP	NO_X RACT Plan 12/20/00	01/01/01	10/23/01, 66 FR 53685.	
Board Order Rohm and Haas Company	NO_X RACT Plan 12/20/00	01/01/01	10/23/01, 66 FR 53685.	
Board Order Texas Gas Transmission	NO_X RACT Plan 11/08/99	01/01/00	10/23/01, 66 FR 53685.	
Lawson Mardon Packaging, USA, Inc.	N/A	08/11/03	07/10/03, 68 FR 41084.	

(e) EPA-approved non-regulatory provisions.

EPA—APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ effective date	EPA approval date	Explanations
Air Quality surveillance plan	Commonwealth of Kentucky	11/15/79	11/16/81, 46 FR 56198.	
Protection Visibility in Class I Areas	Mammoth Cave National Park (Class I area).	08/31/97	07/12/88, 53 FR 26253.	
Small Business Assistance Program	Commonwealth of Kentucky	07/15/93	06/19/95, 60 FR 31915.	
Lexington Maintenance Plan	Fayette County, Scott County	01/15/93	09/11/95, 60 FR 47094.	
Ashland-Huntington Maintenance Plan	Boyd County, Greenup County	05/24/95	06/29/95, 60 FR 33752.	
Maintenance Plan for Owensboro & Edmonson County Area.	Daviess County, Hancock County, Edmonson County.	04/14/98	09/03/98, 63 FR 46898.	
Northern Kentucky 15% Plan & I/M	Boone, Campbell and Kenton Counties.	09/11/98	12/08/98, 63 FR 67591.	
Negative Declarations for the nonattainment portions of Bullitt and Oldham Counties in Louisville 1-hour moderate ozone nonattainment area for CTG rules for aerospace, SOCMI, shipbuilding, and wood furniture manufacturing.	Jefferson County, Bullitt County, Oldham County.	12/14/99	10/23/01, 66 FR 53665.	
Negative Declarations submitted by the Air Pollution Control District of Jefferson County for the Louisville 1-hour moderate ozone nonattainment area for CTG rules for aerospace, shipbuilding, and wood furniture manufacturing.	Jefferson County, Bullitt County, Oldham County.	02/26/01	10/23/01, 66 FR 53665.	
Louisville Ozone Maintenance Plan	Jefferson County and portions of Bullitt and Oldham Counties.	07/09/01	10/23/01, 66 FR and 53685.	
Maintenance Plan for Paducah Area	Marshall County and a portion of Livingston County.	06/14/01	08/20/01, 66 FR 43488.	
Northern Kentucky Maintenance Plan revisions	Boone, Campbell and Kenton Counties.	05/02/03	05/30/03, 68 FR 32384.	

* * * * *

[FR Doc. 04–459 Filed 1–9–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 289–0418a; FRL–7600–9]

Revision to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). The revisions concern the emission of particulate matter (PM–10) from open outdoor burning. We are approving a local rule and removing rescinded local rules that regulate this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on March 12, 2004 without further notice, unless EPA receives adverse comments by February 11, 2004. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, or e-mail to *steckel.andrew@epa.gov,* or submit comments at *http://www.regulations.gov.*

You can inspect a copy of the submitted rule and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted rule and TSD at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal
A. What rules did the State submit?
B. Are there other versions of these rules?
C. What is the purpose of the submitted SIP revision?
II. EPA's Evaluation and Action
A. How is EPA evaluating the SIP revision?
B. Does the SIP revision meet the evaluation criteria?
C. Public comment and final action
III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules and dates that MBUAPCD adopted or rescinded the local rules and when they were submitted to EPA by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted or rescinded	Submitted
MBUAPCD	438	Open Outdoor Fires	04/16/03, Adopted	08/11/03
MBUAPCD	407	Open Outdoor Fires	04/16/03, Rescinded	08/11/03
MBUAPCD	409	Burning of Agricultural Wastes	04/16/03, Rescinded	08/11/03
MBUAPCD	410	Range Improvement Burning	04/16/03, Rescinded	08/11/03
MBUAPCD	411	Forest Management Burning	04/16/03, Rescinded	08/11/03
MBUAPCD	422	Burning of Wood Wastes from Developments	04/16/03, Rescinded	08/11/03
MBUAPCD	432	Wildland Vegetation Management Burning	04/16/03, Rescinded	08/11/03

On October 10, 2003, this submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of these Rules?

We approved Rule 407, which was submitted on October 27, 1983, into the SIP on May 3, 1984 (49 FR 18830). We approved Rules 409, 410, 411, and 422, which were submitted on February 6, 1985, into the SIP on July 13, 1987 (52 FR 26148). Rule 432 was never approved into the SIP and therefore EPA does not need to take any action to remove it from the SIP.

C. What Is the Purpose of the Submitted SIP Revision?

PM–10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM–10 emissions.

The purpose of the submitted SIP revision is described below:

- To incorporate the requirements of the State ''Air Toxic Control Measure to Reduce Emissions of Toxic Air Contaminants from Outdoor Residential Waste Burning.''
- To incorporate the California Code of Regulations, title 17, requirements for prescribed burning and the District's adopted Smoke Management Program.
- To reorganize the District's existing burn rules into one rule for clarity and ease of understanding.

The specific amendments that MBUAPCD made after rescinding several rules and combining their content into Rule 438 are as follows:

- Removed the exemption for forest management burning, range improvement, and wildland vegetation management burning on no-burn days.
- Added an exemption for test burns on no-burn days under specific conditions.
- Added a requirement that prescribed burn projects be registered with the District annually or seasonally.
- Added a requirement for submission by the burner of a Smoke Management Plan for prescribed burn projects.
- Added a requirement that prescribed burns may only be conducted after the burner has received authorization from the District within 24 hours of the ignition.
- Added a restriction that no prescribed burning is allowed on days when poor air quality has been predicted.
- Added a requirement for direct public notification of sensitive downwind receptors for prescribed burn projects.
- Added a restriction that the total emissions from all prescribed burn projects on each day in the air basin remain within the adopted Air Quality Maintenance Plan VOC and NOX emission inventories during the ozone season (May through October).
- Added a provision that the Air Pollution Control Officer may ease the restriction on total emissions under certain limited conditions.
- Clarified which is the ''designated agency'' to issue agricultural waste burning permits.

The TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the SIP Revision?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), must require Best Available Control Measures (BACM) including, Best Available Control Technology (BACT), for significant source categories or major sources in serious PM–10 nonattainment areas (see section 189(b)), must require Reasonably Available Control Measures (RACM) including, Reasonably Available Control Technology (RACT), for significant source categories or major sources in moderate PM–10 nonattainment areas (see section 189(a)), and must not relax existing requirements (see sections 110(l) and 193). MBUAPCD is a PM–10 attainment area and need not fulfill the requirements of BACM/BACT or RACM/RACT.

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR part 51.
- *PM–10 Guideline Document,* EPA–452/R–93–008.
- *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,* 59 FR 41998, 42011 (August 16, 1994).

B. Does the SIP Revision Meet the Evaluation Criteria?

We believe that Rule 438 is consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted SIP revision because we believe it fulfills all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register,** we are simultaneously proposing approval of the same submitted SIP revision. If we receive adverse comments by February 11, 2004, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on March 12, 2004. This will incorporate MBUAPCD Rule 438 into the federally-enforceable SIP and remove MBUAPCD Rules 407, 409, 410, 411, and 422 from the SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this direct final 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.

III. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state 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.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 12, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: December 2, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(148)(iii)(B), (159)(iii)(F), and (320) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(148) * * *

(iii) * * *

(B) Previously approved on May 3, 1984 in (c)(148)(iii)(A) of this section and now deleted without replacement Rule 407.

* * * * *

(159) * * *

(iii) * * *

(F) Previously approved on July 13, 1987 in (c)(159)(iii)(A) of this section and now deleted without replacement Rules 409, 410, 411, and 422.

* * * * *

(320) New and amended regulations for the following APCDs were submitted on August 11, 2003, by the Governor's designee.

(i) Incorporation by reference.

(A) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 438, adopted on April 16, 2003.

* * * * *

[FR Doc. 04–556 Filed 1–9–04; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 69, No. 7
Monday, January 12, 2004

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

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 742, 748, 754, and 772

[Docket No. 030425102–4004–02]

RIN 0694–AC20

Mandatory Use of Simplified Network Application Processing System

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This notice extends until February 12, 2004, the deadline for public comments on the proposed rule that would amend the Export Administration Regulations (EAR) to implement a revised version of the Bureau of Industry and Security's (BIS) Simplified Network Application Processing system. This extension of time would allow the public additional time to comment on the rule.

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

ADDRESSES: Written comments should be e-mailed to: *rpd@bis.doc.gov,* faxed to 202–482–3355, or mailed or delivered to Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Reference Regulatory Identification Number 0694–AC20 in all comments.

FOR FURTHER INFORMATION CONTACT: For information concerning SNAP+, contact George Ipock, Office of Administration: e-mail *gipock@bis.doc.gov*, telephone: (202) 482–5469. For information concerning other matters raised by the proposed rule, contact William Arvin, Office of Exporter Services: e-mail *warvin@bis.doc.gov*, telephone (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

On November 12, 2003, the Bureau of Industry and Security published a proposed rule that would implement a new, internet based, system for submitting export license applications, classification requests, encryption review requests and License Exception AGR notices. *See* 68 FR 64009. The proposed rule would make use of this new system mandatory with a limited number of exceptions. The deadline for public comment on the proposed rule was January 12, 2004. The Bureau is now extending that deadline to February 12, 2004, to allow the public additional time to comment on the rule.

Eileen Albanese,

Director, Office of Exporter Services.

[FR Doc. 04–565 Filed 1–9–04; 8:45 am]

BILLING CODE 3510–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 289–0418b; FRL–7601–1]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). The revisions concern the emission of particulate matter (PM–10) from open outdoor burning. We are proposing to approve local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by February 11, 2004.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, or e-mail to *steckel.andrew@epa.gov,* or submit comments at *http://www.regulations.gov.*

You can inspect a copy of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted SIP revisions and TSD at the following locations: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue, NW, Washington, DC 20460, California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814, Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local MBUAPCD Rule 438 and recision of MBUAPCD Rules 407, 409, 410, 411, and 422 as SIP revisions. In the Rules section of this **Federal Register**, we are approving this SIP revision in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: December 2, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 04–555 Filed 1–9–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

RIN 1018–AJ27

Migratory Bird Subsistence Harvest in Alaska; Subsistence Harvest Regulations for Migratory Birds in Alaska During the Spring/Summer 2004 Subsistence Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is proposing spring/summer migratory bird subsistence harvest regulations in Alaska for the 2004 subsistence season. This proposed rule would establish regulations that prescribe frameworks, or outer limits, for dates when harvesting of birds may occur, species that can be taken, and methods and means excluded from use. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. These regulations are intended to provide a framework to enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking proposes regulations that start on April 2, 2004, and expire on August 31, 2004, for the spring/summer subsistence harvest of migratory birds in Alaska.

DATES: You must submit comments on the proposed spring/summer harvest regulations for migratory birds in Alaska by February 11, 2004.

ADDRESSES: Send your comments on this proposed rule to the Regional Director, Alaska Region, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503, or fax to (907) 786–3306.

FOR FURTHER INFORMATION CONTACT: Fred Armstrong, (907) 786–3887, or Donna Dewhurst, (907) 786–3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

SUPPLEMENTARY INFORMATION:

Background

What Events Led to This Action?

In 1916, the United States and Great Britain (on behalf of Canada) signed the Convention for the Protection of Migratory Birds in Canada and the United States (Canada Treaty). The treaty prohibited all commercial bird hunting and specified a closed season on the taking of migratory game birds between March 10 and September 1 of each year. In 1936, the United States and Mexico signed the Convention for the Protection of Migratory Birds and Game Mammals (Mexico Treaty). The Mexico treaty prohibited the taking of wild ducks between March 10 and September 1. Neither treaty allowed adequately for the traditional harvest of migratory birds by northern peoples during the spring and summer months. This harvest, which has occurred for centuries, was and is necessary to the subsistence way of life in the north and thus continued despite the closed season.

The Canada treaty and the Mexico treaty, as well as migratory bird treaties with Japan (1972) and Russia (1976), have been implemented in the United States through the Migratory Bird Treaty Act (MBTA). The courts have ruled that the MBTA prohibits the Federal Government from permitting any harvest of migratory birds that is inconsistent with the terms of any of the migratory bird treaties. The more restrictive terms of the Canada and Mexico treaties thus prevented the Federal Government from permitting the traditional subsistence harvest of migratory birds during spring and summer in Alaska. To remedy this situation, the United States negotiated Protocols amending both the Canada and Mexico treaties to allow for spring/summer subsistence harvest of migratory birds by indigenous inhabitants of identified subsistence harvest areas in Alaska. The U.S. Senate approved the amendments to both treaties in 1997.

What Will the Amended Treaty Accomplish?

The major goals of the amended treaty with Canada are to allow traditional subsistence harvest and improve conservation of migratory birds by allowing effective regulation of this harvest. The amended treaty with Canada allows permanent residents of villages within subsistence harvest areas, regardless of race, to continue harvesting migratory birds between March 10 and September 1 as they have done for thousands of years. The Letter of Submittal of May 20, 1996, from the Department of State to the White House that officially accompanied the treaty protocol explains that lands north and west of the Alaska Range and within the Alaska Peninsula, Kodiak Archipelago, and the Aleutian Islands generally qualify as subsistence harvest areas.

What Has the Service Accomplished Since Ratification of the Amended Treaty?

In 1998, we began a public involvement process to determine how to structure management bodies to provide the most effective and efficient involvement for subsistence users. This process was concluded on March 28, 2000, when we published in the **Federal Register** (65 FR 16405) the Notice of Decision: ''Establishment of Management Bodies in Alaska to Develop Recommendations Related to the Spring/Summer Subsistence Harvest of Migratory Birds.'' This notice described the establishment and organization of 12 regional management bodies plus the Alaska Migratory Bird Co-management Council (Co-management Council).

Establishment of a spring/summer migratory bird subsistence harvest began on August 16, 2002, when we published in the **Federal Register** (67 FR 53511) a final rule at 50 CFR part 92 that set procedures for incorporating subsistence management into the continental migratory bird management program. These regulations established an annual procedure to develop harvest guidelines to implement a spring/summer migratory bird subsistence harvest.

The next step established the first spring/summer subsistence migratory bird harvest system. This was finalized on July 21, 2003, when we published in the **Federal Register** (68 FR 43010) a final rule at 50 CFR parts 20, 21, and 92 that created the first annual harvest regulations for the 2003 spring/summer subsistence migratory bird season in Alaska. These annual frameworks were not intended to be a complete, all-inclusive set of regulations, but were intended to regulate continuation of customary and traditional subsistence uses of migratory birds in Alaska during the spring and summer. See the August 16, 2002, and July 21, 2003, final rules for additional background information on the subsistence harvest program for migratory birds in Alaska.

This current rulemaking is necessary because the migratory bird harvest season is closed unless opened and the regulations governing subsistence harvest of migratory birds in Alaska are subject to public review and annual approval. The Co-management Council held meetings in April, May, and July of 2003, to develop recommendations for changes effective for the 2004 harvest season. These recommendations were presented to the Service Regulations

Committee (SRC) on July 30 and 31, 2003, for action.

This rule proposes regulations for the taking of migratory birds for subsistence uses in Alaska during the spring/summer of 2004. This rule proposes to list migratory bird species that are open or closed to harvest, as well as season openings and closures by region. It also proposes minor changes in the methods and means of taking migratory birds for subsistence purposes. We propose to amend 50 CFR 92.5 by adding 13 new communities to the list of included areas, and to add corresponding harvest areas and season dates to 50 CFR 92.33. We also propose to amend 50 CFR 92.6 to allow for permits to be issued for possession of bird parts or eggs for scientific research or educational purposes.

How Will the Service Continue To Ensure That the Subsistence Harvest Will Not Raise Overall Migratory Bird Harvest?

The Service has an emergency closure provision (§ 92.21), so that if any significant increases in harvest are documented for one or more species in a region, an emergency closure can be requested and implemented. Eligibility to harvest under the regulations established in 2003 was limited to permanent residents, regardless of race, in villages located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, and in areas north and west of the Alaska Range (§ 92.5). These geographical restrictions open the initial spring/summer subsistence migratory bird harvest to only about 13 percent of Alaska residents. High-population areas such as Anchorage, the Matanuska-Susitna and Fairbanks North Star boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, and Southeast Alaska were excluded from the eligible subsistence harvest areas.

Based on petitions requesting inclusion in the harvest, the Co-Management Council at its April and May 2003 meetings recommended that 13 additional communities be included starting in 2004 based on the five criteria set forth in § 92.5(c). The Upper Copper River region would include the communities of Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, and Chistochina, totaling 1,172 people. The Gulf of Alaska region would include the Chugach communities of Tatitlek, Chenega, Port Graham, and Nanwalek, totaling 541 people. The Cook Inlet region proposed to add only the community of Tyonek, population 193, and the Southeast Alaska region proposed to add only the community of Hoonah, population 860. In addition, subsistence users of Hoonah are requesting only to continue their tradition of harvesting gull eggs. These new regions would increase the percentage of the State population included in the spring/summer subsistence bird harvest only to 13.5 percent.

Upon publication of the 2003 proposed harvest regulations (68 FR 6697), five Kodiak area organizations expressed a need to close the Kodiak road system starting in the 2003 season. Their primary concern was the likelihood of overharvesting, primarily by user groups that have not demonstrated customary and traditional uses of migratory birds and will have easy access to this resource. On the basis of public testimony and written comments, the Service left closed to harvesting a buffer zone around the Kodiak Island road system under § 92.33(e). The conservation concern is the nontraditional access posed by the road system in a region where the migratory bird hunting is traditionally done by boat in marine waters. In April 2003, the Co-Management Council recommended extending this closure to include an additional buffer strip of 500 feet extending beyond the water's edge, to be effective during the 2004 season. Closing the road system and water's edge to the spring and summer subsistence migratory bird harvest will help ensure local increases in harvest do not occur under the 2004 regulations.

Subsistence harvest has been monitored for the past 15 years through the use of annual household surveys in the most heavily used subsistence harvest areas, *e.g.*, Yukon-Kuskokwim Delta. Continuation of this monitoring would enable tracking of any major changes or trends in levels of harvest and user participation after legalization of the harvest. In the March 3, 2003, **Federal Register** (68 FR 10024), we published a notice of intent to submit the Alaska Subsistence Household Survey Information Collection Forms to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act, with a subsequent 60-day public comment period. In the July 31, 2003, **Federal Register** (68 FR 44961), we published a notice that the Alaska Subsistence Harvest Survey Information Collection Forms were submitted to OMB for approval under the Paperwork Reduction Act, with a 30-day public comment period. OMB approved the information collection on October 2, 2003, and assigned OMB control number 1018–0124, which expires on October 31, 2006.

How Did the Service Develop the Methods and Means Prohibitions, and What Is Proposed To Change for 2004?

In development of the initial regulations (68 FR 6697), the Co-Management Council encouraged the Service to adopt the existing methods and means prohibitions that occur in the Federal (50 CFR part 20.21) and Alaska (5AAC92.100) migratory bird hunting regulations. Some exceptions to the Federal regulations were made in the initial regulations and also in this proposed rule to allow the continuation of customary and traditional spring harvest methods, but not the creation of new proposed traditions. In this proposed rule, we have incorporated the Bristol Bay region's request to be added to the list of areas where use of air boats is prohibited for hunting or transporting hunters.

What Is New With Establishing Bird Harvest Limits?

The Co-management Council recommended the current set of proposed regulations to the Service without setting harvest limits, with the recognition that setting limits by area or species may become necessary. These initial years' harvest regulations provide general frameworks to enable the customary and traditional subsistence uses of migratory birds in Alaska. Within these frameworks, the first step in limiting the overall subsistence harvest was to establish a closed species list that included regional restrictions. Establishing a 30-day closed period during the breeding season also limited the harvest impacts. The eventual need to further adjust levels of harvest, either regionally or overall, is recognized and will be addressed by the Co-management Council on the basis of recommendations by the Council's Technical Committee on a species-by-species basis. These decisions will likely be based on bird population status and past subsistence harvest data. Concepts such as community harvest limits and/or designated hunters may be considered to accommodate customary and traditional subsistence harvest methods.

How Did the Service Decide the List of Birds Open to Harvest?

The Service believed that it was necessary to develop a list of bird species that would be open to subsistence harvest during the spring/summer season. The original list was compiled from subsistence harvest data, with several species added based on their presence in Alaska without written records of subsistence take. The original

intent was for the list to be reviewed by the regional management bodies as a check list. The list was adopted by the Co-management Council as part of the guidelines for the 2003 season. Most of the regions adopted the list as written; however, two regions created their own lists. One regional representative explained that it would take much more time than was available for his region to reduce the list and that, once a bird was removed, returning it to the list would be more difficult later. Going with the original list was viewed as protecting hunters from prosecution for the take of an unlisted bird. To understand this rationale, one must be aware that subsistence hunting is generally opportunistic and does not usually target individual species. Native language names for birds often group closely related species, with no separate names for species within these groups. Also, preferences for individual species differ greatly between villages and individual hunters. As a result, regions are hesitant to remove birds from the list open to harvest until they are certain the species are not taken for subsistence use. The list therefore contains some species that are taken infrequently and opportunistically, but this is still part of the subsistence tradition. The Co-Management Council initially decided to call this list ''potentially harvested birds'' versus ''traditionally harvested birds'' because a detailed written documentation of the customary and traditional use patterns for the species listed had not yet been conducted. However, this terminology was leading to some confusion, so the Service renamed the list ''subsistence birds'' to cover the birds open to harvest.

The ''customary and traditional use'' of a wildlife species has been defined in Federal regulations (50 CFR part 100.4) as a long-established, consistent pattern of use, incorporating beliefs and customs that have been transmitted from generation to generation. Much of the customary and traditional use information has not been documented in written form, but exists in the form of oral histories from elders, traditional stories, harvest methods taught to children, and traditional knowledge of the birds' natural history shared within a village or region. The only available empirical evidence of customary and traditional use of the harvested bird species comes from Alaska subsistence migratory bird harvest surveys conducted by Service personnel and contractors and transferred to a computerized database. Because of difficulties in bird species identification, shorebird harvest information has been lumped into ''large shorebird'' and ''small shorebird'' categories. In reality, Alaska subsistence harvests are also conducted in this manner, generally with no targeting or even recognition of individual shorebird species in most cases. In addition, red-faced cormorants, trumpeter swans, Aleutian terns, whiskered auklets, short-eared owls, and others have not been targeted in subsistence harvest questionnaires, so little or no numerical harvest data exists.

How Does the Service Address the Birds of Conservation Concern Relative to the Subsistence Harvest?

Birds of Conservation Concern (BCC) 2002 is the latest document in a continuing effort by the Service to assess and prioritize bird species for conservation purposes. It was published in the **Federal Register** on February 6, 2003 (68 FR 6179). The BCC list identifies bird species at risk because of inherently small populations, restricted ranges, severe population declines, or imminent threats. The species listed need increased conservation attention to maintain or stabilize populations. The legal authority for this effort is the Fish and Wildlife Conservation Act (FWCA) of 1980, as amended. Section 13(a)(3) of the FWCA, 16 U.S.C. 2912(a)(3), requires the Secretary of the Interior through the Service, to ''identify species, subspecies, and populations of all migratory nongame birds that, without additional conservation actions, are likely to become candidates for listing under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543).''

The Co-management Council will continually review the list of subsistence birds. As appropriate, the Council will elevate hunter awareness of species that may have small or declining populations in an effort to directly involve subsistence hunters in conserving these vulnerable species.

At a July 2003 meeting, the SRC decided three of the BCC species (bar-tailed godwits [*Limosa lapponica*], dunlin [*Calidris alpina*], and red-legged kittiwakes [*Rissa brevirostris*]) would remain on the list of birds open to harvest in 2004. The Service, however, has conservation concerns about allowing harvest of the remaining 12 species (11 BCC birds plus wandering tattler) and is soliciting additional public comments as well as Co-management Council documentation of past and present use and dependence on these birds. Based on this information, the Service will make a final decision prior to publication of the final rule for the 2004 regulations as to whether or not to leave these 12 species open for harvest. The 12 species of conservation concern include:

Red-throated Loon (*Gavia stellata*)—Western Alaska BCC list
Red-faced Cormorant (*Phalacrocorax urile*)—Aleutians/Bering Sea Islands and Western Alaska BCC list
Black Oystercatcher (*Haematopus bachmani*)—National and Alaska-wide BCC list
Solitary Sandpiper (*Tringa solitaria*)—National BCC list
Wandering Tattler (*Heteroscelus incanus*)—not on BCC lists, but conservation issues were raised by the State of Alaska
Upland Sandpiper (*Bartramia longicauda*)—National BCC list
Black Turnstone (*Arenaria melanocephala*)—National and Alaska-wide BCC list
Red Knot (*Calidris canutus*)—Northern Pacific Forest and National BCC list
Arctic Tern (*Sterna paradisaea*)—Alaska-wide BCC list
Aleutian Tern (*Sterna aleutica*)—National and Alaska-wide BCC list
Whiskered Auklet (*Aethia pygmaea*)—National and Alaska-wide BCC list
Short-eared Owl (*Asio flammeus*)—National BCC list

The Co-management Council has begun a systematic review of the customary and traditional use of these species and will recommend subsequent action based on its findings. The Co-management Council remains committed to including all stakeholders to determine the list of birds that will ultimately be open for subsistence harvest in 2004. Public comments are welcome on whether these 12 species should remain on the list of birds open to harvest in 2004. Any additional information would assist subsequent decisions made by the Service.

Public Comments Solicited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. If you wish to comment, you may submit comments by any one of several methods. You may mail, fax, or hand-deliver comments to the address indicated under the caption **ADDRESSES.**

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we will also withhold from the rulemaking record a

respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. You may inspect comments received on the proposed regulations during normal business hours at the Service's office in Anchorage, Alaska.

Because we conducted an extensive public involvement process prior to formulating this proposed rule, we are soliciting comments on it for only 30 days. We need to finalize this proposed rule as soon as possible to open the subsistence harvest season in April 2004. In developing the final rule, we will consider each comment received during the public comment period. In the final rule, we possibly may not respond in detail to each comment received during the comment period, but we will summarize all comments received and respond to them.

Statutory Authority

We derive our authority to issue these regulations from the four migratory bird treaties with Canada, Mexico, Japan, and Russia and from the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703 *et seq.*), that implements these treaties. Specifically, these regulations are issued pursuant to 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with these four treaties, to ''issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.''

Executive Order 12866

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.,) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

The Office of Management and Budget (OMB) has determined that this document is not a significant rule subject to OMB review under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The rule does not provide for new or additional hunting opportunities and therefore will have minimal economic or environmental impact. This rule benefits those participants who engage in the subsistence harvest of migratory birds in Alaska in two identifiable ways: first, participants receive the consumptive value of the birds harvested, and second, participants get the cultural benefit associated with the maintenance of a subsistence economy and way of life. The Service can estimate the consumptive value for birds harvested under this rule but does not have a dollar value for the cultural benefit of maintaining a subsistence economy and way of life.

The economic value derived from the consumption of the harvested migratory birds has been estimated using the results of a paper by Robert J. Wolfe titled ''Subsistence Food Harvests in Rural Alaska, and Food Safety Issues'' (August 13, 1996). Using data from Wolfe's paper and applying it to the areas that will be included in this process, we determined a maximum economic value of $6 million. This is the estimated economic benefit of the consumptive part of this rule for participants in subsistence hunting. The cultural benefits of maintaining a subsistence economy and way of life can be of considerable value to the participants, and these benefits are not included in this figure.

b. This rule will not create inconsistencies with other agencies' actions. We are the Federal agency responsible for the management of migratory birds, coordinating with the State of Alaska's Department of Fish and Game on management programs within Alaska. The State of Alaska is a member of the Alaska Migratory Bird Co-management Council.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The rule does not affect entitlement programs.

d. This rule will not raise novel legal or policy issues. The subsistence harvest regulations will go through the same National regulatory process as the existing migratory bird hunting regulations in 50 CFR part 20.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. The rule legalizes a pre-existing subsistence activity, and the resources harvested will be consumed by the harvesters or persons within their local community.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, as discussed in the Executive Order 12866 section above.

a. This rule does not have an annual effect on the economy of $100 million or more. It will legalize and regulate a traditional subsistence activity. It will not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns. The commodities being regulated under this rule are migratory birds. This rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this rule derives from the sale of equipment and ammunition to carry out subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska would qualify as small businesses. We have no reason to believe that this rule will lead to a disproportionate distribution of benefits.

b. This rule will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This rule does not deal with traded

commodities and, therefore, does not have an impact on prices for consumers.

c. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule deals with the harvesting of wildlife for personal consumption. It does not regulate the marketplace in any way to generate effects on the economy or the ability of businesses to compete.

Unfunded Mandates Reform Act

We have determined and certified pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities. A statement containing the information required by this Act is therefore not necessary. Participation on regional management bodies and the Co-management Council will require travel expenses for some Alaska Native organizations and local governments. In addition, they will assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than $300,000 per year. In the Notice of Decision (65 FR 16405, March 28, 2000) we identified 12 partner organizations to be responsible for administering the regional programs. When possible, we will make annual grant agreements available to the partner organizations to help offset their expenses. The Alaska Department of Fish and Game will incur expenses for travel to Co-management Council and regional management body's meetings. In addition, the State of Alaska will be required to provide technical staff support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed $100,000 per year, but should not exceed $150,000 per year.

Paperwork Reduction Act

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no information collection requirements. We have, however, received OMB approval of associated voluntary annual household surveys used to determine levels of subsistence take. The OMB control number for the information collection is 1018–0124, which expires on October 31, 2006. 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.

Federalism Effects

As discussed in the Executive Order 12866 and Unfunded Mandates Reform Act sections above, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 13132. We worked with the State of Alaska on development of these regulations.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of Section 3 of the Order.

Takings Implication Assessment

This rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources throughout Alaska. Therefore, in accordance with Executive Order 12630, this rule does not have significant takings implications.

Government-to-Government Relations With Native American Tribal Governments

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments'' (59 FR 22951), and Executive Order 13175 (65 FR 67249, November 6, 2000), concerning consultation and coordination with Indian Tribal Governments, we have consulted with Alaska tribes and evaluated the rule for possible effects on tribes or trust resources, and have determined that there are no significant effects. The rule will legalize the subsistence harvest of migratory birds and their eggs for tribal members, as well as for other indigenous inhabitants.

Endangered Species Act Consideration

Prior to issuance of annual spring and summer subsistence regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that harvesting is not likely to jeopardize the continued existence of any species designated as endangered or threatened, or modify or destroy its critical habitats and that it is consistent with conservation programs for those species. Consultations under section 7 of this Act conducted in connection with the environmental assessment for the annual subsistence take regulations may cause us to change these regulations. Our biological opinion resulting from the Section 7 consultation is a public document available for public inspection at the address indicated under the caption **ADDRESSES.**

National Environmental Policy Act Consideration

The annual regulations and options were considered in the Environmental Assessment, ''Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the First Legal Spring/Summer Harvest in 2004,'' issued September 8, 2003. Copies are available from the address indicated under the caption **ADDRESSES.**

Energy Supply, Distribution, or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only allows for traditional subsistence harvest and improves conservation of migratory birds by allowing effective regulation of this harvest, it is not a significant regulatory action under Executive Order 12866. Consequently it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action under Executive Order 13211 and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 92

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Subsistence, Treaties, Wildlife.

For the reasons set out in the preamble, we propose to amend title 50, chapter I, subchapter G, of the Code of Federal Regulations as follows:

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

1.The authority citation for part 92 continues to read as follows:

Authority: 16 U.S.C. 703–712.

Subpart A—General Provisions

2. In subpart A, amend § 92.4 by adding the definitions ''Game Management Unit,'' ''Seabirds,'' ''Shorebirds,'' and ''Waterfowl,'' to read as follows:

§ 92.4 Definitions

* * * * *

Game Management Unit, also referred to simply as *Unit*, means 1 of the 26

geographical areas listed in the codified State of Alaska hunting and trapping regulations and on maps of the Alaska State Game Management Units.

* * * * *

Seabirds refers to all bird species listed in § 92.32 within the families Alcidae, Laridae, Procellariidae, and Phalacrocoracidae.

* * * * *

Shorebirds refers to all bird species listed in § 92.32 within the families Charadriidae, Haematopodidae, and Scolopacidae.

* * * * *

Waterfowl refers to all bird species listed in § 92.32 within the family Anatidae.

3. In subpart A, amend § 92.5 by revising paragraph (a) to read as follows:

§ 92.5 Who is eligible to participate?

* * * * *

(a) *Included areas.* Village areas located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, or in areas north and west of the Alaska Range are subsistence harvest areas, except that villages within these areas not meeting the criteria for a subsistence harvest area as identified in paragraph (c) of this section will be excluded from the spring and summer subsistence harvest.

(1) Any person may request the Co-management Council to recommend that an otherwise included area be excluded by submitting a petition stating how the area does not meet the criteria identified in paragraph (c) of this section. The Co-management Council will forward petitions to the appropriate regional management body for review and recommendation. The Co-management Council will then consider each petition and will submit to the U.S. Fish and Wildlife Service any recommendations to exclude areas from the spring and summer subsistence harvest. The U.S. Fish and Wildlife Service will publish any approved recommendations to exclude areas in subpart D of this part.

(2) Based on petitions for inclusion recommended by the Co-Management Council in 2003, the Service is proposing to add the following communities to the included areas under this part starting in the 2004 harvest season:

(i) Upper Copper River Region—Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, Chistochina.

(ii) Gulf of Alaska Region—Chugach Community of Tatitlek, Chugach Community of Chenega, Chugach Community of Port Graham, Chugach Community of Nanwalek.

(iii) Cook Inlet Region—Tyonek.

(iv) Southeast Alaska Region—Hoonah.

* * * * *

4. In subpart A, revise § 92.6 to read as follows:

§ 92.6 Use and possession of migratory birds.

You may not sell, offer for sale, purchase, or offer to purchase migratory birds, their parts, or their eggs taken under this part.

(a) *Eligible persons.* Under this part, you may take birds for human consumption only. Harvest and possession of migratory birds must be done using nonwasteful taking. Nonedible byproducts of migratory birds taken for food may be used for other purposes.

(b) *Noneligible persons.* You may receive portions of birds or their eggs not kept for human consumption from eligible persons only if you have a valid permit issued under § 21.27 for scientific research or education, and consistent with the terms and conditions of that permit.

Subpart C—General Regulations Governing Subsistence Harvest

5. In subpart C, amend § 92.20 by revising paragraph (i) to read as follows:

§ 92.20 Methods and means

* * * * *

(i) Using an air boat (Interior and Bristol Bay Regions only) or jet ski (Interior Region only) for hunting or transporting hunters.

Subpart D—Annual Regulations Governing Subsistence Harvest

6. In Subpart D, add §§ 92.31 through 92.33 to read as follows:

§ 92.31 Migratory bird species not authorized for subsistence harvest.

(a) You may not harvest birds or gather eggs from the following species:

(1) Spectacled Eider (*Somateria fischeri*).

(2) Steller's Eider (*Polysticta stelleri*).

(3) Emperor Goose (*Chen canagica*).

(1)Aleutian Canada Goose (*Branta canadensis leucopareia*)—Semidi Islands only.

(b) In addition, you may not gather eggs from the following species:

(1) Cackling Canada Goose (*Branta canadensis minima*).

(2) Black Brant (*Branta bernicla nigricans*)—in the Yukon/Kuskokwim Delta and North Slope regions only.

§ 92.32 Subsistence migratory bird species.

You may harvest birds or gather eggs from the following species, listed in taxonomic order, within all included regions. When birds are listed only to the species level, all subspecies existing in Alaska are open to harvest.

(a) *Family Gaviidae.*

(1) Red-throated Loon (*Gavia stellata*).

(2) Arctic Loon (*Gavia arctica*).

(3) Pacific Loon (*Gavia pacifica*).

(4) Common Loon (*Gavia immer*).

(b) *Family Podicipedidae.*

(1) Horned Grebe (*Podiceps auritus*).

(2) Red-necked Grebe (*Podiceps grisegena*).

(c) *Family Procellariidae.*

(1) Northern Fulmar (*Fulmarus glacialis*).

(2) [Reserved].

(d) *Family Phalacrocoracidae.*

(1) Double-crested Cormorant (*Phalacrocorax auritus*).

(2) Red-faced Cormorant (*Phalacrocorax urile*).

(3) Pelagic Cormorant (*Phalacrocorax pelagicus*).

(e) *Family Anatidae.*

(1) Greater White-fronted Goose (*Anser albifrons*).

(2) Snow Goose (*Chen caerulescens*).

(3) Lesser Canada Goose (*Branta canadensis parvipes*).

(4) Taverner's Canada Goose (*Branta canadensis taverneri*).

(5) Aleutian Canada Goose (*Branta canadensis leucopareia*)—except in the Semidi Islands.

(6) Cackling Canada Goose (*Branta canadensis minima*)—except no egg gathering is permitted.

(7) Black Brant (*Branta bernicla nigricans*)—except no egg gathering is permitted in the Yukon/Kuskokwim Delta and the North Slope regions.

(8) Tundra Swan (*Cygnus columbianus*).

(9) Gadwall (*Anas strepera*).

(10) Eurasian Wigeon (*Anas penelope*).

(11) American Wigeon (*Anas americana*).

(12) Mallard (*Anas platyrhynchos*).

(13) Blue-winged Teal (*Anas discors*).

(14) Northern Shoveler (*Anas clypeata*).

(15) Northern Pintail (*Anas acuta*).

(16) Green-winged Teal (*Anas crecca*).

(17) Canvasback (*Aythya valisineria*).

(18) Redhead (*Aythya americana*).

(19) Ring-necked Duck (*Aythya collaris*).

(20) Greater Scaup (*Aythya marila*).

(21) Lesser Scaup (*Aythya affinis*).

(22) King Eider (*Somateria spectabilis*).

(23) Common Eider (*Somateria mollissima*).

(24) Harlequin Duck (*Histrionicus histrionicus*).

(25) Surf Scoter (*Melanitta perspicillata*).

(26) White-winged Scoter (*Melanitta fusca*).
(27) Black Scoter (*Melanitta nigra*).
(28) Long-tailed Duck (*Clangula hyemalis*).
(29) Bufflehead (*Bucephala albeola*).
(30) Common Goldeneye (*Bucephala clangula*).
(31) Barrow's Goldeneye (*Bucephala islandica*).
(32) Hooded Merganser (*Lophodytes cucullatus*).
(33) Common Merganser (*Mergus merganser*).
(34) Red-breasted Merganser (*Mergus serrator*).
(f) *Family Gruidae.*
(1) Sandhill Crane (*Grus canadensis*).
(2) [Reserved].
(g) *Family Charadriidae.*
(1) Black-bellied Plover (*Pluvialis squatarola*).
(2) Common Ringed Plover (*Charadrius hiaticula*).
(h) *Family Haematopodidae.*
(1) Black Oystercatcher (*Haematopus bachmani*).
(2) [Reserved].
(i) *Family Scolopacidae.*
(1) Greater Yellowlegs (*Tringa melanoleuca*).
(2) Lesser Yellowlegs (*Tringa flavipes*).
(3) Solitary Sandpiper (*Tringa solitaria*).
(4) Wandering Tattler (*Heteroscelus incanus*).
(5) Spotted Sandpiper (*Actitis macularia*).
(6) Upland Sandpiper (*Bartramia longicauda*).
(7) Bar-tailed Godwit (*Limosa lapponica*).
(8) Ruddy Turnstone (*Arenaria interpres*).
(9) Black Turnstone (*Arenaria melanocephala*).
(10) Red Knot (*Calidris canutus*).
(11) Semipalmated Sandpiper (*Calidris pusilla*).
(12) Western Sandpiper (*Calidris mauri*).
(13) Least Sandpiper (*Calidris minutilla*).
(14) Baird's Sandpiper (*Calidris bairdii*).
(15) Sharp-tailed Sandpiper (*Calidris acuminata*).
(16) Dunlin (*Calidris alpina*).
(17) Long-billed Dowitcher (*Limnodromus scolopaceus*).
(18) Common Snipe (*Gallinago gallinago*).
(19) Red-necked phalarope (*Phalaropus lobatus*).
(20) Red phalarope (*Phalaropus fulicaria*).
(j) *Family Laridae.*
(1) Pomarine Jaeger (*Stercorarius pomarinus*).
(2) Parasitic Jaeger (*Stercorarius parasiticus*).
(3) Long-tailed Jaeger (*Stercorarius longicaudus*).
(4) Bonaparte's Gull (*Larus philadelphia*).
(5) Mew Gull (*Larus canus*).
(6) Herring Gull (*Larus argentatus*).
(7) Slaty-backed Gull (*Larus schistisagus*).
(8) Glaucous-winged Gull (*Larus glaucescens*).
(9) Glaucous Gull (*Larus hyperboreus*).
(10) Sabine's Gull (*Xema sabini*).
(11) Black-legged Kittiwake (*Rissa tridactyla*).
(12) Red-legged Kittiwake (*Rissa brevirostris*).
(13) Ivory Gull (*Pagophila eburnea*).
(14) Arctic Tern (*Sterna paradisaea*).
(15) Aleutian Tern (*Sterna aleutica*).
(k) *Family Alcidae.*
(1) Common Murre (*Uria aalge*).
(2) Thick-billed Murre (*Uria lomvia*).
(3) Black Guillemot (*Cepphus grylle*).
(4) Pigeon Guillemot (*Cepphus columba*).
(5) Cassin's Auklet (*Ptychoramphus aleuticus*).
(6) Parakeet Auklet (*Aethia psittacula*).
(7) Least Auklet (*Aethia pusilla*).
(8) Whiskered Auklet (*Aethia pygmaea*).
(9) Crested Auklet (*Aethia cristatella*).
(10) Rhinoceros Auklet (*Cerorhinca monocerata*).
(11) Horned Puffin (*Fratercula corniculata*).
(12) Tufted Puffin (*Fratercula cirrhata*).
(l) *Family Strigidae.*
(1) Great Horned Owl (*Bubo virginianus*).
(2) Snowy Owl (*Nyctea scandiaca*).
(3) Short-eared Owl (*Asio flammeus*).

§ 92.33 Region-specific regulations.

The 2004 season dates for the eligible subsistence regions are as follows:
(a) *Aleutian/Pribilof Islands Region.*
(1) Northern Unit (*Pribilof Islands):*
(i) Season: April 2–June 30.
(ii) Closure: July 1–August 31.
(2) Central Unit (Aleut Region's eastern boundary on the Alaska Peninsula westward to and including Unalaska Island):
(i) Season: April 2–June 15 and July 16–August 31.
(ii) Closure: June 16–July 15.
(3) Western Unit (Umnak Island west to and including Attu Island):
(i) Season: April 2–July 15 and August 16–August 31.
(ii) Closure: July 16–August 15.
(b) *Yukon/Kuskokwim Delta Region.*
(1) Season: April 2–August 31.
(2) Closure: 30-day closure dates to be announced by the Alaska Regional Director or his designee, after consultation with local subsistence users and the region's Waterfowl Conservation Committee. This 30-day period will occur between June 1 and August 15 of each year. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations and posted in village post offices and stores.
(c) *Bristol Bay Region.*
(1) Season: April 2–June 14 and July 16–August 31 (general season); April 2–July 15 for seabird egg gathering only.
(2) Closure: June 15–July 15 (general season); July 16–August 31 (seabird egg gathering).
(d) *Bering Strait/Norton Sound Region.*
(1) Stebbins/St. Michael Area (Point Romanof to Canal Point):
(i) Season: April 15–June 14 and July 16–August 31.
(ii) Closure: June 15–July 15.
(2) Remainder of the region:
(i) Season: April 2–June 14 and July 16–August 31 for waterfowl; April 2–July 19 and August 21–August 31 for all other birds.
(ii) Closure: June 15–July 15 for waterfowl; July 20–August 20 for all other birds.
(e) Kodiak Archipelago Region, except the Kodiak Island roaded area is closed to the harvesting of migratory birds and their eggs. The closed area is depicted on a map and consists of all lands and water east of a line extending from Crag Point in the north to the west end of Saltery Cove in the south and all lands and water south of a line extending from Termination Point along the north side of Cascade Lake extending to Anton Larson Bay. Waters adjacent to the closed area are closed to harvest within 500 feet from the water's edge. The offshore islands are open to harvest.
(1) Season: April 2–June 20 and July 22–August 31, egg gathering: May 1–June 20.
(2) Closure: June 21–July 21.
(f) *Northwest Arctic Region.*
(1) Season: April 2–August 31 (in general); waterfowl egg gathering May 20–June 9; seabird egg gathering July 3–July 12; molting/non-nesting waterfowl July 1–July 31.
(2) Closure: June 10–August 14, except for the taking of seabird eggs and molting/non-nesting waterfowl as provided in paragraph (f)(1) of this section.
(g) *North Slope Region.*
(1) Southern Unit (Southwestern North Slope regional boundary east to Peard Bay, everything west of the longitude line 158°30′S and south of the

latitude line 70°45′E to west bank of the Ikpikpuk River, and everything south of the latitude line 69°45′E between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 2–June 29 and July 30–August 31 for seabirds; April 2–June 19 and July 20–August 31 for all other birds.

(ii) Closure: June 30–July 29 for seabirds; June 20–July 19 for all other birds.

(2) Northern Unit (At Peard Bay, everything east of the longitude line 158°30′S and north of the latitude line 70°45′E to west bank of the Ikpikpuk River, and everything north of the latitude line 69°45′E between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 6–June 6 and July 7–August 31 for king and common eiders and

April 2–June 15 and July 16–August 31 for all other birds.

(ii) Closure: June 7–July 6 for king and common eiders and June 16–July 15 for all other birds.

(3) Eastern Unit (East of eastern bank of the Sagavanirktok River):

(i) Season: April 2–June 19 and July 20–August 31.

(ii) Closure: June 20–July 19.

(h) *Interior Region.*

(1) Season: April 2–June 14 and July 16–August 31; egg gathering May 1–June 14.

(2) Closure: June 15–July 15.

(i) Upper Copper River (Harvest Area: State of Alaska Game Management Units 11 and 13) (Eligible communities: Gulkana, Chitina, Tazlina, Copper Center, Gakona, Mentasta Lake, Chistochina and Cantwell).

(1) Season: April 15–May 26 and June 27–August 31.

(2) Closure: May 27–June 26.

(3) Note: The Copper River Basin communities listed above also documented traditional use harvesting birds in Unit 12, making them eligible to hunt in this unit using the seasons specified in paragraph (h)(1) of this section.

(j) *Gulf of Alaska Region.*

(1) Prince William Sound Area (Harvest area: Unit 6 [D]), (Eligible Chugach communities: Chenega Bay, Tatitlek).

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(2) Kachemak Bay Area (Harvest area: Unit 15[C] South of a line connecting the tip of Homer Spit to the mouth of Fox River) (Eligible Chugach Communities: Port Graham, Nanwalek).

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(k) Cook Inlet (Harvest area: portions of Unit 16[B] as specified below) (Eligible communities: Tyonek only)

(1) Season: April 2–May 31—That portion of Unit 16(B) south of the Skwentna River and west of the Yentna River and August 1–31—that portion of Unit 16(B) south of the Beluga River, Beluga Lake, and the Triumvirate Glacier.

(2) Closure: June 1–July 31.

(l) Southeast Alaska (Harvest area: National Forest lands in Icy Strait and Cross Sound including Middle Pass Rock near the Inian Islands, Table Rock in Cross Sound, and other traditional locations on the coast of Yakobi Island) (Eligible communities: Hoonah only).

(1) Season: glaucous-winged gull egg gathering only: May 15–June 30.

(2) Closure: July 1–August 31.

Dated: November 28, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–535 Filed 1–9–04; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 69, No. 7
Monday, January 12, 2004

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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet on Friday, January 16, 2004. The meeting will be held in Room M–09 at the Old Post Office Building, 1100 Pennsylvania Ave., NW., Washington, DC, beginning at 9:30 a.m.

The ACHP was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native Hawaiian; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome
II. Preserve America Program Development
III. Preserve America Executive Order Implementation
IV. Report of the Executive Committee
V. Report of the Preservation Initiatives Committee
VI. Report of the Federal Agency Programs Committee
VII. Report of the Communications, Education, and Outreach Committee
VIII. Chairman's Report
IX. Executive Director's Report
X. New Business
XI. Adjourn

Note: The meetings of the ACHP are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, DC, (202) 606–8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: January 6, 2004.

John M. Fowler,

Executive Director.

[FR Doc. 04–528 Filed 1–9–04; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 04–001–1]

Declaration of Extraordinary Emergency Because of Bovine Spongiform Encephalopathy

Bovine spongiform encephalopathy (BSE) has been detected in the United States. BSE is a progressive neurological disorder of ruminants that results from infection by an unconventional transmissible agent. It appears that BSE is primarily spread through the use of ruminant feed containing protein and other products from ruminants infected with BSE. The disease was detected in the State of Washington and had not previously been detected in the United States.

The presence of BSE presents a threat to U.S. livestock. It constitutes a significant danger to the national economy and a potential serious burden on interstate and foreign commerce. The Department has reviewed the measures being taken by the State of Washington to quarantine and regulate the herds in question and has consulted with appropriate State Government and Indian tribal officials in the State of Washington. Based on that review and consultation, and the scope of the impact of this event on the national economy, the Department has determined that the State may be unable to adequately take the measures necessary to quarantine and dispose of animals that may be infected with or exposed to BSE. Therefore, the Department has determined that an extraordinary emergency exists because of BSE in the State of Washington.

This declaration of extraordinary emergency authorizes the Secretary to (1) hold, seize, treat, apply other remedial actions to, destroy (including preventative slaughter), or otherwise dispose of, any animal, article, facility, or means of conveyance if the Secretary determines the action is necessary to prevent the dissemination of BSE and (2) prohibit or restrict the movement or use within the State of Washington, or any portion of the State of Washington, of any animal or article, means of conveyance, or facility if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of BSE. The appropriate State Government and Indian tribal officials in Washington have been informed of these facts.

EFFECTIVE DATE: This declaration of extraordinary emergency shall become effective January 6, 2004.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 04–623 Filed 1–9–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–113–1]

Availability of a Draft Pest Risk Analysis for the Importation of Fresh Commercial Citrus From Peru

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public of the availability of a draft pest risk analysis that has been prepared by the Animal and Plant Health Inspection Service relative to a proposed rule currently under consideration that would allow the importation of various types of fresh commercial citrus from Peru into the United States. We are making this draft pest risk analysis

available to the public for review and comment.

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

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–113–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–113–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–113–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Leah Millar, Center for Plant Health Science and Technology, PPQ, APHIS, 1017 Main Campus Drive, Suite 1550, Raleigh, NC 27606–5202; (919) 513–7045.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) is considering amending the fruits and vegetables regulations in 7 CFR part 319 to allow the importation of fresh commercial citrus fruit (grapefruit, Mandarin oranges or tangerines, sweet oranges, and tangelo) from Peru into the United States. Currently, citrus fruit from Peru may not be imported into the United States. We have prepared a draft pest risk analysis, entitled ''Importation of Fresh Commercial Citrus Fruit: Grapefruit (*Citrus x paradisi* Macfad.); Lime (*C. aurantiifolia* [Christm.] Swingle); Mandarin Orange or Tangerine (*C. reticulata* Blanco); Sweet Orange (*C. sinensis* [L.] Osbeck); Tangelo (*C. x tangelo* J.W. Ingram & H.E. Moore); from Peru into the United States (October 2003), that considers the pest risks associated with the importation of these types of fresh commercial citrus from Peru and identifies the appropriate phytosanitary measures to mitigate the risk of introduction of quarantine pests. We are making the draft pest risk analysis available to the public for review and comment.

You may view the draft pest risk analysis on the Internet at *http://www.aphis.usda.gov/ppq/pra/* or in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this notice). You may also request a copy of the document by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

This notice solicits public comments on the draft pest risk analysis. We will also be making the draft pest risk analysis available for public comment again during the comment period for any proposed rule related to the importation of fresh commercial citrus from Peru.

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 2nd day of January, 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–515 Filed 1–9–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), certified a petition for trade adjustment assistance (TAA) that was filed on December 4, 2003, by the Organized Seafood Association of Alabama, Inc., Bayou La Batre, Alabama. Shrimpers and shrimp farmers in Alabama are now eligible to apply for program benefits.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that increased imports of farmed shrimp contributed importantly to a decline in the landed prices of shrimp in Alabama by 20.5 percent during January 2002 through December 2002, when compared with the previous 5-year average.

Shrimpers and shrimp farmers certified as eligible for TAA may apply to the Farm Service Agency for benefits through April 12, 2004. After submitting completed applications, producers shall receive technical assistance provided by the Extension Service at no cost and an adjustment assistance payment, if certain program criteria are met.

Producers of raw agricultural commodities wishing to learn more about TAA and how they may apply should contact the Department of Agriculture at the addresses provided below for General Administration.

Producers Certified as Eligible for TAA, Contact: Farm Service Agency service centers in Alabama.

For General Information About TAA, Contact: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, email: *trade.adjustment@fas.usda.gov.*

Dated: December 30, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–526 Filed 1–9–04; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), denied a petition for trade adjustment assistance (TAA) for shrimpers that was filed on November 18, 2003, by the Southeastern Fisheries Association, Inc., Tallahassee, Florida.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that domestic producer prices for shrimp did not decline at least 20 percent during January 2002 through December 2002 when compared with the previous 5-year average, a condition required for certifying a petition for TAA.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, email: *trade.adjustment@fas.usda.gov.*

Dated: December 30, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–525 Filed 1–9–04; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Brochure for Glenn/Colusa, (5) Glenn County School Project/Possible Action (7) Bear Wallow Trail Proposal/Possible Action, (8) Noxious Weed Proposal/Possible Action, (9) Setting Up of Meeting for the Year, (10) General Discussion, (11) Next Agenda.

DATES: The meeting will be held on January 26, 2004, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, PO Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by January 22, 2004 will have the opportunity to address the committee at those sessions.

Dated: January 5, 2004.

Robert McCabe,

Acting Designated Federal Official.

[FR Doc. 04–530 Filed 1–9–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance, the following proposal for an extension of a currently approved collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

Title: Survey of Foreign Ocean Carriers' Expenses in the United States.

Form Number(s): BE–29.

Agency Approval Number: 0608–0012.

Type of Request: Extension of a currently approved collection.

Burden: 652 hours.

Number of Respondents: 163.

Avg Hours Per Response: 4 hours.

Needs and Uses: The Bureau of Economic Analysis is responsible for the compilation of the U.S. balance of payments accounts. The information collected in this survey is an integral part of the ''transportation'' portion of the U.S. balance of payments accounts. The balance of payments accounts, which are published quarterly in the Bureau's monthly publication, the *Survey of Current Business*, are one of the major statistical products of BEA. The accounts provide a statistical summary of U.S. international transactions and are used by government and private organizations for national and international policy formulation, and analytical studies.

The information collected is also used for compiling the U.S. national income and product accounts, and for reporting to international organizations such as the International Monetary Fund. Without the information collected in this survey, annual data needed for estimating an integral component of the transportation account would be unavailable. No other Government agency collects comprehensive annual data on foreign ocean carriers' expenses in the United States.

The survey requests information from U.S. agents of foreign ocean carriers. Information is collected on an annual basis from U.S. agents that handle 40 or more port calls by foreign vessels and have annual total covered expenses of $250,000 or more. U.S. agents with less than 40 port calls or with annual total covered expenses below $250,000 are exempt from reporting.

Affected Public: U.S. agents of foreign ocean carriers.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: The International Investment and Trade in Services Survey Act, 22 U.S.C. 3101–3108.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above extension of a currently approved collection can be obtained by calling or writing Diane Hynek, DOC Forms Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations in response to this extension of a currently approved collection should be sent within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503; fax: 202–395–7245; e-mail: *pbugg@omb.eop.gov*.

Dated: December 22, 2003.

Madeleine Clayton,

Management Analyst, Office of Chief Information Officer.

[FR Doc. 04–529 Filed 1–9–04; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Partnerships in the Provision of Weather, Water, Climate and Related Environmental Information

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce, Commerce.

ACTION: Notice of availability.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) proposes to adopt a policy regarding the information activities of the National Weather Service (NWS) and potentially other NOAA programs. This new proposed policy is intended to strengthen the existing partnership between government, academia and the private sector. This partnership provides the nation with high quality weather, climate and related environmental information.

ADDRESSES: The proposed policy is available electronically at *http://www.noaa.gov/fairweather*. Requests for hard copies should be sent to Fair Weather, Room 11404, 1325 East-West Highway, Silver Spring, MD 20910–3283.

FOR FURTHER INFORMATION CONTACT: Peter Weiss 301–713–0258, *peter.weiss@noaa.gov*.

Dated: December 29, 2003.

Nicholas Leivers,

Chief, Executive Affairs.

[FR Doc. 04–43 Filed 1–9–04; 8:45 am]

BILLING CODE 3510–KE–P

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0267]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Contract Facilities Capital Cost of Money

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through April 30, 2004. DoD proposes that OMB extend its approval for use through April 30, 2007.

DATES: DoD will consider all comments received by March 12, 2004.

ADDRESSES: Respondents may submit comments via the Internet at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@osd.mil.* Please cite OMB Control Number 0704–0267 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Mr. Ted Godlewski, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite OMB Control Number 0704–0267.

At the end of the comment period, interested parties may view public comments on the Internet at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Mr. Ted Godlewski, (703) 602–2022. The information collection requirements addressed in this notice are available electronically via the Internet at: *http://www.acq.osd.mil/dp/dars/dfars.html.* Paper copies are available from Mr. Ted Godlewski, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 230, Cost Accounting Standards Administration; DD Form 1861, Contract Facilities Capital Cost of Money; OMB Control Number 0704–0267.

Needs and Uses: A DD Form 1861 is normally completed for each proposal for a contract for supplies or services that is priced and negotiated on the basis of cost analysis, and for each indirect cost rate negotiation. Contracting officers use DD Form 1861 in computing profit objectives for negotiated contracts. The form enables contracting officers to differentiate profit objectives for various types of contractor assets—land, buildings, and equipment.

Affected Public: Businesses and other for-profit entities.

Reporting Frequency: On occasion.

Number of Respondents: 15,000.

Responses Per Respondents: Approximately 3.

Annual Responses: 45,138.

Average Burden Per Response: 10 hours.

Annual Burden Hours: 451,380.

Summary of Information Collection

This information collection includes requirements relating to DFARS Part 230, Cost Accounting Standards Administration. DFARS Subpart 230.70, Facilities Capital Employed for Facilities in Use, prescribes use of DD Form 1861 as a means of linking Form CASB–CMF, Facilities Capital Cost of Money Factors Computation, and DD Form 1547, Record of Weighted Guidelines Application. The contracting officer uses DD Form 1861 to record and compute contract facilities capital cost of money and facilities capital employed, and carries the facilities capital employed amount to DD Form 1547 to develop a profit objective. When the weighted guidelines method is used as one of the three structured approaches for developing a prenegotiation profit or fee objective (in accordance with DFARS 215.404–4), completion of DD Form 1861 requires contractor information not included on Form CASB–CMF, *i.e.*, distribution percentages of land, buildings, and equipment for the business unit performing the contract. DFARS 230.7004–2 directs the contracting officer to choose the most practical method of obtaining this information, *e.g.*, from the contract administration office or corporate administrative contracting officer, or through a solicitation provision.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 04–566 Filed 1–9–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Defense Acquisition University.

ACTION: Board of Visitors meeting.

SUMMARY: The next meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held at Defense Acquisition University, West Region, 33000 Nixie Way, San Diego, CA 92110. The purpose of this meeting is to report back to the BoV on continuing items of interest.

DATES: January 28, 2004 from 0900–1500.

ADDRESSES: Defense Acquisition University, West Region, 33000 Nixie Way, San Diego, CA 92110.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Cizmadia at 703–805–5134.

SUPPLEMENTARY INFORMATION: The meeting is open to the public; however, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Ms. Patricia Cizmadia at 703–805–5134.

Dated: January 5, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–508 Filed 1–9–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting Cancellations.

SUMMARY: On Thursday, September 11, 2003 (68 FR 53597) the Department of Defense announced closed meetings of the Defense Science Board Task Force on Patriot Systems Performance. The meetings scheduled for January 7–8, 2004, were cancelled.

Dated: January 5, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–506 Filed 1–9–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

DATES: March 30, 2004 from 0800 a.m. to 12:10 p.m.; March 31, 2004 from 0800 a.m. to 15:30 p.m. and April 1, 2004 from 0800 a.m. to 12:45 p.m.

ADDRESSES: The Shelter Pointe Hotel and Marina, 1551 Shelter Island Drive, San Diego, CA 92106.

FOR FURTHER INFORMATION CONTACT: Ms. Veronica Rice, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2119.

SUPPLEMENTARY INFORMATION:

Matters To Be Considered

Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

The meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

Dated: January 5, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–507 Filed 1–9–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for a Proposed Water Treatment Residuals Management Process for the Washington Aqueduct, Washington, DC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Washington Aqueduct seeks to plan and create a water treatment residuals management process that will comply with the standards established in National Pollutant Discharge Elimination System (NPDES) Permit DC0000019 and will allow for continued safe, reliable, and cost effective production of drinking water. Washington Aqueduct generates residual solids, a byproduct of producing drinking water, and currently periodically discharges this material to the Potomac River. The residuals consist of river sediment and solid materials generated by adding coagulant as part of the drinking water treatment process. NPDES Permit DC0000019 includes effluent standards for the discharge of the water treatment residuals that cannot be achieved by the current Washington Aqueduct residual management process.

This notice advises the public that pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, Washington Aqueduct, which operates the Dalecarlia and McMillan Water Treatment Plants, will prepare a combined Feasibility Study/Draft Environmental Impact Statement. The combined studies will identify, analyze, and evaluate alternatives for reducing or eliminating the discharge of water treatment residuals from the Dalecarlia Water Treatment Plant and Georgetown Reservoir to the Potomac River in order to comply with NPDES Permit DC0000019, effective April 15, 2003, and a Federal Facility Compliance Agreement, signed June 12, 2003. In addition, Washington Aqueduct will consider alternate methods of managing the Potomac River sediment that accumulates in the Dalecarlia Reservoir.

DATES: A public scoping meeting will be held on Wednesday, January 28, 2004 between 7 and 9 p.m. at St. Patrick's Episcopal Church and Day School, 4700 Whitehaven Parkway, NW., Washington, DC 20007–1586. Directions are available at *http://washingtonaqueduct.nab.usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the Draft Environmental Impact Statement (DEIS) can be addressed to: Michael C. Peterson, (202) 764–0025, *michael.c.peterson@usace.army.mil*, Environmental Engineer, Washington Aqueduct Division, Baltimore District, U.S. Army Corps of Engineers, 5900 MacArthur Boulevard, Washington, DC 20016.

SUPPLEMENTARY INFORMATION:

1. Background

Washington Aqueduct operates the Dalecarlia and McMillan Water Treatment Plants in Washington, DC, which provide potable water to over one million persons in the District of Columbia and Northern Virginia. Raw water diverted from the Potomac River is collected in the Dalecarlia Reservoir, where river sediment settles naturally. The sediment periodically dredged from the Dalecarlia Reservoir is not returned to the Potomac River.

Raw water flows from the Dalecarlia Reservoir to the Dalecarlia Water Treatment Plant and also via the Georgetown Reservoir to the McMillan Water Treatment Plant. Aluminum sulfate, the chemical used for coagulation, is added from the Dalecarlia Plant to the raw water for both the Dalecarlia and McMillan Water Treatment Plants. Chemically included sedimentation takes place in four basins at the Dalecarlia Water Treatment Plant and two basins at the Georgetown Reservoir. The Dalecarlia facility employs 36 rapid dual media filters and the McMillan facility is equipped with 12 rapid dual media filters. Except for the filter backwash water at the McMillan Water Treatment Plant, which is recycled to the McMillan Reservoir, and the filter backwash water at the Dalecarlia Water Treatment Plant, which is recycled to the Dalecarlia Reservoir, all sedimentation residuals are currently returned to the Potomac River.

2. Regulatory Mandate

In the recently issued NPDES permit, the Environmental Protection Agency has significantly reduced the allowable concentration of residuals that Washington Aqueduct can discharge to the Potomac. This change in the permit requires Washington Aqueduct to evaluate alternate methods of residuals collection, processing, conveyance, and disposal. Washington Aqueduct and Environmental Protection Agency Region III entered into a Federal Facility

Compliance Agreement to allow Washington Aqueduct to continue to produce drinking water while developing and implementing a new residuals management process. The Federal Facilities Compliance Agreement contains deadlines for various compliance milestones including the following NEPA documents (deadline in parentheses):

- Description of Proposed Actions and Alternatives submitted to Environmental Protection Agency Region III (May 28, 2004)
- Draft Environmental Impact Statement submitted to Environmental Protection Agency Region III (December 20, 2004)
- Final Record of Decision submitted to Environmental Protection Agency Region III (June 3, 2005)

3. Objectives of Proposed Action

The objectives of the proposed residuals management process are as follows, not necessarily in order of precedence (measurement indicators in parentheses):

- To allow Washington Aqueduct to achieve complete compliance with NPDES Permit DC00000019 and all other federal and local regulations.
- To design a process that will not impact current or future production of safe drinking water reliably for the Washington Aqueduct customers. (Peak design flow of drinking water)
- To reduce, if possible, the quantity of solids generated by the water treatment process through optimized coagulation or other means. (Mass or volume of solids generated)
- To minimize, if possible, impacts on various local or regional stakeholders and minimize impacts on the environment. (Traffic, noise, pollutants, etc.)
- To design a process that is cost-effective in design, implementation, and operation. (Capital, operations, and maintenance expenses)

4. Alternatives

Various alternatives will be considered that include, but are not limited to, different methods of collection, processing, conveyance, and disposal of the residuals as well as the no action alternative. Processing will be evaluated at both onsite and offsite facilities. Conveyance and disposal options are anticipated to include discharging to the sewer, barging to a remote processing or disposal site, trucking to a remote disposal site, pumping to a remote processing facility, and dewatering onsite and disposing in a dedicated monofill.

The alternatives evaluated in the DEIS will be analyzed in depth in areas to include, but not limited to, predicted changes to air quality, aquatic resources, terrestrial and wetland resources, cultural resources, traffic, solid and toxic waste, and infrastructure as well as any environmental justice concerns. Cumulative, secondary, indirect and other associated impacts will be evaluated.

5. Scoping Process

The participation of all affected and interested federal, state, and local agencies, environmental and neighborhood groups, Indian tribes, and individuals is welcome and encouraged. Anyone wishing to contribute ideas or information may submit a comment to the contact above during the 30 day scoping period that immediately follows the publication of this notice. Alternatively, comments will be collected online at *http://washingtonaqueduct.nab.ussace.army.mil.* Comments and other information can also be presented at the public scoping meeting (see **DATES**).

6. Availability of the DEIS

The Washington Aqueduct anticipates the DEIS will be made available to the public in October 2004.

Dated: January 5, 2004.

Thomas P. Jacobus,

Chief, Washington Aqueduct.

[FR Doc. 04–441 Filed 1–9–04; 8:45 am]

BILLING CODE 3710–41–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting described below. The Board will also conduct a series of public hearings pursuant to 42 U.S.C. 2286b and invites any interested persons or groups to present any comments, technical information, or data concerning safety issues related to the matters to be considered.

TIME AND DATE OF MEETING: 9 a.m., February 3, 2004.

PLACE: Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue NW., Suite 300, Washington, DC 20004–2001. Additionally, as a part of the Board's E-Government initiative, the meeting will be presented live through Internet video streaming. A link to the presentation will be available on the Board's Web site (*http://www.dnfsb.gov*).

STATUS: Open. While the Government in the Sunshine Act does not require that the scheduled discussion be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: The Board has been reviewing the Department of Energy's (DOE) current oversight and management of the contracts and contractors it relies upon to accomplish the mission assigned to DOE under the Atomic Energy Act of 1954, as amended. We will focus on what impact, if any, DOE's new initiatives may have or might have had upon assuring adequate protection of the health and safety of the public and workers at DOE's defense nuclear facilities. The seventh public meeting will collect information needed to understand and address any health or safety concerns that may require Board action. This will include, but is not limited to, presentations by the Department of Energy and the National Nuclear Security Administration (NNSA) to explain their contract management and oversight initiatives.

The Board has identified several key areas that will be examined in public meetings. In the February 3rd meeting, the Board will hear from DOE's Office of Environment, Safety, and Health concerning its roles and responsibilities in the oversight process, and from NNSA regarding its review of applicable lessons learned from the Columbia Accident Investigation Board Report. The Board will continue to explore in more depth Federal management and oversight policies being developed by DOE and NNSA for defense nuclear facilities. The information gathered will explore Federal contract management and oversight experience and will provide relevant reference experience. The public hearing portion is independently authorized by 42 U.S.C. 2286b.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: Requests to speak at the hearing may be submitted in writing or by telephone. The Board asks that commentators describe the nature and scope of their oral presentation. Those who contact the Board prior to close of business on February 2, 2004, will be scheduled for

time slots, beginning at approximately 11:30 a.m. The Board will post a schedule for those speakers who have contacted the Board before the hearing. The posting will be made at the entrance to the Public Hearing Room at the start of the 9 a.m. meeting.

Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. The Board Members may question presenters to the extent deemed appropriate. Documents will be accepted at the meeting or may be sent to the Defense Nuclear Facilities Safety Board's Washington, DC office. The Board will hold the record open until March 3, 2004, for the receipt of additional materials. A transcript of the meeting will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office and at DOE's public reading room at the DOE Federal Building, 1000 Independence Avenue SW., Washington, DC 20585.

The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone, or adjourn the meeting and hearing, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: January 8, 2004.

John T. Conway,

Chairman.

[FR Doc. 04–695 Filed 1–8–04; 3:21 pm]

BILLING CODE 3670–01–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday, January 21, 2004. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

The conference among the commissioners and staff will begin at 9:30 a.m. Topics of discussion will include: An update on development of the Water Resources Plan for the Delaware River Basin; an update on activities of the TMDL Implementation Advisory Committee (IAC); a report on PCB minimization planning efforts; a report on the effect of the Endangered Species Act and the presence of the dwarf wedge mussel on the fisheries enhancement program for the New York City Delaware Basin Reservoirs; a presentation on the proposed fisheries enhancement program for the New York City Delaware Basin Reservoirs; a discussion on DRBC's Fiscal Year 2005 proposed budget and decrement plan; and a discussion on a proposed Army Corps of Engineers Feasibility Cost Share Agreement.

The subjects of the public hearing to be held during the 1:30 p.m. business meeting include the dockets listed below:

1. *Nestle Waters North America, Inc. D–98–27 RENEWAL.* A spring water renewal project to continue to supply up to 9.0 million gallons (mg)/30 days of water to the applicant's bottled water operations from Hoffman Springs Nos. 1, 2, and 3 in the Ontelaunee Creek Watershed. The project is located in Lynn Township, Lehigh County, Pennsylvania.

2. *New Lisbon Development Center D–2003–08 CP.* An application for approval of a ground water withdrawal project to supply up to 8.0 mg/30 days of water to the applicant's institutional facility from new Wells Nos. 1, 2, 3, and 4 in the Cohansey Formation. The project wells are located in the South Branch Rancocas Creek Watershed in Woodland Township, Burlington County, New Jersey.

3. *Limerick Township Municipal Authority D–2003–16 CP.* An application to expand an existing 1.0 million gallons per day (mgd) secondary sewage treatment plant (STP) to process 1.7 mgd via an extended aeration treatment operation. The STP is located off King Road in Limerick Township, Montgomery County, Pennsylvania. It will continue to serve only Limerick Township, and effluent will continue to be discharged to an unnamed tributary of the Schuylkill River, approximately 43 river miles upstream from its confluence with the Delaware River.

4. *Ockels Farms, Inc. D–2003–18.* An application for approval of a ground water withdrawal project to supply up to 135 mg/30 days of water from Wells Nos. 1 through 5 screened in the Manokin and Columbia Formations, for supplemental irrigation of the applicant's 650 acre farm. The applicant has 14 wells in total, nine of which (Wells Nos. 6 through 14) are located outside of the Delaware River Basin. The project is located in the Cedar Creek and Broadkill River Watersheds in Sussex County, Delaware.

5. *Artesian Water Company, Inc. D–2003–22 CP.* An application for approval of a ground water withdrawal project to supply the applicant's public water supply distribution system from new Well No. 3 in the Willow Grove Wellfield, replacement Well No. 2R in the Townsend Wellfield, and replacement Well No. 2R in the Bayview Wellfield; and to retain the combined withdrawal of 150 mg/30 days from all wells in the Southern Distribution system. Willow Grove Well No. 3 and Townsend Well No. 2R are located in the Appoquinimink River Watershed, and Bayview Well No. 2R is located in the C&D Canal East Watershed in New Castle County, Delaware.

6. *Schwenksville Borough Authority D–2003–29 CP.* An application for approval of a ground water withdrawal project to supply up to 3 mg/30 days of water to the applicant's public water supply distribution system from new Well No. 9, and to increase the combined withdrawal from all wells to 14.8 mg/30 days. The project is located in the Swamp Creek Watershed in the Borough of Schwenksville and Lower Frederick Township, Montgomery County, Pennsylvania in the Southeastern Pennsylvania Ground Water Protected Area.

7. *Anthony E. Argiros/Family School D–2003–35.* An application to reroute to a proposed on-site subsurface discharge system a 19,500 gallon per day (gpd) STP discharge that currently flows to Abe Lord Creek, a tributary of the Delaware River in the Special Protection Waters Area. The existing plant will continue to provide advanced secondary treatment. The proposed subsurface discharge system is designed to further improve effluent quality. The modified project will continue to serve the Family School in the Town of Hancock, Delaware County, New York.

The Commission's 1:30 p.m. business meeting also will include a hearing on the DRBC's Fiscal Year 2005 proposed budget. In addition, the meeting will include: Adoption of the Minutes of the December 3, 2003 business meeting; announcements; a report on Basin hydrologic conditions; a report by the executive director; and a report by the Commission's general counsel.

Draft dockets scheduled for public hearing on January 21, 2004 are posted on the Commission's Web site, *http://www.drbc.net,* where they can be accessed through the Notice of Commission Meeting and Public Hearing. Additional documents relating to the dockets and other items may be examined at the Commission's offices. Please contact Robert Tudor at 609–883–9500 ext. 208 with any docket-related questions.

Persons wishing to testify at this hearing are requested to register in advance with the Commission secretary at 609–883–9500 ext. 203. Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the hearing should contact the Commission secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission may accommodate your needs.

Dated: January 6, 2004.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 04–531 Filed 1–9–04; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 11, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 6, 2004.

Jeanne Van Vlandren,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Financial Report for the Endowment Challenge Grant Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 300; Burden Hours: 900.

Abstract: The financial report requires investment data from institutions for the purpose of assessing their progress in increasing their endowment fund resources. The data is also used to monitor compliance with statutory and regulatory provisions.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2314. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address OCIO_RIMG@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–527 Filed 1–9–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection Submitted for OMB Review and Comment

AGENCY: Department of Energy.

ACTION: Review and comment.

SUMMARY: The Department of Energy (DOE) has submitted to the Office of Management and Budget (OMB) for clearance, a proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). The proposed collection will provide a baseline measurement of knowledge of and opinions about hydrogen, fuel cells, and the hydrogen economy.

DATES: Comments on the proposed information collection must be received on or before February 11, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503. (Comments should also be addressed to Susan L. Frey, Director, Records Management Division IM–11/Germantown Bldg., Office of Business and Information Management, Office of the Chief Information Officer, U.S. Department of Energy, Germantown, MD 20874–1290, and to Lorena F. Truett, Oak Ridge National Laboratory, National Transportation Research Center, 2360 Cherahala Boulevard, Room I–32, Knoxville, TN 37932.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Lorena F. Truett using the contact information listed above.

SUPPLEMENTARY INFORMATION: This package contains:

(1) *OMB No.:* 1910–NEW.

(2) *Package Title:* Hydrogen, Fuel Cells & Infrastructure Technologies Program Baseline Knowledge Assessment.

(3) *Type of Request:* New collection.

(4) *Purpose:* The Baseline Knowledge Assessment for the DOE Hydrogen, Fuel Cells & Infrastructure Technologies (HFCIT) program will measure the levels of and changes in awareness and understanding of hydrogen and fuel cell technologies and the hydrogen economy

within four target populations: (1) The general public, (2) students and educators, (3) personnel in state and local governments, and (4) potential users of hydrogen fuel and technologies in business and industry. Four distinct information collections will be required, one for each of the target populations. These collections will be conducted in stages, with the general public study conducted first. Changes relative to baseline knowledge levels will be determined when, after three years, each population group will be surveyed again using the same survey instrument and methodology. The instrument for assessing baseline knowledge will be specifically targeted to the population group. The public survey, for example, will assess a general knowledge of the production, storage, delivery, applications, and safety of hydrogen and fuel cells. Information gathered in this assessment will assist the HFCIT program in formulating an overall education plan for hydrogen technologies. Future surveys will provide a basis for determining changes in public awareness and understanding of the hydrogen economy, which is an important tool for knowing whether the education strategies should be modified and, if so, how.

(5) *Type of Respondents:* There are four populations to be surveyed; however, the general scope and temper of the four collections will be the same. The general public will be surveyed first. For the general public, a random (probability sample) survey of adults, age 18 and over, will be conducted via computer-assisted telephone interviews (CATI) or by other appropriate mechanism. About twenty closed-end questions will be posed. The second survey population will consist of a random sample of students—that is, teens (ages 12–17) and pre-teens (ages 6–11)—and educators. The third population will be randomly selected from energy agencies in all 50 states and the District of Columbia, plus a limited number of local (*i.e.*, municipal) agencies. Finally, a limited number of large-scale or potential large-scale users of energy sources powered by hydrogen and fuel cells will also be interviewed using both closed-end and open-end questions.

(6) *Estimated Number of Respondents:* The numbers of respondents will differ for each of the populations. The general public survey will be of 1,000 adults; the educational survey is planned to include 1,000 students and approximately 100–150 educators; it is estimated that the total number of contacts with state and local agencies will be less than 100; finally, less than 50 interviews with large-scale users are planned.

(7) *Estimated Number of Burden Hours:* For the general public survey, the burden is estimated at ten minutes per respondent for 1,000 respondents, for a total time and cost burden of 167 hours and $0. The total burdens for the other populations will depend on the designs of those surveys but will be similar in temper and scope to the burden for the general public survey. The total time and cost burden for the student survey is tentatively estimated to be 133 hours and $0; the total burden for educators is estimated to be no more than 25 hours and $0. The total burden for the state and local government and large-scale user surveys is expected to be less than the burden for the student survey.

Statutory Authority: Energy Reorganization Act of 1974 (Pub. L. 93–438).

Issued in Washington, DC on January 5, 2004.

Susan L. Frey,

Director, Records Management Division, Office of Records and Business Management, Office of the Chief Information Officer.

[FR Doc. 04–574 Filed 1–9–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat.770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, January 26, 2004, 8:30 a.m.—4 p.m.; Tuesday, January 27, 2004, 8:30 a.m.—4 p.m.

ADDRESSES: Hilton-Palmetto Dunes, 23 Ocean Lane, Hilton Head, SC 29928.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Closure Project Office, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC, 29802; Phone: (803) 952–7886.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, January 26, 2004

8:30 a.m.—Special Session on CAB Administration
10 a.m.—Special Session on 2004 CAB Workplan
12 noon—Lunch Break
1:30 p.m.—Combined Committee Session
5:15 p.m.—Adjourn

Tuesday, January 27, 2004

8:30 a.m.—Recognition of Outgoing Cab Members & Remarks; Approval of Minutes; Agency Updates
9:15 a.m.—Public Comment Session
9:30 a.m.—Chair and Facilitator Update
9:45 a.m.—Waste Management Committee Report
11:30 a.m.—Strategic & Legacy Management Committee Report
11:50 a.m.—Public Comment Session
12 noon—Lunch Break
1 p.m.—Nuclear Materials Committee Report
1:50 p.m.—Facilities Disposition & Site Remediation Committee Report
2:40 p.m.—Administrative Committee Report
3:10 p.m.—2004 Candidate Review and Elections
—2004 Committee Chair Elections
3:50 p.m.—Public Comment Session
4 p.m.—Adjourn

If needed, time will be allotted after public comments for items added to the agenda and administrative details. A final agenda will be available at the meeting Monday, January 26, 2004.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make the oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department

of Energy Savannah River Operations Office, PO Box A, Aiken, SC, 29802, or by calling her at (803) 952–7886.

Issued at Washington, DC on January 7, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–573 Filed 1–9–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on January 21–22, 2004, at the Taj Mahal Hotel, 1 Mansingh Road, New Delhi, India 110 011, in connection with an IEA-India Workshop on Emergency Oil Stock Issues.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on January 21–22, 2004, in connection with an IEA-India Workshop on Emergency Oil Stock Issues, to be held at The Taj Mahal Hotel, 1 Mansingh Road, New Delhi, India 110 011, commencing on January 21 at 9 a.m. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at the IEA-India Workshop.

The agenda for the Workshop is under the control of the IEA. It is expected that the IEA will adopt the following agenda:

1. Opening Remarks

—Welcome Address and Introduction to the Workshop
—Opening Statement by the IEA: Major Oil Security Challenges and Role of Emergency Stocks in World Oil Market

2. Session 1: Global and Regional Oil Security Challenges

—India's Energy Security Challenges
—Risks in the Current Oil Market and Implications on Economy
—Case Study on the U.S. Oil Disruption Simulation Model
—Industry's Views on Oil Supply Risks in the Current Market
—India's Efforts to Build Strategic Stocks: Current Situation and New Steps

3. Session 2: The IEA's Oil Crisis Management Experience

—IEA's Oil Crisis Management Experience
—IEA Member Countries' Stockholding Models
—Government Stocks: United States
—Agency Stocks: Germany
—Company Stocks: United Kingdom

4. Session 3: IEA Member Countries' Emergency Oil Stocks

—Overview of Emergency Stockholding in IEA Member Countries
—Government Stock Model
  —Legislation: Japanese Case—Reform of Japan National Oil Corporation
  —Financing Scheme: U.S. Case—Strategic Petroleum Reserve
—Agency Stock Model
  —Legislation: German Case—Building an Independent Stockholding Agency
  —Legislation: Czech Republic Case—Policy and Institutional Set-up
  —Financing Scheme: Dutch Case—Financing of Stockholding
  —Financing Scheme: Hungarian Case—Establishing the Crude Oil and Product Stockholding Association
—Mandatory Company Stock Model
  —Legislation: U.K. Case—Maintaining and Mobilizing Company Stocks
  —Financing Scheme: A Major Company's Experience in Managing Commercial and Strategic Oil Stocks
—Government and Mandatory Company Stock Model
  —Legislation: French Case—Government-Industry Relationship
  —Financing Scheme: Korean Case—Financing Schemes for Emergency Stocks and Emergency Operations

5. Closing Session: Looking Forward

—Identification of Areas for Future Cooperation
—Closing Remarks

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meeting of the IAB is open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions (SEQ); representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, or the IEA. The expected participants at the IEA-India Workshop include representatives from the Indian Ministry of Petroleum and other related governmental bodies, oil companies, and research institutes; representatives of IEA Member Countries, including the United States; representatives of the IEA Secretariat; and representatives of members of the IAB.

Issued in Washington, DC, January 5, 2004.

Samuel M. Bradley,

Assistant General Counsel for International and National Security Programs.

[FR Doc. 04–572 Filed 1–9–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–127–000]

Algonquin Gas Transmission Company; Notice of Tariff Filing

January 2, 2004.

Take notice that on December 30, 2003, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Fourth Revised Sheet No. 654, to be effective February 1, 2004.

Algonquin states that the purpose of this filing is to modify Section 18 of the General Terms and Conditions of its FERC Gas Tariff to provide that monthly invoices of Algonquin's customers shall be submitted, and shall be considered duly delivered, to customers by posting the invoices on Algonquin's LINK® System, or if requested by a customer in writing on or before February 15, 2004, by mailing the invoice to the customer by regular U.S. mail.

Algonquin states that copies of its filing have been served on all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–26 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–156–000, ER04–156–001, and EL04–41–000]

Notice of Initiation of Proceeding and Refund Effective Date

January 5, 2004.

Allegheny Power System Operating Companies: Monongahela Power Company, Potomac Edison Company, and West Penn Power Company, all d/b/a Allegheny Power; PHI Operating Companies: (Consolidated) Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; Baltimore Gas and Electric Company; Jersey Central Power & Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; Rockland Electric Company; and UGI Utilities, Inc.

Take notice that on January 2, 2004, the Commission issued an order in the above-indicated Docket Nos. initiating a proceeding in Docket No. EL04–41–000 under Section 206 of the Federal Power Act.

The refund effective date in Docket No. EL04–41–000 will be 60 days after publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E4–34 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–617–001]

Colorado Interstate Gas Company; Notice of Compliance Filing

January 2, 2004.

Take notice that on December 19, 2003, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 2004:

Tenth Revised Sheet No. 1
Second Revised Sheet No.11J

CIG states that it is also filing a firm transportation agreement. CIG states that the tariff sheet update the list of non-conforming agreements and implement a new negotiated rate transaction in compliance with the Commission's Order issued October 24, 2003 in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–21 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–36–000]

Consolidated Edison Company of New York, Inc., Consolidated Edison Solutions, Inc., KeySpan Energy Services, Inc., Constellation New-Energy, Strategic Energy, New York Energy Buyer Forum, and Consumer Power Advocates, Complaints, v. New York Independent System Operator, Inc., Respondent; Notice Convening Conference

January 6, 2004.

Pursuant to Rule 601 of the Commission's Rules of Practice and Procedure, 18 CFR 385.601, the Dispute Resolution Service will convene a conference on Tuesday, January 13, 2004, to discuss how Alternative Dispute Resolution processes and procedures may assist the participants in resolving disputes arising in the above-docketed proceeding. The conference will be held at the Consolidated Edison Company of New York, Inc., building at 4 Irving Place, New York, New York, (212–460–1089) beginning at 11 p.m. and ending at approximately 5:30 p.m.

Jerrilynne Purdy and Richard Miles, acting for the Dispute Resolution Service, will convene the conference. They will be available to communicate in private with any participant prior to the conference. If a participant has any questions regarding the conference, please call Ms. Purdy at 202/502–8671 or e-mail to *jerrilynne.purdy@ferc.gov*. Parties may also communicate with Richard Miles, the Director of the Commission's Dispute Resolution Service, at 1 877 FERC ADR (337–2237) or 202/502–8702 or e-mail to *richard.miles@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–41 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–37–000, CP04–44–000, CP04–45–000, and CP04–46–000]

Corpus Christi LNG, L.P., Cheniere Corpus Christi Pipeline Company; Notice of Applications

January 2, 2004.

Take notice that on December 22, 2003, Corpus Christi LNG, L.P. (Corpus LNG) filed an application seeking authorization to site, construct and operate a liquefied natural gas (LNG) terminal located near Corpus Christi, Texas. The LNG terminal will provide LNG tanker terminal services to third party shippers who would be importing LNG. Corpus LNG seeks authorization to site, construct and operate the LNG terminal pursuant to section 3(a) of the Natural Gas Act (NGA) and part 153 of the Federal Energy Regulatory Commission(s (Commission) regulations. Corpus LNG also requests the approval of the Corpus LNG terminal as the place of entry for the imported LNG supplies (Docket No. CP04–37–000).

Also take notice that on December 22, 2003, Cheniere Corpus Christi Pipeline Company (Cheniere Corpus Pipeline) filed an application seeking a certificate of public convenience and necessity, pursuant to section 7(c) of the NGA and part 157, subpart A of the Commission's regulations, to construct and operate a 24 mile pipeline and related facilities to transport natural gas on an open access basis (Docket No. CP04–44–000). Also, in Docket No. CP04–45–000, Cheniere Corpus Pipeline requests a blanket certificate under section 7(c) of the NGA and part 157, subpart F of the Commission's regulations to perform routine activities in connection with the future construction, operation and maintenance of the proposed 24 mile pipeline. Finally, Cheniere Corpus Pipeline requested authorization in Docket No. CP04–46–000 to provide the natural gas transportation services on a firm and interruptible basis pursuant to section 7(c) of the NGA and part 284 of the Commission(s Regulations.

These applications are on file with the Commission and open to public inspection. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. Any initial questions regarding these applications should be directed to Keith M Meyer, 333 Clay Street, Suite 3400, Houston, Texas. Phone: (713) 659–1361.

Cheniere Corpus Pipeline will conduct a 30-day open season in January 2004 for the purpose of obtaining binding commitments for firm transportation capacity. Cheniere Corpus Pipeline says that the construction and operation of the pipeline will enable new competitively priced supplies of natural gas imported through the Corpus LNG terminal to reach markets throughout the U.S.

The National Environmental Policy Act (NEPA) review of the proposals will begin only after the Cultural Resources information required in part 380, appendix A, section 380.12 of the regulations has been filed with the Commission and found by staff to be sufficient. Based on the historic processing timeline for projects such as this one that use the traditional authorization process, we anticipate that a Draft Environmental Impact Statement would be issued for public comment about 8 to 10 months after the NEPA process has commenced.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Those providing environmental comments will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. The environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: January 23, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–14 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES04–10–000]

Detroit Edison Company; Notice of Application

January 2, 2004.

Take notice that on December 18, 2003, the Detroit Edison Company (Detroit Edison) submitted an application pursuant to Section 204 of the Federal Power Act seeking authorization to issue securities, in an aggregate principal amount not to exceed $1.2 billion, consisting of approximately $1.0 billion of secured and unsecured long-term debt and

approximately $200 million of common stock.

Detroit Edison also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: January 20, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–16 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–124–000]

East Tennessee Natural Gas Company; Notice of Tariff Filing

January 2, 2003.

Take notice that on December 30, 2003, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Sixth Revised Sheet No. 132 to be effective February 1, 2004.

East Tennessee states that the purpose of this filing is to modify section 16 of the General Terms and Conditions of its FERC Gas Tariff to provide that monthly invoices of East Tennessee's customers shall be submitted, and shall be considered duly delivered, to customers by posting the invoices on East Tennessee's LINK® System, or if requested by a customer in writing on or before February 15, 2004, by mailing the invoice to the customer by regular U.S. mail.

East Tennessee states that copies of its filing have been served on all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–23 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–123–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 5, 2004.

Take notice that on December 30, 2003, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of January 1, 2004:

Forty-Eighth Revised Sheet No. 7
Forty-Eighth Revised Sheet No. 8

ESNG states that the purpose of this instant filing is to track rate changes attributable to storage services purchased from Transcontinental Gas Pipe Line Corporation (Transco) under its Rate Schedules GSS and LSS. ESNG further states that the costs of the above referenced storage services comprise the rates and charges payable under ESNG's Rate Schedules GSS and LSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–31 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–126–000]

Egan Hub Storage, LLC; Notice of Tariff Filing

January 2, 2004.

Take notice that on December 30, 2003, Egan Hub Storage, LLC (Egan Hub) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 81 to be effective February 1, 2004.

Egan Hub states that the purpose of this filing is to modify Section 14 of the General Terms and Conditions of its FERC Gas Tariff to provide that monthly invoices of Egan Hub's customers shall be submitted, and shall be considered duly delivered, to customers by posting the invoices on Egan Hub's LINK® System, or if requested by a customer in writing on or before February 15, 2004, by mailing the invoice to the customer by regular U.S. mail.

Egan Hub states that copies of its filing have been served on all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–25 Filed 01–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–122–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 2, 2004.

Take notice that on December 24, 2003, El Paso Natural Gas Company (EPNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A, the following tariff sheets bearing a proposed effective date of January 23, 2004:

Third Revised Sheet No. 200
Third Revised Sheet No. 361
Second Revised Sheet No. 362

EPNG states that these tariff sheets permit EPNG to hold capacity with upstream and downstream entities in compliance with Commission's off-system capacity policies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–22 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket No. RP04–130–000]

Fidelity Exploration & Production Company Complainant v. Southern Star Central Gas Pipeline, Inc. Respondent; Notice of Complaint

January 2, 2004.

Take notice that on December 31, 2003, Fidelity Exploration & Production Company (Fidelity) submitted a complaint against Southern Star Central Gas Pipeline, Inc. (Southern Star) requesting fast track processing by the Federal Energy Regulatory Commission. Fidelity alleges that Southern Star violated its tariff provisions that outline the best bid procedure for an existing shipper's right of first refusal at the expiration or renegotiation of its agreement. Fidelity states that a copy of the complaint was served on Southern Star on December 31, 2003, via facsimile.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. The answer to the complaint, comments, protests and

interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: January 20, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–28 Filed 01–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–176–005 and CP01–179–003]

Georgia Strait Crossing Pipeline LP; Notice Rejecting Request for Rehearing

January 2, 2004.

In September 2002 the Commission granted Georgia Strait Crossing Pipeline LP (Georgia Strait) authorization to construct a 47-mile pipeline across the northwest tip of Washington to carry gas to Vancouver Island.[1] One year later, Fuel Safe Washington (Fuel Safe) filed a request to reopen the record to supplement the EIA. Fuel Safe also sought judicial review of the Commission's decision.

The Commission issued an Order on November 13, 2003, which stated:

> Judicial review of our decision in this case is pending before The Circuit Court of Appeals for the Tenth Circuit in Fuel Safe Washington v. FERC, Case No. 03–9577. Because that Court now has exclusive jurisdiction over this proceeding, we no longer have authority to reopen the record, unless directed by the Court. Consequently, Fuel Safe's request is dismissed.[2]

On December 16, 2003, Fuel Safe sought rehearing of the Commission's November 13 Order dismissing its request to reopen the record.

Pursuant to Section 19(a) of the Natural Gas Act,[3] requests for rehearing of the Commission's Order were due within thirty days after issuance of the Order *i.e.*, no later than December 15, 2003. Because the 30-day rehearing deadline is statutorily based, it cannot be extended, and Fuel Safe's request for rehearing is rejected.

This notice constitutes final agency action. Request for rehearing by the Commission of this rejection notice must be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713 (2003).

Linda Mitry,

Acting Secretary.

[FR Doc. E4–30 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

[1] 100 FERC ¶ 61,280 (2002), *order denying reh'g and granting clarification*, 102 FERC ¶ 61,051 (2003).

[2] 105 FERC ¶ 61,190, paragraph 5 (2003).

[3] 3 15 U.S.C. 717r.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–125–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Tariff Filing

January 2, 2004.

Take notice that on December 30, 2003, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 283 to be effective February 1, 2004.

Maritimes states that the purpose of this filing is to modify Section 15 of the General Terms and Conditions of its FERC Gas Tariff to provide that monthly invoices of Maritimes's customers shall be submitted, and shall be considered duly delivered, to customers by posting the invoices on Maritimes's LINK System, or if requested by a customer in writing on or before February 15, 2004, by mailing the invoice to the customer by regular U.S. mail.

Maritimes states that copies of its filing have been served on all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–24 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–404–010]

Northern Natural Gas Company; Notice of Compliance Filing

January 2, 2004.

Take notice that on December 23, 2003, Northern Natural Gas Company (Northern), submitted for filing a study covering a recent 24 month period, showing which shippers paid Daily Delivery Variance Charges (DDVCs), how much each shipper paid and the amount of DDVC refund each shipper would have realized if Northern's proposed penalty refund mechanism was already in place. Northern states that it is making this filing in compliance with the Commission's Order in Northern's Order No. 637 proceeding.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-

free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: January 9, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–20 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–109–000 and EL04–37–000]

Pacific Gas and Electric Co.; Notice of Initiation of Proceeding and Refund Effective Date

January 5, 2004.

Take notice that on December 30, 2003, the Commission issued an order in the above-indicated Docket Nos. initiating a proceeding in Docket No. EL04–37–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL04–37–000 will be 60 days after publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E4–32 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–48–003]

Portland General Electric Company; Notice of Compliance Filing

January 2, 2004.

Take notice that on December 24, 2003, Portland General Electric Company (Portland) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective on December 3, 2003:

First Revised Sheet No. 4
First Revised Sheet No. 60
First Revised Sheet No. 61
First Revised Sheet No. 79

Portland asserts that the purpose of this filing is to comply with the Commission's December 2, 2003 order in Docket Nos. RP04–48–000, 001 and 002.

Portland states that on December 2, 2003, the Commission issued an order accepting Portland's tariff sheets to provide Part 284 service to be effective December 3, 2003, subject to Portland making certain specified changes relating to the calculation of Portland's depreciation rate, the crediting of penalty revenues to interruptible transportation customers, the lack of feasibility of a segmentation policy on Portland's system, and the ability of shippers to add or change primary points. Portland asserts that the purpose of its filing is to make the changes specified by the Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–29 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–47–000, CP04–38–000, CP04–39–000, and CP04–40–000]

Sabine Pass LNG, L.P. and Cheniere Sabine Pass Pipeline Company; Notice of Applications

January 2, 2004.

Take notice that on December 22, 2003, Sabine Pass LNG, L.P. (Sabine LNG) filed an application seeking authorization to site, construct and operate a liquefied natural gas (LNG) terminal located near Sabine Pass Channel, Louisiana. The LNG terminal will provide LNG tanker terminal services to third party shippers who would be importing LNG. Sabine LNG made the request to site, construct and operate the LNG terminal pursuant to Section 3(a) of the Natural Gas Act and part 153 of the Commission's regulations. Sabine LNG also requests the approval of the Sabine Pass LNG terminal as the place of entry for the imported LNG supplies (Docket No. CP04–47–000).

Also take notice that on December 22, 2003, Cheniere Sabine Pass Pipeline Company (Cheniere Sabine) filed an application seeking a certificate of public convenience and necessity, pursuant to Section 7(c) of the NGA and part 157, Subpart A of the Commission's Regulations, to construct and operate a 120 mile pipeline and related facilities to transport natural gas on an open access basis (Docket No. CP04–38–000). Cheniere Sabine is an affiliate of Sabine LNG. Also, in Docket No. CP04–39–000, Cheniere Sabine requests a blanket certificate under Section 7(c) of the NGA and part 157, Subpart F of the Commission's regulations to perform routine activities in connection with the future construction, operation and maintenance of the proposed 120 mile pipeline. Finally, Cheniere Sabine requested authorization in Docket No. CP04–40–000 to provide the natural gas transportation services on a firm and interruptible basis pursuant to Section 7(c) of the NGA and part 284 of the Commission's Regulations.

These applications are on file with the Commission and open to public inspection. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. Any initial questions regarding these applications should be directed to Keith M. Meyer, 333 Clay Street, Suite 3400, Houston, Texas. Phone: (713) 659–1361.

Cheniere Sabine will conduct a 30-day open season in January 2004 for the purpose of obtaining binding commitments for firm transportation capacity. Cheniere Sabine says that the construction and operation of its pipeline will enable new competitively priced supplies of natural gas imported

through the Sabine Pass LNG terminal to reach markets all across the U.S.

Cheniere has provided the minimal amount of cultural resources information necessary for staff to begin the traditional scoping process under the National Environmental Policy Act (NEPA). For projects such as this one that use the traditional authorization process, a Draft Environmental Impact Statement (DEIS) is typically issued for public comment about 8 to 10 months from the filing date of the application. However, the Commission staff can complete and issue the DEIS only after the remaining cultural resources information is submitted.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: January 23, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–15 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–128–000]

Texas Eastern Transmission, LP; Notice of Tariff Filing

January 2, 2004.

Take notice that on December 30, 2003, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, First Revised Sheet No. 583 and Second Revised Sheet No. 602, to be effective February 1, 2004.

Texas Eastern states that the purpose of this filing is to modify Sections 8.5 and 10.2 of the General Terms and Conditions of its FERC Gas Tariff to provide that monthly invoices of Texas Eastern's customers shall be submitted, and shall be considered duly delivered, to customers by posting the invoices on Texas Eastern's LINK® System, or if requested by a customer in writing on or before February 15, 2004, by mailing the invoice to the customer by regular U.S. mail.

Texas Eastern states that copies of its filing have been served on all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–27 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–132–000 and EL04–38–000]

Wolverine Power Supply Corporation, Inc.; Notice of Initiation of Proceeding and Refund Effective Date

January 5, 2004.

Take notice that on December 30, 2003, the Commission issued an order in the above-indicated Docket Nos. initiating a proceeding in Docket No. EL04–38–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL04–38–000 will be 60 days after publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E4–33 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG04–19–000, et al.]

CNC/SEGS, Inc., et al.; Electric Rate and Corporate Filings

January 2, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. CNC/SEGS, Inc.

[Docket No. EG04–19–000]

On December 23, 2003, CNC/SEGS, Inc. (CNC/SEGS) filed with the Commission pursuant to part 365 of the Commission's regulations a limited clarification (Limited Clarification) to its application (Application) for a determination of exempt wholesale generator (EWG) status to be effective as of the date of the original Application. CNC/SEGS is a corporation duly organized under the laws of California. CNC/SEGS states that it is an indirect owner of a partial interest in a solar-powered small power production facility located near Kramer Junction, California.

Comment Date: January 15, 2004.

2. POSDEF Power Company, L.P.

[Docket No. EG04–25–000]

Take notice that on December 23, 2003, POSDEF Power Company, L.P. (the Applicant), with its principal office at 700 Universe Blvd., Juno Beach, Florida 33408, filed with the Federal Energy Regulatory Commission (the Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant states that it is a California limited partnership engaged directly and exclusively in the business of owning and operating an approximately 44 MW coal-fueled cogeneration facility located in Stockton, California. Applicant further states that electric energy produced by the facility will be sold at wholesale.

Comment Date: January 13, 2004.

3. El Paso Electric Company

[Docket No. EL02–113–004]

Take notice that on December 23, 2003, El Paso Electric Company submitted a compliance filing pursuant to the Commission's Letter Order issued October 23, 2003, 105 FERC ¶ 61,107.

Comment Date: January 13, 2004.

4. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER98–411–012]

Take notice that on December 23, 2003, Wolverine Power Supply Cooperative, Inc. (Wolverine) tendered for filing a triennial market power analysis in compliance with the Commission's December 23, 1997, Order in Wolverine Power Supply Cooperative, Inc., 81 FERC ¶ 61,369 (1997).

Comment Date: January 13, 2004.

5. New York Independent System Operator, Inc.

[Docket No. ER01–3001–008]

Take notice that on December 23, 2003, the New York Independent System Operator, Inc. (NYISO) submitted a correction to its December 1, 2003, report on the status of its demand side management programs and the status of the addition of new generation resources in New York State. NYISO states that the filing corrects a statement that appears on page 5 of the cover letter to the report. The NYISO further states that it has served a copy of this filing upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff and Market Administration and Control Area Services Tariff.

Comment Date: January 13, 2004.

6. Alliant Energy Corporate Services, Inc.

[Docket No. ER02–762–003]

Take notice that on December 23, 2003, Alliant Energy Corporate Services, Inc. (AESC) submitted for filing Original Sheet Nos. 27 and 28 under FERC Electric Tariff Volume No. 1, pursuant to Commission Order issued December 11, 2003 in Docket No. EL01–118–000, *et. al.*

Comment Date: January 13, 2004.

7. American Electric Power Service Corporation, Commonwealth Edison Company, the Dayton Power and Light Company, and PJM Interconnection, L.L.C.

[Docket No. ER03–262–012]

Take notice that on December 22, 2003, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (collectively ComEd) submitted an informational filing to update the list of jurisdictional transmission facilities owned by ComEd which will be placed under the operational control of PJM Interconnection, L.L.C.

Comment Date: January 12, 2004.

8. El Paso Electric Company

[Docket No. ER04–26–001]

Take notice that on December 23, 2003, El Paso Electric Company (EPE) submitted a filing in compliance with a November 24, 2003, Letter Order in Docket No. ER04–26–000. EPE states that the compliance filing contains cost data in support of EPE's rates charged for Real Power Loss service and EPE's newly issued Open Access Transmission Tariff, FERC Electric Tariff Third Revised Volume No. 1.

Comment Date: January 13, 2004.

9. Xcel Energy Services Inc., Northern States Power Company

[Docket No. ER04–92–001]

Take notice that on December 23, 2003, Xcel Energy Services Inc. (XES) on behalf of Northern States Power Company (NSP) submitted a refund reporting compliance with the Commission's December 17, 2003, Letter Order in Docket No. ER04–92–000.

Comment Date: January 13, 2004.

10. Bangor Energy Resale, Inc.

[Docket No. ER04–326–000]

Take notice that on December 23, 2003, Bangor Energy Resale, Inc. submitted a Notice of Cancellation for its market-based rate schedule.

Comment Date: January 13, 2004.

11. Connexus Energy

[Docket No. ER04–327–000]

Take notice that on December 23, 2003, Connexus Energy submitted for filing revised sheets to Connexus Energy's Electric Rate Schedule FERC No. 1. Connexus Energy states that the revised sheets effect minor rate changes under Connexus Energy's contract with Elk River Municipal Utilities. Connexus Energy requests waiver of the Commission's notice requirement to allow a January 1, 2004, effective date.

Comment Date: January 13, 2004.

12. Progress Energy, Inc. on Behalf of Carolina Power & Light Company

[Docket No. ER04–328–000]

Take notice that on December 23, 2003, Progress Energy, Inc. on behalf of Carolina Power & Light Company (CP&L) tendered for filing a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement with Piedmont Electric Membership Corporation. CP&L is requesting an effective date of January 1, 2004, for this Service Agreement. CP&L further states that a copy of the filing was served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: January 13, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–37 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–39–000, et al.]

Duke Energy Trading and Marketing, L.L.C., et al.; Electric Rate and Corporate Filings

December 31, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Duke Energy Trading and Marketing, L.L.C.

[Docket No. EC04–39–000]

Take notice that on December 19, 2003, Duke Energy Trading and Marketing, L.L.C. (DETM) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization of the transfer by DETM of certain wholesale power contracts to Morgan Stanley Capital Group Inc.

Comment Date: January 13, 2004.

2. Duke Energy Vermillion, L.L.C.

[Docket Nos. EC04–41–000 and ER04–320–000]

Take notice that on December 19, 2003, Duke Energy Vermillion, L.L.C. (Duke Vermillion) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act (FPA) for authorization to transfer an undivided ownership interest to Wabash Valley Power Association, Inc. (Wabash) of FPA-jurisdictional interconnection facilities and related books and records associated with the proposed sale to Wabash of a 25% undivided ownership interest in Duke Vermillion's approximately 648 MW generation facility located in Vermillion County, Indiana (the Transaction).

Duke Vermillion requests confidential treatment for the documents contained in Exhibit I of the section 203 application. Duke Vermillion also tendered for filing pursuant to section 205 of the FPA as a rate schedule an ownership and operation agreement that Duke Vermillion and Wabash will enter into a closing which will govern the joint ownership and operation of the Facility. Duke Vermillion requests that the ownership and operation agreement rate schedule not become effective until the date the Transaction closes.

Comment Date: January 9, 2004.

3. Cargill Power Markets, L.L.C. v. Midwest Independent Transmission System Operator, Inc.

[Docket No. EL04–46–000]

Take notice that on December 29, 2003, Cargill Power Markets, L.L.C. (CPM), filed a complaint against Midwest Independent Transmission System Operator, Inc. (MISO). CPM alleges that MISO has violated its open access transmission tariff and Commission policy when processing its queue when eligible customers have submitted competing transmission service requests for transmission capacity over certain congested facilities for which incumbent transmission customers have exercised their ''rollover rights.'' CPM states that the complaint was served on MISO on December 29, 2003.

Comment Date: January 20, 2004.

4. TECO Energy Soures, Inc., Panda Gila River, L.P., TECO PANDA Generating Co., L.P., TPS Dell, L.L.C., TPS McAdams, L.L.C., Union Power Partners, L.P.

[Docket Nos. ER96–1563–018, ER01–931–003, ER02–1000–002, ER02–510–001, ER02–507–001, and ER01–930–003]

Take notice that on December 17, 2003, the above referenced companies, tendered a compliance filing in accordance with the Commission's Order issued November 17, 2003, in Docket Nos. EL01–118–000 and 001, Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorization, 105 FERC ¶ 61,218 (2003).

Comment Date: January 14, 2004.

5. Oklahoma Gas And Electric Company, OGE Energy Resources, Inc.

[Docket Nos. ER98–511–002 and ER97–4345–014]

Take notice that on December 22, 2003, Oklahoma Gas and Electric Company and OGE Energy Resources, Inc., energy affiliates, jointly filed a triennial market power update in support of their market pricing authority. In addition, they submitted revised versions of their market based rate tariffs in accordance with the Commission's Order issued November 17, 2003, in Docket Nos. EL01–118–000 and 001.

Comment Date: January 14, 2003.

6. Southern Company Services, Inc.

[Docket No. ER02–851–013]

Take notice that on December 16, 2003, Southern Company Services, Inc. tendered for filing revisions of a calculation concerning the payment of Settlement refunds submitted in Docket No. ER02–851–013 on November 21, 2003.

Comment Date: January 6, 2003.

7. Chanarambie Power Partners, L.L.C.

[Docket No. ER03–1340–003]

Take notice that on December 22, 2003, Chanarambie Power Partners, L.L.C., revised the effective date of pages 2 and 3 of its market-based wholesale power sales tariff filed in December 19, 2003, in ER03–1340–002.

Comment Date: January 12, 2004.

8. Progress Energy, Inc. on behalf of Florida Power Corporation

[Docket No. ER03–1402–001]

Take notice that on December 22, 2003, Florida Power Corporation (FPC) tendered for filing in compliance with Commission's Order issued November 28, 2003, revisions to their Operating Agreement between FPC d/b/a/ Progress

Energy Florida, Inc. and Gainesville Regional Utilities.

FPC states that a copy of this filing was served upon the Florida Public Service Commission and the North Carolina Utilities Commission.

Comment Date: January 12, 2004.

9. FPL Energy VG Repower Wind, L.L.C.

[Docket No. ER04–167–000]

Take notice that on December 22, 2003, FPL Energy VG Repower Wind, L.L.C. tendered for filing a withdrawal of its Application for Market-based Rate Authority filed on November 5, 2003.

Comment Date: January 12, 2004.

10. FPL Energy 251 Wind, L.L.C.

[Docket No. ER04–168–000]

Take notice that on December 22, 2003, FPL Energy 251 Wind, LLC tendered for filing a withdrawal of its Application for Market-based Rate Authority filed on November 5, 2003.

Comment Date: January 12, 2004.

11. Delmarva Power & Light Company

[Docket No. ER04–188–001]

Take notice that on December 22, 2003, Delmarva Power & Light Company (Delmarva) tendered for filing a revised executed Interconnection Agreement (the Revised Lewes IA) with the City of Lewes, Delaware (Lewes).

Delmarva states that copies of the filing were served upon the City of Lewes and the Delaware Public Service Commission.

Comment Date: January 12, 2004.

12. Unitil Resources, Inc.

[Docket No. ER04–319–000]

Take notice that on December 22, 2003, Unitil Resources, Inc. (URI) filed a Notice of Cancellation with the Federal Energy Regulatory Commission pursuant to sections 35.15 and 131.53 of the Commission's rules and regulations, 18 CFR 35.15 and 131.53. URI seeks to cancel its rate schedule for power sales at market-based rates, designated as Rate Schedule FERC No. 1. URI requests that the cancellation be made effective as of December 23, 2003.

Comment Date: January 12, 2004.

13. Gilroy Energy Center, LLC

[Docket No. ER04–321–000]

On December 22, 2003, Gilroy Energy Center, LLC (Gilroy) filed an unexecuted Must-Run Service Agreement and accompanying schedules (RMR Agreement) between Gilroy and the California Independent System Operator Corporation (ISO) setting forth the rates, terms and conditions under which Gilroy will provide reliability must-run services to the ISO.

Comment Date: January 12, 2004.

14. Portland General Electric Company

[Docket No. ER03–322–000]

Take notice that on December 22, 2003, Portland General Electric Company (PGE) filed revised tariff sheets to its Open Access Transmission Tariff. PGE states that the revised sheets are intended to: (1) Describe Retail Network Integration Transmission Service to facilitate open access service in the PGE's service area; and (2) set forth the rates for the Retail Network Integration Transmission Service. PGE requests an effective date of March 1, 2004.

Comment Date: January 12, 2004.

15. Los Esteros Critical Energy Facility, LLC

[Docket No. ER04–323–000]

On December 22, 2003, Los Esteros Critical Energy Facility, LLC (Los Esteros) filed an unexecuted Must-Run Service Agreement and accompanying schedules (RMR Agreement) between Los Esteros and the California Independent System Operator Corporation (ISO) setting forth the rates, terms and conditions under which Los Esteros will provide reliability must-run services to the ISO.

Comment Date: January 12, 2004.

16. Creed Energy Center, LLC

[Docket No. ER04–324–000]

On December 22, 2003, Creed Energy Center, LLC (Creed) filed an unexecuted Must-Run Service Agreement and accompanying schedules (RMR Agreement) between Creed and the California Independent System Operator Corporation (ISO) setting forth the rates, terms and conditions under which Creed will provide reliability must-run services to the ISO.

Comment Date: January 12, 2004.

17. Goose Haven Energy Center, LLC

[Docket No. ER04–325–000]

On December 22, 2003, Goose Haven Energy Center, LLC (Goose Haven) filed an unexecuted Must-Run Service Agreement and accompanying schedules (RMR Agreement) between Goose Haven and the California Independent System Operator Corporation (ISO) setting forth the rates, terms and conditions under which Goose Haven will provide reliability must-run services to the ISO.

Comment Date: January 12, 2004.

18. New England Power Pool

[Docket No. ER04–331–000]

Take notice that on December 24, 2003, the New England Power Pool (NEPOOL) Participants Committee filed the One Hundred First Agreement Amending New England Power Pool Agreement (the Amendment) which modifies prospectively how NEPOOL expenses are to be shared among members of the Generation and Supplier Sectors. NEPOOL has requested that the Amendment become effective as of January 1, 2004.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment Date: January 14, 2004.

19. Southeast Chicago Energy Project, LLC

[Docket No. ER04–333–000]

Take notice that on December 22, 2003, Southeast Chicago Energy Project, LLC (Southeast Chicago) tendered for filing an amendment to its cost-based rate wholesale power sales agreement between Southeast Chicago and Exelon Generation Company, LLC, to provide Black Start Service.

Comment Date: January 12, 2004.

20. PPL Electric Utilities Corporation

[Docket No. ES04–1–002]

Take notice that on December 31, 2003, PPL Electric Utilities Corporation, submitted further information in support of its application filed on October 10, 2003, pursuant to section 204 of the Federal Power Act, seeking authorization to issue short-term debt in an aggregate face amount not to exceed $600 million.

Comment Date: January 9, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number

filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–36 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–36–000, CP04–41–000, and PF03–4–000]

Weaver's Cove Energy, L.L.C. and Mill River Pipeline, L.L.C.; Notice of Status Change of Environmental Review and Expiration of Scoping Period for the Proposed Weaver's Cove LNG Project

December 31, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of Weaver's Cove Energy L.L.C.'s and Mill River Pipeline L.L.C.'s (collectively referred to as Weaver's Cove) proposed Weaver's Cove LNG Project, which includes facilities in Fall River, Somerset, Swansea, and Freetown, Massachusetts. On December 30, 2003, the Commission gave notice that on December 19, 2003, in Docket Nos. CP04–36–000 and CP04–41–000, Weaver's Cove's applications were filed with the Commission under section 3 and section 7 of the Natural Gas Act and part 153, part 157, and part 284 of the Commission's regulations. That notice gave a deadline of January 13, 2004, for the filing of motions to intervene, protests and comments.

The instant notice announces a final opportunity for interested stakeholders to submit comments on the Weaver's Cove LNG Project before the close of the scoping period. Details on how to submit written comments are provided in the public participation section of this notice. Please note that the scoping period will close on January 30, 2004.

We [1] are sending this notice to residences within 0.5 mile of the proposed LNG terminal site; potentially-affected landowners along the proposed pipeline routes; Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; and local libraries and newspapers. We have asked State and local government representatives to notify their constituents of this planned action and encourage them to comment on their areas of concern.

Summary of the Proposed Project

Weaver's Cove proposes to construct and operate a liquefied natural gas (LNG) import terminal and natural gas pipelines to import LNG and deliver a baseload sendout of 400 million cubic feet per day (MMcf/d), and a peak sendout of 800 MMcf/d to markets in New England. The facilities would consist of:

- A pier and unloading facilities capable of receiving LNG tankers with a capacity of up to 145,000 cubic meters;
- One LNG storage tank with a capacity of 200,000 cubic meters (4.4 billion cubic feet of gas equivalent);
- Four shell and tube vaporizers supplied by 12 natural gas fired heaters;
- Four truck loading stations to deliver LNG to other storage facilities in the northeastern United States;
- Ancillary utilities, buildings, and service facilities;
- Two 24-inch-diameter pipelines (the 2.52-mile-long Western Pipeline and the 3.6-mile-long Northern Pipeline) to interconnect with the Algonquin Gas Transmission Company pipeline system; and
- Two meter and regulation stations.

A map depicting the proposed terminal site and the two pipeline routes is provided in appendix 1.[2] [3]

Weaver's Cove is requesting approval to begin construction of the LNG facilities by late 2004. The approximate duration of construction of the terminal facilities would be 3 years. The duration of pipeline construction would be approximately 5 months. Weaver's Cove proposes to place the project in service in the fourth quarter of 2007.

Land Requirements

The proposed LNG terminal would be on a 73-acre site zoned for industrial use on the Taunton River in Fall River, Massachusetts. The site has been formerly used as an oil refinery and a marine import terminal for petroleum products. The riverfront areas of the site are in a Designated Port Area as defined by the Massachusetts Coastal Zone Management plan.

The project would also require maintenance and improvement dredging of approximately 7 miles of the Federal Navigation Channel within Mount Hope Bay and the Taunton River and a turning basin within the Taunton River to enable the LNG tankers to access the proposed site. The dredging would occur in Massachusetts and Rhode Island. The total volume of dredging including overdredge is anticipated to be about 2,500,000 cubic yards. Weaver's Cove is proposing to reuse the dredged material at the terminal site as general fill material and would create landforms with the material to provide a visual barrier. Dredge disposal alternatives being investigated by Weaver's Cove include confined aquatic disposal cell, confined disposal, or ocean disposal methods.

The EIS Process

The Commission will be the lead Federal agency for this EIS process which is being conducted to satisfy the requirements of the National Environmental Policy Act (NEPA). The Commission will use the EIS to consider the environmental impacts that could result if it issues a Certificate of Public Convenience and Necessity under section 7, and an import authorization under section 3, of the Natural Gas Act for the proposed project. The U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, Region 1, and the U.S. Coast Guard have agreed to be cooperating agencies and will use the EIS in their decision-making processes. The EIS will also be used by the Massachusetts Executive Office of Environmental Affairs (EOEA) pursuant to a Special Review Procedure established by the Secretary of Environmental Affairs to comply with the Massachusetts Environmental Policy Act regulations.

By this notice, we are formally requesting additional comments and announcing the closing of the process referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. We are soliciting input from the public and interested agencies to help us focus the analysis in

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[1] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Office of Energy Projects.

[2] Requests for detailed maps of the facilities may be made to the company directly. Call or e-mail: local 508–678–5700, toll free 1–877–633–5700, or *info@weaverscove.com*. Be as specific as you can about the location(s) of your area(s) of interest.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices are available on the Commission(s website (*http://www.ferc.gov*) at the (eLibrary(link or from the Commission(s Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call at (202) 502–8371. For instructions on connecting to eLibrary refer to the last two pages of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

the EIS on the potentially significant environmental issues related to the proposed action. All comments received will be considered during the preparation of the EIS which will include our independent analysis of the identified issues.

For the Weaver's Cove LNG Project, the scoping process began on May 2, 2003, with an interagency meeting in Fall River, Massachusetts to discuss the project and the environmental review process with Weaver's Cove and other key Federal and state agencies. On July 11, 2003, the Commission issued a Notice of Intent to Prepare an EIS for the proposed Weaver's Cove LNG Project, request for comments on environmental issues, and notice of joint public scoping meeting (NOI). The FERC staff subsequently conducted a joint public scoping meeting with the Massachusetts EOEA in Swansea, Massachusetts on July 29, 2003, to receive oral comments and concerns about the project.

Prior to receipt of a formal application, the NOI announced that the FERC Staff was initiating its NEPA Pre-filing review on Weaver's Cove's project under Docket No. PF03–4–000.[4] The purpose of the FERC's NEPA Pre-filing Process is to: (1) Establish a framework for constructive discussion between the project proponents, potentially affected landowners, agencies, and the Commission staff; (2) encourage the early involvement of interested stakeholders to identify issues and study needs; and (3) attempt to identify and resolve issues early, before an application is filed with the FERC.

Our independent analysis of the proposed project will be included in a draft EIS. The draft EIS will be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, Native American tribes, newspapers, libraries, and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the draft EIS. We will consider all timely comments on the draft EIS and revise the document, as necessary, before issuing the final EIS. In addition, we will consider all comments on the final EIS before we make our recommendations to the Commission.

With this notice, we are asking other Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to the environmental issues to formally cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies which would like to request cooperating status should follow the instructions for filing comments described later in this notice.

If you are an affected property owner receiving this letter, a Weaver's Cove representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. You may have already been contacted by Weaver's Cove about the Weaver's Cove LNG Project. A fact sheet has been prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. If you provided comments to us during the pre-filing period, you do not need to resubmit them. For those who will submit comments for the first time, you should focus your comments on the potential environmental effects, reasonable alternatives (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please mail your comments so they will be received in Washington, DC on or before January 30, 2004, and carefully follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of your comments for the attention of Gas Branch 1; and
- Reference Docket Nos. CP04–36–000 and CP04–41–000 on the original and both copies.

The Commission strongly encourages you to file your comments electronically via the Internet, in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. As mentioned before, the Commission issued on December 30, 2003, a notice announcing the filing of the applications and a deadline of January 13, 2004, to file motions to intervene, protests and comments in this proceeding.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208 FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERConlinesupport@ferc.gov.* The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm.*

Weaver's Cove has established an Internet Web site for this project at *http://www.weaverscoveenergy.com.* The Web site includes a description of the project, an overview map of the terminal site and pipeline routes, and a

[4] To view the NOI and any information filed under PF03–4–000, follow the instructions for using the eLibrary link at the end of this notice.

link for the public to submit comments on the project. Weaver's Cove will continue to update its website with information about the project, and will always accept comments.

Finally, any future public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E4–35 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing; Ready for Environmental Analysis; and Soliciting Motions To Intervene and Protests, Comments, Recommendations, Terms and Conditions, and Prescriptions

January 2, 2004.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection.

a. *Type of Applications:* New major licenses.

b. *Project Nos.:* 2130–033, 2118–007, 2005–012, and 2067–020.

c. *Dates Filed:* P–2130 and P–2118 filed December 26, 2002; P–2005 and P–2067 filed December 23, 2002.

d. *Applicants:* Pacific Gas and Electric Company, current licensee for P–2130 and P–2118; and Tri-Dam Project, current licensee for P–2005 and P–2067.

e. *Names of Projects:* Spring Gap-Stanislaus Project No. 2130–033, Donnells-Curtis Transmission Line Project No. 2118–007, Beardsley/Donnells Project No. 2005–012, and Tulloch Project No. 2067–020.

f. *Location:* On the Middle Fork, South Fork, and mainstem of the Stanislaus River in Tuolumne and Calaveras counties, California. All of the Beardsley/Donnells Project, most of the Spring Gap-Stanislaus Project, and all of the Donnell-Curtis Transmission Line Project are located within the Stanislaus National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Randy Livingston, Pacific Gas and Electric Company, P.O. Box 770000, Mail Code: N11C, San Francisco, CA 94117; and Mr. Steve Felte, Tri-Dam Project, P.O. Box 1158, Pinecrest, CA 95364.

i. *FERC Contact:* Susan O'Brien, *susan.obrien@ferc.gov*, (202) 502–8449.

j. *Deadline for Filing Motions to Intervene and Protests, Comments, Recommendations, Terms and Conditions, and Prescriptions:* 60 days from the issuance date of this notice. Reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The existing Spring Gap-Stanislaus Project is composed of four developments: Relief, Pinecrest, Spring Gap, and Stanislaus. It has a combined capacity of 98 MW.

The existing Donnells-Curtis Transmission Line Project is a 115 kV transmission line. Portions of the transmission line under FERC jurisdiction include an 8-mile segment extending from Donnells Powerhouse to Spring Gap Junction and the 2.2-mile tap line from Beardsley Powerhouse to Beardsley Junction.

The existing Beardsley/Donnell Project is composed of the Beardsley and Donnell Developments and has a combined capacity of 64 MW.

The existing Tulloch Project is composed of a single development and has a capacity of 17.1 MW.

m. Copies of the applications are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. Copies are also available for inspection and reproduction at the addresses in item h above.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS'', ''TERMS AND CONDITIONS'', or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural schedule:* The remaining schedule for processing this relicense application is revised as shown below. Revisions to this schedule may be made as appropriate.

Milestone	Target date
Issue scoping document 2.	December 2003
Notice accepting applications and ready for environmental analysis, solicit motions to intervene.	December 2003
Issue acceptance letters and request clarification.	December 2003
Notice of the availability of the draft EIS document.	April 2004
Initiate 10(j) process	May 2004
Notice of the availability of the final EIS document.	October 2004
Ready for Commission decision on the application.	December 2004

Linda Mitry,

Acting Secretary.

[FR Doc. E4–17 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

January 2, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Partial Transfer of License.

b. *Project No:* 4784–063.

c. *Date Filed:* December 11, 2003.

d. *Applicants:* UtilCo Group Inc. (Transferor), UtilCo SaleCo, LLC (Transferee), Chrysler Capital Corporation and Topsham Hydro Partners Limited Partnership (Co-licensees).

e. *Name and Location of Project:* The Pejepscot Hydroelectric Project is located on the Androscoggin River in the town of Topsham, in Sagadahoc, Cumberland and Androscoggin Counties, Maine.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* For Transferor: Victor A. Contract, Orrick, Herrington & Sutcliffe LLP, 3050 K Street, NW., Washington, DC 20007, (202) 339–8495. For Transferee: Brogan Sullivan, Assistant General Counsel, UtilCo Group Inc. c/o Aquila, Inc., 20 W. Ninth Street, Kansas City, MO 64105, (816) 467–3659.

h. *FERC Contact:* Lynn R. Miles (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* January 23, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–4784–063) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* The Transferor and Transferee request that the license be modified to reflect a partial transfer of license from transferor, as a co-licensee for the project, to transferee, a newly-formed affiliate of transferor. The named Co-licensees would remain as such.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the project number excluding the last three digits (P–4784) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov* . For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g. above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–18 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

January 6, 2004.

Take notice that the following applications have been filed with the Commission and are available for public inspection:

a. *Application Types:* Non-project use of project lands.

b. *Project Nos:* 2210–095, 2210–096 and 2210–097.

c. *Dates Filed:* P–2210–095 was filed on November 10, 2003, P–2210–096 was filed on November 17, 2003, and P–2210–097 was filed on November 13, 2003.

d. *Applicant:* Appalachian Power Company (APC).

e. *Name of Project:* Smith Mountain Pumped Storage Project.

f. *Location:* The project is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Roanoke Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and §§ 799 and 801.

h. *Applicant Contact:* Teresa P. Rogers, Hydro Generation Department, American Electric Power, P.O. Box 2021, Roanoke, VA 24022–2121, (540) 985–2441.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 502–6182, or e-mail address: *heather.campbell@ferc.gov*.

j. *Deadline for Filing Comments and or Motions:* February 6, 2004.

All documents (original and eight copies) should be filed with: Ms.

Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2210–095, –096, or –097) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* APC is requesting approval of non-project uses of project lands for the proposals described below.

P–2210–095—Request for approval for Resource Partnership L.L.C to install and operate within the project boundary 15 docks with a total of 62 covered stationary slips and 30 floaters. The docks and associated facilities will serve multi-family dwellings and single family homes. Construction would take place along the Blackwater River portion of the project at an area known as the Cottages at Contentment Island. There is no dredging associated with the proposal.

P–2210–096—Request for approval for Bayview Holdings L.L.C. to install and operate three docks with a total of 31 covered stationery slips. Construction would take place along the Roanoke River at an area identified as Emerald Bay. No dredging will be needed.

P–2210–097—Request for approval for Harbor Ridge Homeowners Association to install and operate an additional 7 covered stationery slips to a dock that has two slips. These slips, along with an existing dock with 15 slips, will serve multi-family type dwellings. Construction would take place along the Roanoke River at a site known as Harbor Ridge. No dredging is proposed.

l. *Location of the Applications:* These filings are available for review at the Commission in the Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described applications. Copies of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–38 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request To Amend License and To Solicit Comments, Motions To Intervene, and Protests

January 6, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of license to delete license Article 411.

b. *Project No:* 11264–027.

c. *Date Filed:* April 30, 2003.

d. *Applicant:* South Yadkin Power, Inc.

e. *Name of Project:* Cooleemee Hydro Project.

f. *Location:* The project is located on the South Yadkin River in Davie County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mrs. Pearlie Bullock, South Yadkin Power, Inc., 6898-A Coltrane Mill Road, Greensboro, NC 27406, (336) 674–6293.

i. *FERC Contacts:* Any questions on this notice should be addressed to Ms. Shana High at (202) 502–8674, or e-mail address: *shana.high@ferc.gov*.

j. *Deadline for Filing Comments and or Motions:* February 6, 2004.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–11264–027) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* Article 411 requires South Yadkin Power, Inc. to file a final recreation plan providing for a canoe portage and associated directional signs. The April 30, 2003, application specifically requests that South Yadkin Power, Inc. be relieved of the responsibility of the canoe portage trail since a canoe portage trail is constructed on the opposite side of the river within RiverPark.

l. *Location of the Applications:* The filings are available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please call the Helpline at (866) 208–3676 or contact *FERCOnLineSupport@ferc.gov*. For TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to

take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–39 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

January 6, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12480–000.

c. *Date Filed:* November 12, 2003.

d. *Applicant:* The Eastern Shoshone Tribe of the Wind River Reservation.

e. *Name of Project:* Eastern Shoshone Wind River Hydroelectric Project.

f. *Location:* The proposed project would be located at the Bureau of Reclamation's (BOR) Wind River Diversion Dam, on the Big Wind River within Fremont County, Wyoming, on the sovereign territory of the Wind River Reservation. A portion of the project area includes lands owned by the BOR and the United States in trust for the Eastern Shoshone and Northern Arapaho Tribes.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Eastern Shoshone Tribe of the Wind river Reservation, 14 North Fork Road, P.O. Box 538, Fort Washakie, WY 82520–0538, (307) 332–3532. Vernon Hill, Chairman, Shoshone Business Council, Eastern Shoshone Tribe, P.O. Box 538, Fort Washakie, WY 82514. Don Clary, Holland & Knight, LLP, 633 West Fifth Street, Suite 2100, Los Angeles, CA 90071, (213) 896–2450.

i. *FERC Contact:* Mr. Lynn R. Miles, (202) 502–8763.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12480–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 12457–000, Date Filed: May 20, 2003, Date Issued: August 15, 2003, Due Date: November 15, 2003.

l. *Description of Project:* The proposed run-of-river project using the BOR's existing Wind River Diversion Dam would consist of: (1) A penstock, (2) a powerhouse containing one generating unit with a total installed capacity of 1 MW, (3) an existing transmission line, and (4) appurtenant facilities. The project would have an annual generation of 4.5 GWh.

m. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

p. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

q. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit

application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

r. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

s. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

t. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings

u. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E4–40 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RT02–2–000, RT04–2–000, ER04–116–000, and ER04–157–000]

State-Federal Regional RTO Panels, ISO New England Inc., Bangor Hydro-Electric Company, New England Transmission Owners; Notice of State-Federal Regional Panel Discussion

January 2, 2004.

At the request of the New England Conference of Public Utility Commissioners (NECPUC), on January 8, 2004, from approximately 1 p.m. to 3 p.m. members of the Federal Energy Regulatory Commission will hold a discussion with NECPUC Commissioners and staff to discuss issues that are related to ISO New England Inc. RTO formation currently pending before the Commission.

This conference is established pursuant to the Order Announcing the Establishment of State-Federal Regional Panels to Address RTO Issues, Modifying the Application of Rule 2201 in the Captioned Dockets, and Clarifying Order No. 607, 97 FERC ¶ 61,182 (2001), reh'g denied, 98 FERC ¶ 61,309 (2002), amended by 99 FERC ¶ 61,092 (2002).

Attendance at this meeting is limited to the Commission, NECPUC commissioners, and their respective staffs. To accommodate Federal sunshine rules, the meeting will not be attended by more than two FERC Commissioners at the same time. The discussion will take place at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. A transcript of the discussion will be placed in the above-captioned dockets.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–13 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

January 2, 2004.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or prohibited off-the-record communication relevant to the merit's of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202)502–8659.

PROHIBITED

Docket No.	Date filed	Presenter or requester
1. CP04–12–000	12–19–03	Gary H. Harding, Alice L. Epstein.
2. CP04–12–000	12–19–03	Cheryl Moore.
3. CP04–12–000	12–19–03	L. Karl Roller.
4. Project No. 2342–000	12–29–03	Karen Janda.

EXEMPT

Docket No.	Date filed	Presenter or requester
1. Project No. 2630–000	12–17–03	Nicholas Jayjack.
2. Project Nos. 1930–000, 2290–000	12–19–03	Philip Scordelis.
3. Project No. 1971–000	12–19–03	Bev Stultz.
4. Project No. 11659–000	12–29–03	Robert Easton (to: Eric Cutler).
5. Project No. 11659–000	12–29–03	Robert Easton (to: Richard Levitt).

Linda Mitry,

Acting Secretary.

[FR Doc. E4–19 Filed 1–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Sacramento Area Voltage Support Project (DOE/EIS–0323)

AGENCY: Western Area Power Administration, DOE.

ACTION: Record of Decision.

SUMMARY: Based upon the analysis and information contained in the Sacramento Area Voltage Support (SVS) Environmental Impact Statement (EIS), the Western Area Power Administration (Western) has decided that, should the SVS project proceed, it should follow the configuration of the preferred alternative described in the SVS Final EIS. This alternative is identified as Proposed Action Option B and would consist of (1) reconductoring a double-circuit, 230-kilovolt (kV) transmission line from Elverta Substation to Tracy Substation, (2) constructing a new double-circuit, 230-kV transmission line from O'Banion Substation to Elverta Substation, and (3) realigning the transmission line near Pleasant Grove Cemetery between O'Banion and Elverta substations and Option B of the Cottonwood-Roseville single-circuit, 230-kV transmission line. In making this decision, Western evaluated (1) alternatives to the proposed project, and (2) alternatives that cover the reasonable range of options to complete enhancements to the 230-kV power transmission system between O'Banion and Tracy substations. These transmission enhancements and additions are necessary to maintain transmission security and reliability. Of the alternatives evaluated, Proposed Action Option B provides the highest degree of security and reliability for voltage support while having relatively few environmental impacts.

FOR FURTHER INFORMATION CONTACT: Ms. Loreen McMahon, Environmental Project Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, telephone (916) 353–4460, e-mail *mcmahon@wapa.gov.* For information about the Department of Energy (DOE) National Environmental Policy Act (NEPA) process, contact Ms. Carol M. Borgstrom, Director, NEPA Policy and Compliance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: Population growth and development in the Sacramento, California, area has steadily increased electricity demand. The need for generation interconnections and operational flexibility in using existing electrical transmission facilities has increased. These factors combine to reduce security and reliability of the interconnected transmission system, which includes Western's Federal transmission system. While Western is not responsible for the load growth, transmission lines in the Sacramento area have reached their maximum transfer limits in serving existing needs. New transmission and transmission upgrades are needed to mitigate transmission line overload, reduce the frequency of automatic generation and load curtailment during the summer peak load periods, and help maintain reliability of the interconnected system operation.

Power system studies conducted by the Sacramento Area Transmission Planning Group and the River City Transmission Group concluded that transmission additions in the Sacramento area are needed to alleviate voltage sag and ensure power system reliability. The EIS analyzed environmental impacts of alternatives identified to improve electric system reliability and provide voltage support for the Sacramento area.

Alternatives

Western identified five broad alternative categories (new power generation, demand-side management (DSM), distributed generation, new transmission, and transmission upgrades) in its Notice of Intent (65 FR 48496) to prepare this EIS. Between September 12 through September 21, 2000, Western conducted a series of four scoping meetings in Lodi, Marysville, and Folsom, California. Public scoping comments were collected from August 8 through October 2, 2000. Western held two public workshops (March and September 2001) to address public comments on the broad selection of alternatives under consideration.

The results of public scoping meetings, workshops, meetings with agencies, and transmission system studies contributed to identifying the alternatives carried forward for detailed review. Alternatives eliminated from detailed review included new power generation, DSM, and distributed generation. New power generation and distributed generation alternatives will not solve short-term voltage support and reliability issues. DSM would be more applicable to the distribution of electricity, and the local utilities have implemented programs to decrease electrical loads during peak-use hours. Western believes that in the short term, imposing regulations of this type would not solve the reliability issues.

The alternatives carried forward for detailed analysis included new transmission and transmission upgrades. To minimize environmental impacts, Western incorporated standard Environmental Protection Measures (EPM) into the project description for the Proposed Action and all alternatives. Detailed evaluation of the Proposed Action and alternatives in the Draft EIS considered the three types of project activities below.

1. Reconductoring would consist of replacing the existing transmission line conductors (wires) with higher capacity conductors. In general, the existing rights-of-way (ROW) would be used, although some new structures may be needed.

2. New construction of transmission lines would include designing and building new structures and installing new conductors. New construction would occur on existing ROW where possible or require new ROW in parallel with existing ROW.

3. Realignment would include route deviations from Western's existing transmission lines.

The Notice of Availability (NOA) for the Draft EIS was published in the **Federal Register** on November 15, 2002, followed by a 45-day public comment period. During the public comment period, three public hearings were held: December 9, 2002, in Lodi, California; December 11, 2002, in Folsom, California; and December 12, 2002, in Marysville, California. Comments on the Draft EIS were made at the public hearings and were sent to Western via mail, telephone, and e-mail. A total of 117 comments were received from 28 individuals, companies, and government agencies.

Comments to the Draft EIS prompted a minor modification to avoid residential property. This modification affects two of the alternatives, resulting in adding two alternatives as described in the Final EIS. The description and impacts of the modification are identical for both the Proposed Action and Alternative 2. The title description ''Option A'' was added to the original project description of the Proposed Action and Alternative 2. The title description ''Option B'' was added to the modified alignments.

The Final EIS is an abbreviated version, which references the Draft EIS in its entirety. The Final EIS identifies the Preferred Alternative and provides corrections to the Draft EIS, additional information not included in the Draft EIS, public comments, Western's responses to those comments, and analyses of the modification applicable to the Proposed Action and Alternative 2. Option A and Option B of the Proposed Action, as well as the other alternatives, are described below.

Proposed Action

Option A: This is the original alignment of the Proposed Action. It would consist of (1) Reconductoring 73.2 miles of double-circuit, 230-kV transmission line from Elverta Substation to Tracy Substation, (2) constructing 26.6 miles of new double-circuit, 230-kV transmission line from O'Banion Substation to Elverta Substation, and (3) realigning the transmission line near Pleasant Grove Cemetery, between O'Banion and Elverta substations and 5 miles of the Cottonwood-Roseville single-circuit, 230-kV transmission line north of Elverta Substation.

Option B: This is the modified alignment of the Proposed Action. It would consist of (1) Reconductoring 73.2 miles of double-circuit, 230-kV transmission line from Elverta Substation to Tracy Substation, (2) constructing 26.6 miles of new double-circuit, 230-kV transmission line from O'Banion Substation to Elverta Substation, and (3) realigning the transmission line near Pleasant Grove Cemetery, between O'Banion and Elverta substations, and 6.1 miles of the Cottonwood-Roseville single-circuit, 230-kV transmission line. This modified realignment of the Cottonwood-Roseville line would extend about 2 miles east of the original alignment and then traverse south.

Alternative 1

Reconductoring Transmission Lines between O'Banion and Tracy substations would consist of reconductoring 99.8 miles of the existing double-circuit and single-circuit, 230-kV transmission lines from O'Banion Substation to Tracy Substation.

Alternative 2

Option A: New Transmission from O'Banion Substation to Elverta Substation is the original alignment of Alternative 2. It would consist of (1) constructing 26.6 miles of new double-circuit, 230-kV transmission line from O'Banion Substation to Elverta Substation, and (2) realigning the transmission line near Pleasant Grove Cemetery and 5 miles of the Cottonwood-Roseville single-circuit, 230-kV transmission line north of Elverta Substation.

Option B: New Transmission from O'Banion Substation to Elverta Substation is the modified alignment of Alternative 2. It would consist of (1) constructing 26.6 miles of new double-circuit, 230-kV transmission line from O'Banion Substation to Elverta Substation, and (2) realigning the transmission line near Pleasant Grove Cemetery and 6.1 miles of the Cottonwood-Roseville single-circuit, 230-kV transmission line. This modified realignment of the Cottonwood-Roseville line would extend about 2 miles east of the original alignment then traverse south.

Alternative 3

New Transmission from Elk Grove Substation to Tracy Substation would consist of constructing 46.2 miles of new double-circuit, 230-kV transmission line from Elk Grove Substation to Tracy Substation.

No Action Alternative

The No Action Alternative would involve unchanged operation of the existing transmission line system. Western would not develop or build additional transmission lines or substation facilities in the study area relative to voltage support.

The NOA of the Final EIS was published in the **Federal Register** on September 19, 2003. Western publicized the Notice of Intent, public scoping meetings, public hearings, and availability of the Draft EIS in local newspapers. Western will also publish the availability of this Record of Decision (ROD) in local newspapers.

Decision

Western selected Proposed Action Option B as its action, since it provides the maximum load-serving capability and reduces the need for automatic generation and load curtailment during the summer peak load periods to the greatest degree. This action best fulfills the agency's statutory mission and responsibilities under the Central Valley Project Act authority and it has relatively low environmental impacts.

Through analysis in the EIS, Western determined two of the alternatives were environmentally preferable. The No Action Alternative was determined to be the environmentally preferred alternative with the least environmental impact. It would not, however, meet the purpose and need. Western determined that Alternative 1 is the environmentally preferred action alternative due to fewer environmental impacts on land use, visual resources, and water resources compared to the Proposed Action Option B and the other action alternatives. However, none of the action alternatives, including Alternative 1, would avoid significant air impacts. The environmentally preferred action alternative was not selected because its fewer environmental impacts do not outweigh Western's need to provide maximum load-serving capability that is provided with the selected alternative.

Proposed Action Option B

Project financing for construction is uncertain. With this decision, Western is adopting the EPMs outlined in the EIS. Once funding is secured, Western would complete an air quality analysis to predict potential emissions, conduct biological and cultural resource surveys as necessary, complete a biological assessment and Section 7 consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, and consult with the State Historic Preservation Office on cultural resources. Stipulations identified through these analyses and consultations would be developed based on agreements reached between Western and the regulatory agencies. Western would develop a mitigation action plan (MAP) for such stipulations to ensure all practical means of avoiding environmental harm. Western would make the MAP available to the public.

This ROD meets the requirements of NEPA as well as the Council on Environmental Quality and DOE's NEPA implementing regulations. Additional analyses results may affect this decision and result in subsequent analysis or decisions. The public will be notified of any additional activities necessary to meet Western's NEPA and other public involvement requirements.

Dated: December 29, 2003.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 04–571 Filed 1–9–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Loveland Area Projects Transmission and Ancillary Services—Rate Order No. WAPA–106

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Rate Order.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of Rate Order No. WAPA–106 and Rate Schedules L–NT1, L–FPT1, L–NFPT1, L–AS1, L–AS2, L–AS3, L–AS4, L–AS5, L–AS6, and L–AS7 placing provisional rates for the Loveland Area Projects (LAP) transmission and ancillary services of the Western Area Power Administration (Western) into effect on an interim basis. The provisional rates will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of required investment within the allowable period.

DATES: The provisional rates will be placed into effect on an interim basis on March 1, 2004, and will be in effect until the Federal Energy Regulatory Commission (Commission) confirms, approves, and places the provisional rates into effect on a final basis for a 5-year period ending February 28, 2009, or until superseded.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel T. Payton, Rates Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, 5555 E. Crossroads Boulevard, Loveland, CO 80538, telephone (970) 461–7442, e-mail *dpayton@wapa.gov.*

SUPPLEMENTARY INFORMATION: The Deputy Secretary of Energy approved Rate Schedules L–NT1, L–FPT1, L–NFPT1, L–AS1, L–AS2, L–AS3, L–AS4, L–AS5, and L–AS6 on March 23, 1998 (Rate Order No. WAPA–80, 63 FR 16778, April 6, 1998); and the Commission confirmed and approved the rate schedules on July 21, 1998, under FERC Docket No. EF98–5181–000 (84 FERC 61,066). The rate schedule for Energy Imbalance Service was revised and approved by the Secretary on May 30, 2002 (Rate Order No. WAPA–97, 67 FR 39970, June 11, 2002), through March 31, 2003.

Additionally, Western has two existing rate schedules for Rocky Mountain Customer Service Region (RMR) services outside Western's Open Access Transmission Tariff (Tariff) that were approved for short-term service by Western's Administrator. These are Rate Schedule L–LO1, Transmission Losses Service, effective October 8, 2000, and Rate Schedule L–US1, Unauthorized Use of Transmission and Control Area Services, effective June 15, 2001. These rates, as well as those under the Tariff and listed above, were extended through March 31, 2004.

Western will replace Rate Schedule L–LO1 with Rate Schedule L–AS7 in this rate action. Rate Schedule L–US1 has been incorporated into revised Rate Schedules L–FPT1, L–NFPT1, and L–AS2 that are part of this rate action. Rate Schedule L–US1 will terminate upon the effective date of this rate order.

There are no significant changes to the formula-based rate methodology for the transmission rates. Western is proposing changes for the formula-based rates for ancillary services. Rates for these services will be recalculated each year to incorporate the most recent financial and load information and will be applicable to all transmission and ancillary services customers.

Provisional Rates for LAP Transmission Service

The provisional rates in Rate Schedules L–NT1, L–FPT1, and L–NFPT1 for LAP transmission services are based on a revenue requirement that recovers (1) the LAP Transmission System costs for facilities associated with providing all transmission services; and (2) the non-facility costs allocated to transmission services. These provisional firm and nonfirm LAP transmission service rates include the costs for scheduling, system control, and dispatch service needed to provide the transmission service. The provisional rates are applicable to existing network, firm and nonfirm LAP transmission services, and future transmission services.

Provisional Rates for Ancillary Services

Western will provide seven ancillary services consistent with FERC Order No. 888. Of the seven ancillary services offered by Western, two are services which must be offered by the transmission provider or control area operator, and must be taken by the transmission customer. These are: (1) Scheduling, System Control, and Dispatch Service, and (2) Reactive Supply and Voltage Control Service from Generation Sources (VAR Support). The remaining five ancillary services, Regulation and Frequency Response Service (Regulation), Energy Imbalance Service, Spinning Reserves Service, Supplemental Reserves Service, and Transmission Losses Service, will be offered by Western, but the customer may also self-provide or purchase these services from another entity. The cost

associated with Scheduling, System Control, and Dispatch Service is included in the appropriate transmission service rate.

The provisional rates for LAP transmission and ancillary services rates are developed pursuant to the Department of Energy Organization Act (42 U.S.C. 7101–7352), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts specifically applicable to the project involved, were transferred to and vested in the Secretary of Energy.

By Delegation Order No. 00–037.00, approved December 6, 2001, the Secretary of Energy delegated (1) The authority to develop power and transmission rates on a nonexclusive basis to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR 903) became effective on September 18, 1985 (50 FR 37835).

Rate Order No. WAPA–106, confirming, approving, and placing the proposed LAP transmission and ancillary services rates into effect on an interim basis, is issued, and new Rate Schedules L–NT1, L–FPT1, L–NFPT1, L–AS1, L–AS2, L–AS3, L–AS4, L–AS5, L–AS6, and L–AS7 will be submitted promptly to the Commission for confirmation and approval on a final basis.

Dated: December 30, 2003.

Kyle E. McSlarrow,

Deputy Secretary.

Order Confirming, Approving, and Placing the Loveland Area Projects Transmission and Ancillary Service Formula Rates Into Effect on an Interim Basis

These transmission and ancillary service formula rates are established pursuant to Section 302 of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) were transferred to and vested in the Secretary of Energy (Secretary).

By Delegation Order No. 00–037.00 approved December 6, 2001, the Secretary delegated: (1) The authority to develop power and transmission rates on a non-exclusive basis to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Commission.

Existing DOE procedures for public participation in power rate adjustments are found in 10 CFR 903. Filing Requirements and Procedures for Approving the Rates of Federal Power Marketing Administrations by the Commission are found in 18 CFR 300.

Acronyms/Terms and Definitions

As used in this rate order, the following acronyms/terms and definitions apply:

Acronym/Term	Definition
$/kW-month	Monthly charge for capacity (*i.e.*, $ per kilowatt (kW) per month).
12 cp	Rolling 12-month peak average of customers' loads, coincident with the LAP Transmission System peak.
CRSP	Colorado River Storage Project.
FERC Order No. 888.	FERC Order Nos. 888, 888–A, 888–B, and 888–C, unless otherwise noted.
Firm Electric Service Contract.	Contracts for the sale of long-term firm LAP Federal energy and capacity, pursuant to the Post-1989 General Power Marketing and Allocation Criteria (Marketing Plan).
Federal Customers.	Loveland Area Projects (LAP) customers taking delivery of long-term firm service under Firm Electric Service Contracts, project use, and special use contracts.
Fry-Ark	Fryingpan-Arkansas Project.
FY	Fiscal Year.
kW	Kilowatt; 1,000 watts.
kWh	Kilowatt-hour; the common unit of electric energy, equal to 1 kW taken for a period of 1 hour.
kW-month	Unit of electric capacity, equal to the maximum of kW taken during 1 month.
LAP	Loveland Area Projects.
LAP Transmission System Total Load.	Average 12-cp monthly system peak for network transmission service, average 12-cp monthly entitlements of Federal Customers, and reserved capacity for all firm point-to-point transmission service.
Load ratio share.	Network Transmission Customer's hourly load coincident with Western's monthly transmission system peak, expressed as a ratio.
LSE	Load-Serving Entity is an entity within the control area serving load.
Long-Term Firm Point-to-Point Transmission Service.	Annual firm point-to-point transmission service reservation with 12 consecutive equal monthly amounts.
mill	Unit of monetary value equal to .001 of a U.S. dollar; *i.e.*, 1/10th of a cent.
mills/kWh	Mills per kilowatt-hour.
Monthly Entitlements.	Maximum capacity to be delivered each month under Firm Electric Service Contracts. Each monthly entitlement is a percentage of the seasonal contract-rate-of-delivery.
MW	Megawatt; equal to 1,000 kW or 1,000,000 watts.
Network Integration Transmission Service.	Firm Transmission Service for the delivery of capacity and energy from designated network resources to designated network loads.
Non-Firm Point-to-Point Transmission Service.	Point-to-Point Transmission Service reserved on an as-available basis for periods ranging from 1 hour to 1 month.
OASIS	Open Access Same-Time Information System.
P–SMBP—WD	Pick-Sloan Missouri Basin Project—Western Division.
RMR	Rocky Mountain Customer Service Region.
Service Agreement.	The initial agreement and any amendments or supplements entered into by the Transmission Customer and Western for service under the Tariff.
Short-Term Firm Point-to-Point Transmission Service.	Firm point-to-point transmission service for duration of less than 12 consecutive months.
SSG–WI	Seams Steering Group-Western Interconnection.
Tariff	Western Area Power Administration, Open Access Transmission Service Tariff, Docket No. NJ–98–1–00.

Acronym/Term	Definition
Transmission Customer.	The RMR customer taking network or point-to-point transmission service.
WACM	Western Area Colorado Missouri control area.
WECC	Western Electricity Coordinating Council.

Effective Date

The provisional formula rates will become effective on an interim basis on the first day of the first full billing period beginning on or after March 1, 2004, and will be in effect pending the Commission's approval of them or substitute formula rates on a final basis through February 28, 2009, or until superseded. These formula rates will be applied under existing transmission contracts and Western's Tariff. Western will replace existing Rate Schedules L–NT1, L–FPT1, L–NFPT1, L–AS1, L–AS2, L–AS3, L–AS4, L–AS5, and L–AS6 with these new rate schedules for service on the LAP system.

Additionally, Western has two existing rate schedules for ancillary services outside the Tariff that were approved for short-term service by Western's Administrator. These are Rate Schedule L–LO1, Transmission Losses Service, effective October 8, 2000, and Rate Schedule L–US1, Unauthorized Use of Transmission and Control Area Services, effective June 15, 2001. These rates, as well as those under the Tariff and listed above, were extended through March 31, 2004.

Western will replace existing Rate Schedule L–LO1 with Rate Schedule L–AS7 in this rate action. Existing Rate Schedule L–US1 has been incorporated into revised Rate Schedules L–FPT1, L–NFPT1, and L–AS2 that are part of this rate action. Rate Schedule L–US1 will terminate upon the effective date of this rate order.

There are no significant changes to the formula-based rate methodology for the transmission rates. Western is proposing changes for the formula-based rates for ancillary services. Rates for these services will be recalculated each year to incorporate the most recent financial and load information and will be applicable to all transmission and ancillary services customers.

Public Notice and Comment

Western has followed the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR 903, in the development of these formula rates and schedules.

The following summarizes the steps Western took to ensure involvement of interested parties in the rate process:

1. On May 19, 2003, Western held an informal Public Information Meeting with interested parties to discuss RMR's proposed rates for transmission and ancillary services. Western posted all information presented at the informal Public Information Meeting on its Web site at *http://www.wapa.gov/rm/rm.htm.*

2. RMR published a **Federal Register** notice on June 13, 2003 (68 FR 35398), officially announcing the proposed transmission and ancillary services rates adjustment, initiating the public consultation and comment period, announcing the Public Information and Public Comment forums, and outlining procedures for public participation.

3. On June 18, 2003, RMR sent a letter to all interested parties providing them with a copy of the **Federal Register** notice published on June 13, 2003 (68 FR 35398).

4. On July 14–15, 2003, Western held its Public Information Forums in Denver, Colorado, and Lincoln, Nebraska, respectively, where Western representatives explained the need for the rate adjustment in detail and answered questions from interested parties.

5. On August 6, 2003, Western held a Public Comment Forum in Denver, Colorado, to provide the public an opportunity to comment for the record. Seven individuals commented at this forum.

6. On September 9, 2003, Western posted on its Web site answers to 16 questions posed by a coalition representing wind generation proponents.

7. Twenty-five parties submitted written comments during the 90-day Consultation and Comment Period. The Consultation and Comment Period ended on September 11, 2003. All comments have been considered in the preparation of this rate order.

Comments

Representatives of the following organizations made oral comments:

American Wind Energy Association, Lakewood, Colorado;
Black Hills Power Company, Rapid City, South Dakota;
Lysco, New Brunswick, Ontario;
Municipal Energy Agency of Nebraska, Lincoln, Nebraska;
National Renewable Energy Laboratory, Golden, Colorado;
Nipco California;
Oak Ridge National Laboratory, Oak Ridge, Tennessee;
PanAero Corporation, Englewood, Colorado;
Tri-State Generation and Transmission Association, Inc., Westminster, Colorado;
Xcel Energy, Minneapolis, Minnesota.

The following organizations submitted written comments:

American Wind Energy Association, Lakewood, Colorado;
Basin Electric Power Cooperative, Inc., Bismarck, North Dakota;
Black Hills Power Company, Rapid City, South Dakota;
Broken Bow Municipal Utilities, Broken Bow, Nebraska;
City of Alliance, Nebraska;
City of Aspen, Colorado;
City of Bridgeport, Nebraska;
City of Burwell, Nebraska;
City of Curtis, Nebraska;
City of Gering, Nebraska;
City of Gillette, Wyoming;
City of Gunnison, Colorado;
City of Mitchell, Nebraska;
City of Wood River, Nebraska;
Loveland Area Customers Association;
Mni Sose Intertribal Water Rights Coalition, Inc., Rapid City, South Dakota;
Municipal Energy Agency of Nebraska, Lincoln, Nebraska;
Oak Ridge National Laboratory, Oak Ridge, Tennessee;
PanAero Corporation, Englewood, Colorado;
Platte River Power Authority, Fort Collins, Colorado;
State of South Dakota;
Town of Lyons, Colorado;
Tri-State Generation and Transmission Association, Inc., Westminster, Colorado;
Village of Shickley, Nebraska;
Western Interstate Energy Board, Denver, Colorado.

Project Description

RMR offers transmission service on LAP transmission facilities, which include transmission lines, substations, communication equipment, and related facilities. LAP is comprised of two power projects: the P–SMBP—WD and the Fryingpan-Arkansas Project (Fry-Ark). The two projects were integrated for operational and marketing purposes in 1989. LAP serves Federal and Transmission Customers in a four-State area, over a transmission system of approximately 3,473 miles (5,589 circuit kilometers) and 79 substations.

Western will offer ancillary services from Western Area Colorado Missouri control area (WACM) resources, which represent a combination of some CRSP generation resources and all LAP generation resources.

P–SMBP—WD

The initial stages of the Missouri River Basin Project were authorized by

Section 9 of the Flood Control Act of December 22, 1944 (Pub. L. 534, 58 Stat. 877, 891). The Missouri River Basin Project, later renamed the Pick-Sloan Missouri Basin Program (P–SMBP) to honor its two principal authors, has been under construction since 1944. The P–SMBP encompasses a comprehensive program of flood control, navigation improvement, irrigation, municipal and industrial (M&I) water development, and hydroelectric production for the entire Missouri River Basin. Multipurpose projects have been developed on the Missouri River and its tributaries in Colorado, Montana, Nebraska, North Dakota, South Dakota, and Wyoming.

The Colorado-Big Thompson, Kendrick, Riverton, and Shoshone Projects were administratively combined with P–SMBP in 1954, followed by the North Platte Project in 1959. These projects are known as the ''Integrated Projects'' of the P–SMBP. The Riverton Project was reauthorized as a unit of the P–SMBP in 1970.

The P–SMBP—WD and the Integrated Projects include 19 powerplants. There are six powerplants in the P–SMBP—WD: Glendo, Kortes, and Fremont Canyon powerplants on the North Platte River; Boysen and Pilot Butte powerplants on the Wind River; and Yellowtail Powerplant on the Big Horn River.

In the Colorado-Big Thompson Project there are also six powerplants: Green Mountain Powerplant on the Blue River is on the West Slope of the Rocky Mountains; and Marys Lake, Estes, Pole Hill, Flatiron, and Big Thompson powerplants on the East Slope of the Continental Divide.

The Kendrick Project has two power production facilities: Alcova and Seminoe powerplants. Power production facilities in the Shoshone Project are Shoshone, Buffalo Bill, Heart Mountain, and Spirit Mountain powerplants. The only production facility in the North Platte Project is the Guernsey Powerplant.

Fry-Ark

The Fry-Ark is a transmountain diversion development in southeastern Colorado authorized by the Act of Congress on August 16, 1962 (Pub. L. 87–590, 76 Stat. 389, as amended by Title XI of the Act of Congress on October 27, 1974 (Pub. L. 93–493, 88 Stat. 1486, 1497). The Fry-Ark diverts water from the Fryingpan River and other tributaries of the Roaring Fork River in the Colorado River Basin on the West Slope of the Rocky Mountains to the Arkansas River on the East Slope of the Continental Divide. The water diverted from the West Slope, together with regulated Arkansas River water, provides supplemental irrigation, M&I water supplies, and produces hydroelectric power. Flood control, fish and wildlife enhancement, and recreation are other important purposes of Fry-Ark. The only generating facility in Fry-Ark is the Mt. Elbert Pumped-Storage Powerplant on the East Slope of the Rocky Mountains.

CRSP

CRSP was authorized by the Colorado River Storage Project Act, ch. 203, 70 Stat. 105, on April 11, 1956. CRSP provides for the comprehensive development of the Upper Colorado River Basin (Upper Basin). It furnishes the long-term regulatory storage needed to allow states in the Upper Basin (Colorado, New Mexico, Utah, and Wyoming) to meet their water delivery obligations to the states of the Lower Basin (Arizona, California, and Nevada) and still use the water apportioned to them by the Colorado River Compact of 1922. The part of CRSP in WACM is the territory north of Shiprock, New Mexico. CRSP hydroelectric facilities providing ancillary services for WACM are the Aspinall Unit (formerly Curecanti) and part of the Glen Canyon Powerplant. The southern portion of CRSP is operated by Western's Desert Southwest Customer Service Region in Phoenix, Arizona.

LAP Transmission Service

RMR prepared a transmission service rate study based on the cost of service for the LAP Transmission System. RMR is seeking approval of formula rates for calculation of point-to-point transmission rates and the network transmission service revenue requirement. The rates will subsequently be recalculated every year, effective October 1, based on the approved formula rates and updated financial and load data. RMR will provide customers notice of changes in rates prior to October 1 of each year.

RMR will continue to bundle transmission service for delivery of LAP long-term firm Federal power to Federal Customers in the firm power rate under existing contracts that expire in 2024. The transmission rates include the cost of Scheduling, System Control, and Dispatch Service.

System Augmentation

Requests for credits for transmission augmentation were made in April 1999 by four entities: Cheyenne Light, Fuel, and Power Company; Platte River Power Authority; Tri-State Generation and Transmission Association, Inc.; and Wyoming Municipal Power Agency. These requests were resolved as follows:

1. Cheyenne Light, Fuel, and Power Company's request was denied in 1999.

2. Based upon further discussion, Platte River Power Authority rescinded its request in 2003.

3. Augmentation credits are being discussed with Tri-State Generation and Transmission Association, Inc., and will be included in the annual revenue requirement, if granted.

4. Western purchased the Big George Substation from Wyoming Municipal Power Agency in 2000, and eliminated the need for augmentation credits.

Western evaluated these requests in accordance with guidance in FERC Order No. 888–A, Section IV.G.1.g.:

> * * * for a customer to be eligible for a credit, its facilities must not only be integrated with the Transmission Provider's system, but must also provide additional benefits to the transmission grid in terms of capability and reliability, and be relied upon for the coordinated operation of the grid.

An estimate for augmentation is included in Western's current revenue requirement for transmission service.

Ancillary Services

RMR will offer seven ancillary services to all customers. The seven ancillary services are: (1) Scheduling, System Control, and Dispatch Service; (2) VAR Support; (3) Regulation; (4) Energy Imbalance Service; (5) Spinning Reserves Service; (6) Supplemental Reserves Service; and (7) Transmission Losses Service. The ancillary services formula rates are designed to recover only the costs incurred for providing the service(s). The rates for ancillary services are based on WACM costs.

In its Notice of Proposed Rates published in the **Federal Register** on June 13, 2003, RMR's rate proposal for Regulation had two components. The first component's charge was load-based, where the customer would be charged for Regulation based upon its 12-cp load calculation. The second component's charge was capacity-based, specifically addressing intermittent renewable resources. The charge was designed to compensate WACM for the lack of predictability and control of intermittent renewable resources.

However, due to a significant number of comments received during the public process, Western has withdrawn the second component of the Regulation rate from this final Notice of Rate Order. Western plans to engage in a dialogue with the public concerning the Regulation rate and its design in early 2004, after which time Western will reopen the Regulation rate for another

separate public process to continue through the spring and summer of 2004.

Comparison of Existing and Provisional Rates for Transmission and Ancillary Services

The following table displays a comparison of existing rates and the provisional formula rates using FY 2002 data. These rates will be recalculated annually based on updated financial and load data.

Class of service	Existing rate schedule and rate effective October 1, 2003	Provisional rate schedule and rate effective March 1, 2004
Network Transmission Service	L–NT1 Load ratio share of 1/12 of the revenue requirement of $38,776,237.	L–NT1. Load ratio share of 1/12 of the revenue requirement of $38,776,237.
Firm Point-to-Point Transmission Service.	L–FPT1 $2.68/kW-month	L–FPT1. $2.68/kW-month; Unauthorized Use Penalty will apply.
Non-Firm Point-to-Point Transmission Service.	L–NFPT1 Maximum of 3.75 mills/kWh	L–NFPT1. Maximum of 3.75 mills/kWh; Unauthorized Use Penalty will apply.
Scheduling, System Control, and Dispatch Service.	L–AS1 $40.90 per schedule per day for non-transmission customers.	L–AS1. $25.22 per electronic tag per day for non-transmission customers.
Reactive Supply and Voltage Control Service from Generation Sources.	L–AS2 $0.106/kW-month	L–AS2. $0.106/kW-month; Unauthorized use penalty will apply.
Regulation and Frequency Response Service.	L–AS3 $0.164/kW-month	L–AS3. $0.175/kW-month.
Energy Imbalance Service	L–AS4 Bandwidth of +/−5% with an outside-the-bandwidth penalty of 50%, with LAP weighted average hourly real-time sale and purchase pricing applied. Minimum deviation of 2 MW.	L–AS4. Bandwidth of +/−5% with an outside-the-bandwidth penalty of 25%, with LAP weighted average hourly real-time sale and purchase pricing applied. Minimum deviation of 4 MW.
Operating Reserves Service—Spinning and Supplemental.	L–AS5, L–AS6 Long-term reserves are not available from WACM. Reserves may be provided on a pass-through cost, plus an amount for administration.	L–AS5, L–AS6. Long-term reserves are not available from WACM. Reserves may be provided on a pass-through cost, plus an amount for administration.
Transmission Losses Service	L–LO1 Transmission losses may be settled either financially or with energy. Insufficient losses supplied will be settled financially by default. Prescheduled transactions must have losses delivered concurrently; real-time transactions can return the losses 7 days later, same profile. A 10% administration fee will be applied against the amount of the customer's bill. Pricing used is Palo Verde indices, on- and off-peak.	L–AS7. Transmission losses may be settled either financially or with energy. Insufficient losses supplied will be settled financially by default. All customers will have the option to return the loss obligation for both prescheduled and real-time transactions 7 days later, same profile. Pricing used is LAP weighted average hourly real-time purchase price.
Unauthorized Use of Transmission and Control Area Services.	L–US1 Penalized 150% of demand charge, with a maximum of monthly service, against overruns of reserved capacity.	Incorporated into Rate Schedules L–FPT1, L–NFPT1, and L–AS2. Penalized 150% of demand charge, with a maximum of monthly service, against overruns of reserved capacity.

Certification of Rates

Western's Administrator has certified that the LAP transmission and ancillary services rates placed into effect on an interim basis herein are the lowest possible consistent with sound business principles. The formula rates have been developed in accordance with agency administrative policies and applicable laws.

LAP Transmission Service Discussion

RMR will implement the charges for network and point-to-point transmission service on March 1, 2004. Network service charges will be based on the Transmission Customer's load-ratio share of the annual revenue requirement for transmission. Point-to-point service will be based on reserved capacity on the transmission system.

Annual Transmission Revenue Requirement: The Annual Transmission Revenue Requirement will be applicable to both network and point-to-point transmission service.

The Annual Transmission Revenue Requirement is the Annual Transmission Cost, adjusted for revenue credits and costs associated with expenses which increase the capacity available for transmission. The formula is:

$$\text{Annual Transmission Revenue Requirement} = \text{Annual Transmission Cost} + \text{Transmission Expenses Which Increase Transmission System Capacity} - \text{Miscellaneous Revenue Credits} - \text{Revenue Credit For Existing Contracts}$$

The Transmission Expenses Which Increase Transmission System Capacity will include credits paid to Transmission Customers for their augmentation of the LAP Transmission System. Crediting arrangements will be addressed in the individual service agreements, and appropriate adjustments will be made in subsequent rate calculations.

Miscellaneous Revenue Credits may include, but not be limited to, non-firm, discounted firm, and short-term firm transmission sales; Scheduling, System Control, and Dispatch Service; or facility charges for transmission facility investments included in the revenue requirement. During the period October 1, 2001, through September 30, 2002, the annual non-firm point-to-point transmission service credit is estimated to be $2,510,181, based on non-firm transmission sales made on the LAP Transmission System; the annual credit for short-term firm transmission sales is estimated to be $4,309,440; credits for scheduling service are estimated to be $180,600; and the credit for facility use charges is $0.

The Annual Transmission Cost is the product of the Annual Fixed Charge Rate and the Net Investment Cost for Transmission Facilities. The formula is:

Annual Transmission Cost = Annual Fixed Charge Rate × Net Investment Cost for Transmission Facilities

The formula applied to FY 2002 data is:

$45,276,458 = 19.812% × $228,530,479

The Net Investment Cost for Transmission Facilities was determined by an analysis of the LAP Transmission System. Each LAP facility was identified by function: transmission, sub-transmission, distribution, or generation-related. Only the investment costs of the facilities identified as ''transmission'' were used in developing the proposed transmission rates. The investment costs of facilities identified as ''sub-transmission'' and ''distribution'' were allocated to LAP Federal Customers. The LAP sub-transmission system is used primarily for delivery of Federal power to Federal Customers. If a Transmission Customer requires the use of the sub-transmission system, an additional facility-use charge will be assessed. All costs of Fry-Ark were considered generation-related and therefore, included with other generation-related costs in the revenue requirement for ancillary services.

The facilities identified as performing the function of transmission include all transmission lines that are normally operated in a continuously-looped manner and the associated substations and switchyard facilities. In the LAP Transmission System, these are primarily the 115–kV and the 230–kV transmission lines. In addition, a portion of the communication and maintenance facilities was included in the investment costs for transmission.

The Annual Fixed Charge Rate includes operation and maintenance (O&M) expenses, administrative and general expenses (A&GE), depreciation expenses, and interest expenses. The formula is:

$$\text{Annual Fixed Charge Rate} = \frac{\text{Annual Operation \& Maintenance Expenses} + \text{Annual Administrative \& General Expenses} + \text{Annual Depreciation Expenses}}{\text{Net Investment}} + \frac{\text{Annual Interest Expenses}}{\text{Unpaid Balance}}$$

The formula applied to FY 2002 data is:

$$19.812\% = 7.070\% + 1.732\% + 3.371\% + 7.639\%$$

The source for the annual O&M, A&GE, depreciation, and interest expenses is the *Results of Operations for the Rocky Mountain Customer Service Region—Pick-Sloan Missouri Basin.* The source for the unpaid balance is the amount reported in the *Historical Financial Document in Support of the Power Repayment Study for the Pick-Sloan Missouri Basin Program.*

LAP Transmission System Load: The LAP Transmission System Total Load is the average 12-cp monthly system peak for network transmission service, the 12-cp monthly entitlements for Federal Customers, and the reserved capacity for all firm point-to-point transmission service.

The LAP Transmission System Total Load (12-cp) is calculated as follows, based upon 2002 data and known and measurable changes:

Federal Customers	604,640
Network Transmission Customers	522,496
Subtotal	1,127,136
Point-to-Point Reserved Capacity	79,635
LAP Transmission System Total Load	1,206,771

This LAP Transmission System Total Load for each month is derived as follows:

1. Sum the hourly individual revenue meter readings for network delivery points on the LAP Transmission System to find the LAP system peak hour.

2. Add the Federal Customers' entitlements that do not receive LAP auxiliary transmission.

3. Add the reserved capacity for point-to-point customers.

Network Integration Transmission Service: The monthly charge for Network Integration Transmission Service is the product of the Transmission Customer's load-ratio share times one-twelfth of the Annual Transmission Revenue Requirement. The customer's load-ratio share is the ratio of its network transmission load to

the LAP Transmission System Total Load, which will be calculated on a rolling average 12-cp basis.

The customer's network load is derived as follows:

1. Identify the LAP Transmission System's peak hour for each month.

2. Calculate the total delivery to each individual Network Integration Transmission Service customer for the 12 monthly peak hours.

3. Identify the part of the total delivery associated with each customer's monthly LAP entitlement.

4. Identify the network delivery (total delivery less monthly LAP entitlements) during each of the 12 monthly peaks.

5. Sum the 12 monthly peaks and divide by 12 months to derive the average 12 cp for each Network Transmission Service customer.

Firm Point-to-Point Transmission Service: The rate for Firm Point-to-Point Transmission Service is the Annual Transmission Revenue Requirement, divided by the LAP Transmission System Total Load. Firm Point-to-Point Transmission Service is available for a period of 1 day or longer.

The formula for the rate is as follows:

$$\text{Firm Point-to-Point Transmission Rate} = \frac{\text{Annual Transmission Revenue Requirement}}{\text{LAP Transmission System Total Load}}$$

Non-Firm Point-to-Point Transmission Service: Non-Firm Point-to-Point Transmission Service is available for periods ranging from 1 hour to 1 month. The rate for Non-Firm Point-to-Point Transmission Service may be discounted based on market conditions, but will never be higher than the Firm Point-to-Point Transmission Service rate, converted to an energy equivalent at 100 percent load factor. The formula for the Non-Firm Point-to-Point Transmission Service rate is:

$$\text{Maximum Non-Firm Point-to-Point Transmission Rate} = \text{Firm Point-to-Point Transmission Rate}$$

Unauthorized Use of Transmission: If a Transmission Customer (including the transmission provider for third-party sales) engages in unauthorized use of RMR-managed transmission systems, the Transmission Customer shall be charged 150 percent of the demand charge for the type of service at issue (reserved); *e.g.*, hourly, daily, weekly, or monthly, with a maximum monthly demand charge. Unauthorized use is defined as unscheduled or untagged use of the transmission system and any affiliated ancillary service, exceeding reserved capacity at any point of delivery or receipt. Unauthorized use may also include a customer's failure to curtail transmission when requested.

Transmission Service Comments

The following comments were received concerning transmission service during the Public Consultation and Comment Period. Western paraphrased and combined comments when it did not affect the meaning of the comment. Western's response follows each comment.

Comment: Various pieces of study work have been completed that detail large-scale wind development in Western's service areas. This work shows that significant regional transmission planning work is underway to accommodate large scale wind development in Western's service areas. Given its hydro power marketing responsibilities and extensive transmission network, Western is in a unique situation to address wind integration issues.

Response: While this comment is outside the scope of the rate action, Western notes that it has only three existing interconnection requests for 30 MW or greater for wind generation within WACM. Western is heavily involved in all regional transmission planning work currently underway for any wind development within WACM.

Comment: OASIS data shows firm transmission service is often fully subscribed by incumbent firms. Data from SSG-WI shows many regional transmission congestion points in WECC to be physically congested only a small portion of the time, yet non-firm transmission service under FERC Order No. 888 compliant tariffs is only available for periods of less than 1 year. As wind is able to be dispatched off the system, investigation of the use of physically available transmission on a long-term, non-firm basis might show how wind could make use of existing transmission during non-congested times.

Response: While this comment is outside the scope of the rate action, Western notes that FERC Order No. 888 does not provide for the offering of Non-Firm Point-to-Point Transmission Service on a long-term basis. The sale of non-firm transmission service on a long-term basis would complicate the management of scheduling and dispatching and would cause a significant increase in the number of transmission curtailments. Western will accept requests for non-firm short-term transmission. The availability of non-firm short-term transmission is posted on Western's OASIS Web site.

Comment: With regard to generator modeling for stability analysis, wind farm and wind technology design options can vary depending on circumstances. Engineering interconnection software should have the correct wind options in data libraries. An iterative process between wind project developers and grid operators is needed to determine good utility practices for interconnecting wind resources.

Response: While this comment is outside the scope of the rate action, Western is committed to engaging with interested parties in order to determine the best utility practices for the interconnection of wind resources into WACM.

Comment: With regard to cost allocations for transmission upgrades and additions, the allocations for upgrades and additions must take into account both costs imposed by new generators and the system benefits of investments.

Response: Cost allocations for transmission upgrades will be addressed on a case-by-case basis. While the allocation of integration costs themselves is fairly straightforward, the determination of benefits to the system is more complex and will be determined through the use of power flow studies

using modeling techniques or other tools available.

Comment: Various commenters interested in the impact of Western's actions on wind generation stand ready to engage with Western in constructive dialogue toward resolution of the issues that Western and wind developers face as large-scale wind development spreads in Western's service territory. They propose an initial workshop co-sponsored by Western, the National Renewable Energy Laboratory, the Oak Ridge National Laboratory, and others. The agenda should allow participants to share data and methods developed elsewhere, to discuss preliminary findings already in hand, and to develop the issues and agendas for working groups to resolve the issues in this rate proceeding and begin the process of addressing the broader issues raised in these comments.

Response: Western continues its ongoing dialogue with wind generation proponents. As stated in this rate order, in response to feedback received during the public process, Western has delayed implementation of the Regulation service capacity-based charge for intermittent renewable resources. Western plans to reopen the rate for Regulation service in its entirety early in 2004 and begin a separate public process.

Comment: A customer comments that it is supportive of changes being proposed for lower transmission rates. Lower rates encourage additional use of the transmission system, which lowers native transmission customers' revenue requirements.

Response: Western appreciates the comment. However, while the annual rate may fluctuate based on financial and load data updates, the rate methodology has not changed.

Ancillary Services Discussion

Seven ancillary services will be offered by WACM; two of which are required to be purchased by the LAP Transmission Customer. These two are: (1) Scheduling, System Control, and Dispatch Service, and (2) VAR Support. The remaining five ancillary services—Regulation, Energy Imbalance Service, Spinning Reserves, Supplemental Reserves, and Transmission Losses Service—will also be offered, but customers have the option of self-supplying or purchasing them from another entity. If WACM is unable to provide these services from its own resources, an offer will be made to purchase the services and pass through these costs to the customer.

The formula rates for ancillary services are based on WACM's costs and are designed to recover only the costs associated with providing the service(s). WACM Federal power resources consist of all the LAP Federal power resources and a portion of the CRSP Federal power resources.

Scheduling, System Control, and Dispatch Service: The cost for providing Scheduling, System Control, and Dispatch Service for Transmission Customers is included in the appropriate transmission service rates. This service can be provided only by the operator of the control area in which the transmission facilities are located. The formula rates will be applied to all tags for WACM non-Federal transmission customers.

The formula rate for Scheduling, System Control, and Dispatch is based on the annual cost of all personnel and related costs involved in providing the service for WACM. The annual cost is divided by the number of electronic tags per year to derive a ''rate per tag'' to be applied per day. The electronic tag represents a specific request for transmission of energy through, within, into, or out of, WACM, per day.

While the revenue requirement calculation is consistent with the 1998 rate order submittal, the charge basis is changing from ''per schedule per day'' to ''per tag per day.''

The charge will be assessed to the last transmission provider displayed in the electronic tag, unless other arrangements are made with WACM.

RMR will accept any number of tag changes over the course of a day, without additional charge, so that entities trying to follow their loads closely may do so without penalty.

Based on FY 2002 data, the rate for Scheduling, System Control, and Dispatch Service for WACM will be $25.22 per tag per day, effective March 1, 2004.

Reactive Supply and Voltage Control Service from Generation Sources: The formula rate for VAR Support is based upon Reclamation's net generation plant investment in WACM. Annual Fixed Charge Rates based on annual generation-related O&M, A&GE, depreciation, and interest expenses for LAP and CRSP are applied to Reclamation's net generation plant investment to calculate annualized costs. The percentage of WACM generation capacity that is utilized for VAR Support is then identified. This percentage is applied to the annualized costs for LAP and CRSP, and those results are summed to derive the annual revenue requirement for VAR Support for WACM. The annual revenue requirement is then divided by the WACM 12-cp load being provided VAR Support, to yield a $/kW-year rate, which is divided by 12 months to yield a $/kW-month rate. Based upon FY 2002 data, the WACM rate for VAR Support is $0.106/kW-month.

Full or partial credit may be given to those customers with generators providing WACM with VAR Support. Any crediting arrangement must be documented in the customers' Service Agreements.

Regulation and Frequency Response Service: The rate for Regulation is a load-based rate, and will be applied against customer's loads within WACM.

The formula rate for Regulation is based upon a current analysis that shows WACM presently requires approximately 75 MW of regulating capacity to meet the control area needs. The amount of regulation and cost of associated purchases will be revised annually to accurately reflect the capacity needed to supplement hydroelectric resources.

The revenue requirement for that regulating capacity is comprised of: (1) The annualized cost of LAP regulating plants in WACM; (2) the revenue requirement for CRSP regulating plants within WACM; and (3) the cost of a capacity purchase to support regulation. Net investment costs for only those plants that are able to provide regulating service were included in (1) and (2), above.

For LAP, the same Annual Fixed Charge Rate used in the VAR Support formula was used to convert the LAP net plant investment to an annual cost for Regulation. The annual cost was divided by the nameplate capacity of the applicable plants to yield an average cost per kilowatt for LAP. LAP's revenue requirement for the provision of 25 MW is $1,189,750.

For CRSP, the revenue requirement was provided to RMR from the CRSP Management Center in Salt Lake City using the same methodology, but with CRSP's net investment and Annual Fixed Charge Rate. Historical operational experience shows that the amount of regulating capacity provided for CRSP loads is 40 MW. With the division of CRSP's load into two control areas on April 1, 1998, WACM received one-half of the 40 MW of capacity, or 20 MW. CRSP's valuation of the revenue requirement for WACM's 20 MW is $480,185.

Additionally, a 30 MW purchase of capacity was made at a net cost of $3,416,400.

The total of these three components to provide WACM with 75 MW of regulating capacity is $5,086,335. The load in WACM requiring regulation is 2,425,221 kW (12-cp value).

Based upon FY 2002 data, the rate for Regulation effective March 1, 2004, will be $0.175/kW-month.

Customers who provide WACM with Regulation will receive a credit. These types of crediting arrangements must be documented in Transmission Customers' Service Agreements.

Energy Imbalance Service: The Commission established guidelines in FERC Order No. 888 for Energy Imbalance Service of +/−1.5 percent hourly deviation (3 percent bandwidth) with a 2 MW minimum deviation, as in its view, anything more or less than that could affect system reliability. However, RMR recognizes that metering inadequacies, changes in scheduling practices, and unit control problems may hinder customers' ability to meet the 3 percent bandwidth. Therefore, RMR has established a +/−5-percent hourly deviation (10 percent bandwidth) with a 4 MW minimum deviation. Energy Imbalance Service taken within the bandwidth will be charged or credited 100 percent of the LAP weighted hourly average real-time purchase or sale price that hour. Energy Imbalance Service taken outside the bandwidth will be charged a 25 percent penalty.

In the previously approved rate schedule for this service, the minimum deviation was 2 MW and the penalty for excursions outside the bandwidth was 50 percent.

In this rate order, the 2 MW minimum is increased to a 4 MW minimum to afford smaller customers increased operating flexibility. Western decreased the out-of-bandwidth penalty from 50 percent to 25 percent after conducting an analysis of imbalances since implementation (July 2002). The out-of-bandwidth excursions did not appear to significantly impact Western's operations; therefore, Western decreased the penalty.

All Energy Imbalance Service provided by WACM, both inside and outside the bandwidth, will be settled financially and accounted for hourly after the fact. The +/−5 percent will be applied against a customer's actual load, and will be calculated hourly to any energy imbalance that occurs as a result of a customer's schedules and/or meter data.

There are normally four scenarios for Energy Imbalance Service, each of which receives a specific pricing calculation. These scenarios are: (1) Over delivery within the bandwidth; (2) under delivery within the bandwidth; (3) over delivery outside the bandwidth; and (4) under delivery outside the bandwidth. The respective pricing for each scenario is: for (1) and (2) 100 percent of LAP weighted hourly average real-time sale or purchase price would apply, dependent upon the control area energy condition in aggregate; for (3) 75 percent of LAP weighted hourly average real-time sale price would apply; and for (4) 125 percent of the LAP weighted hourly average real-time purchase price would apply.

When there are no real-time sales or purchases within an hour, the pricing defaults both within and outside the bandwidth will be applied in the following order:

1. Weighted hourly average real-time sale or purchase pricing for the day (on and off peak).
2. Weighted hourly average real-time sale or purchase pricing for the current month (on and off peak).
3. Weighted hourly average real-time sale or purchase pricing for the prior month.
4. Weighted hourly average real-time sale or purchase pricing for the month immediately prior to the prior month (and continuing in this manner until sale or purchase pricing is located) for on and off peak.

Western supports the development of intermittent renewable energy sources, but does not have the resource capability to cover fluctuations anticipated with such resources. However, Western is willing to purchase, on a pass-through cost basis, the requirements to mitigate the fluctuations inherent in intermittent resources. No bandwidth will apply. This will assure that intermittent resource providers pay only for the Energy Imbalance Service they take. They will not be penalized for any out-of-bandwidth activity.

For jointly-owned generators and any other generators within the control area without designated load, the bandwidth established for Energy Imbalance Service will be +/−2 percent of the actual hourly generation output of the units at issue. The charges or credits for Energy Imbalance Service will be assigned to the operating agent of the generator, unless WACM is provided with a copy of a signed agreement from all of the generation owners designating a specific methodology to allocate among owners and entitlees. Western reserves the right to refuse a designation that does not provide for the full and accurate recovery of all generator energy imbalances existing among owners and/or entitlees. The generation owners will be responsible for proper tagging and scheduling of the generation to ensure the accurate assignment of Energy Imbalance Service.

Bandwidth expansion will be made for physical resource loss, contribution to the control area for frequency reserves requirements, and for the transition of large generating resources.

During periods of control area operating constraints, Western reserves the right to eliminate credits for over deliveries. Additionally, parties who over or under deliver may share in potential penalty costs assessed against Western for operation outside of established utility guidelines.

Operating Reserves—Spinning and Supplemental: WACM has no long-term reserves available beyond its own internal requirements, based on the post-1999 Resource Study done in July 1995.

At a customer's request, an offer will be made to purchase reserves and pass through that cost, plus an amount for administration. Additionally, the customer would be responsible for providing the transmission to deliver these reserves.

Transmission Losses Service: Transmission losses will be assessed for all real-time and prescheduled transactions on transmission facilities managed by Western or within WACM. Transmission Customers will be allowed the option of energy repayment either concurrently or 7 days later, using the same profile. Transmission Customers must declare their preference annually, as to which method of energy payback they prefer. When a transmission loss energy obligation is not provided (or under provided) by a Transmission Customer for a transmission transaction, the cost of energy still owed for losses will be calculated based upon the LAP weighted average hourly real-time purchase price. Pricing for loss energy due 7 days later, and not received by WACM, will be priced at the 7-day-later price (the LAP weighted average hourly real-time purchase price with the same defaults as Energy Imbalance Service). There will be no financial compensation or energy returned to Transmission Customers for over delivery of transmission losses, as there should be no condition beyond the control of the Transmission Customer that results in overpayment.

There will be no administrative charge for Transmission Losses Service.

Ancillary Service Comments

RMR received written comments concerning the ancillary services during the Public Consultation and Comment Period. These comments have been paraphrased where appropriate, without compromising the meaning of the comments. Certain comments were duplicative in nature, and were

combined. RMR's response follows each comment.

Comment: Large-scale wind development is on the horizon, including very large wind resources in all of Western's states. Western should be taking a leadership role in addressing wind integration issues.

Response: Western is committed to working with all interested parties to ensure that wind development in Western's control areas is supported in a fair and equitable manner. As mentioned earlier in this rate order, Western plans to engage in a dialogue with the public concerning a Regulation rate design for intermittent renewable resources in early 2004, after which time Western will reopen the Regulation rate for another separate public process to continue through the spring and summer of 2004.

Comment: A commenter states that requirements to schedule generation a day or more ahead of delivery, challenges the development of wind resources in the absence of agreement on wind forecasting methods and implementation, and can unnecessarily raise ancillary service costs for wind.

Response: Western requires the preschedule of generation in adherence to NERC and WECC policies regarding deadlines for submittal of tags for energy and transmission schedules. However, NERC Policy 3 allows changes to schedules up to 20 minutes prior to the hour in an hourly scheduling environment. Western, therefore, believes that considerable scheduling flexibility is available for balancing resources and loads.

Comment: Many comments were received concerning the proposed rate for Regulation and Frequency Response Service for Intermittent Renewable Resources. These comments included concerns about rate design, implementation, and undue financial penalties and/or charges for intermittent renewable resources.

Response: As indicated earlier in this rate order, due to the large number of comments received concerning this component of the Regulation rate, Western has withdrawn the capacity-based rate component from the Rate Schedule for Regulation and Frequency Response Service to be implemented March 1, 2004. Western will further study the issue and early in 2004 will engage in an informal process with the public concerning the Regulation rate and its design. After receiving informal public input, Western will reopen the Regulation rate for a formal public process.

Comment: A commenter believes that Western should charge an administrative fee for Energy Imbalance Service, similar to the way CRSP assesses administrative charges for its Western Replacement Power and/or Customer Displacement Power products.

Response: Western has reviewed this issue and determined that it will not assess an administrative charge for Energy Imbalance Service. Western views Energy Imbalance Service as an integral function and responsibility of the WACM control area, recoverable under O&M.

Comment: With regard to Energy Imbalance Service for jointly owned generators, a commenter suggests that Western use 2 percent of the unit rating, instead of the current policy of using 2 percent of the actual generation output, as the bandwidth margin.

Response: Western will continue to use 2 percent of the actual generation output as the bandwidth margin for Energy Imbalance Service. Western believes that this is more reasonable than applying 2 percent to the unit's rating.

As an example, if a 400 MW plant has an actual output in an hour of only 50 MW, the use of the unit's 400 MW nameplate capacity results in a bandwidth of 8 MW for a 50 MW output, or a 16 percent bandwidth. When the 2 percent is applied in this same example to the 50 MW of actual generation output, the result is a bandwidth of +/−1 MW.

Comment: A commenter suggests opening the bandwidth for Energy Imbalance Service to forgive shortfalls of large coal units' generation, if the shortfall is caused by station service associated with a large coal unit being off line.

Response: Station service loads are the responsibility of the plant owner's LSE. These loads are covered for up to the initial 2 hours of an unplanned outage under membership in the Rocky Mountain Reserve Sharing Group. It is the LSE's responsibility to schedule for these loads after this initial period. Therefore, Western will not open the bandwidth for imbalances resulting from the incorrect scheduling of station service loads.

Comment: A commenter suggests that Western expand the minimum deviation for Energy Imbalance Service from 2 MW to 4 MW.

Response: Western agrees with the commenter and is expanding the minimum deviation for Energy Imbalance Service from 2 MW to 4 MW, to provide smaller customers greater flexibility in balancing their loads and resources.

Comment: Western should clarify what it means by ''eliminating the bandwidth for intermittent renewables' imbalances'' for Energy Imbalance Service. Does this mean that there will be zero deviation from schedules allowed or that infinite deviation will be allowed?

Response: For Energy Imbalance Service calculated for intermittent renewable resources within WACM, Western will apply no bandwidth. What this means is that hour-to-hour, the intermittent renewable resource will pay 100 percent or receive 100 percent of the LAP weighted average hourly purchase or sale price, respectively. No penalty will apply to Energy Imbalance Service taken by an intermittent renewable resource.

Comment: A commenter asks for a credit for the self-provision of Regulation service.

Response: Western notes that there is a crediting provision in the existing rate for Regulation service for entities that are able to self-provide this service or are purchasing it from another party. This eligibility for a credit is also contained in the rate schedule for Regulation that is part of this rate order. Any such crediting arrangement will need to be documented in the entity's Service Agreement.

Comment: A commenter notes that Western will charge ''market'' rates for imbalances. The commenter has a concern that Western should never be allowed to over collect revenues by forcing wind generators into the currently imperfect imbalance market, and keeping the spread whenever imbalances partly or completely cancel each other out.

Response: The rates that Western charges for Energy Imbalance Service are the LAP weighted average hourly real-time purchase and sales prices; that is, they are Western's actual costs and revenues for power. As such, Western is neither making a profit on energy over delivered for Energy Imbalance Service, nor is it suffering a loss on energy under delivered for Energy Imbalance Service. Western, acting as the WACM control area operator, merely balances out the loads and resources, by either selling or purchasing energy, and passing the costs on to customers as appropriate for their specific energy condition.

Comment: A commenter would like a full description about how the Energy Imbalance Service financial settlement will work. Western should allow netting imbalances for intermittent renewables over a monthly billing period to simplify the administration and financial impact of imbalance payments.

Response: Western's Energy Imbalance Service accounting is accomplished based upon a financial settlement methodology, performed hourly, 3 to 4 months after the fact. Each hour's imbalance is calculated using LAP weighted average hourly real-time purchase or sales pricing. Due to hourly variations in the value of energy, Western will not allow the netting of energy over the course of a month. This could result in a financial loss or gain for the control area, and Western's methodology is based on cost-recovery for over or under deliveries.

Comment: A commenter states that arbitrary, non-cost based penalties for not meeting schedules by intermittent generators (who do not have the ability to ''game'' the system) in the absence of market-based real-time settlements for Energy Imbalance Service, can and should be eliminated for wind without negatively impacting grid operations or costs.

Response: Western uses market-based real-time settlements for Energy Imbalance Service financial calculations. This allows customers with energy imbalances to be charged or credited for only the identical purchase or sale that WACM had to make in order to balance the control area. It is not Western's intent to make a profit with Energy Imbalance Service, but only to recover actual costs from appropriate parties. Western reiterates that there will be no penalties associated with Energy Imbalance Service caused by intermittent renewable resources.

Comment: A commenter is very concerned about the proposal to round hourly Energy Imbalance Service to the nearest whole MW. Western has said the effect is negligible, but it will mean a cost increase to the commenter of 270 percent. This is a significantly negative impact to the commenter. The commenter would like to know the apparent, compelling reason to change the methodology.

Response: Western had originally proposed rounding Energy Imbalance Service up to the nearest whole MW hourly, predicated upon a concern from a customer regarding the inability to have zero energy imbalance in an hour due to the scheduling of energy in MWs and the actual meter readings in kWs.

Upon further study, Western has determined that the rounding of Energy Imbalance Service hourly values can be beneficial in some hours, but detrimental in others.

In this final rate order, the hourly Energy Imbalance Service values and subsequent billing will remain in kWs. When the customer over delivers kWs, it is credited for those kWs in that hour; when the customer under delivers kWs, it is charged for those kWs in that hour.

Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the initiation of the LAP transmission rate and ancillary service rate adjustment is related to non-regulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rules of particular applicability relating to rates or services are not considered rules within the meaning of the Act. Since the LAP transmission rates and ancillary rates are of limited applicability, no flexibility analysis is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Environmental Evaluation

In compliance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321, *et seq.*; the Council on Environmental Quality Regulations (40 CFR 1500–1508); and DOE NEPA Regulations (10 CFR 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Submission to Federal Energy Regulatory Commission

The formula rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to the Commission for confirmation and approval on a final basis.

Order

In view of the foregoing, and pursuant to the authority delegated to me by the Secretary of Energy, I confirm, approve, and place into effect on an interim basis, effective March 1, 2004, formula rates for transmission and ancillary services under Rate Schedules L–NT1, L–FPT1, L–NFPT1, L–AS1, L–AS2, L–AS3, L–AS4, L–AS5, L–AS6, and L–AS7. The rate schedules shall remain in effect on an interim basis, pending the Commission's confirmation and approval of them or substitute formula rates on a final basis through February 28, 2009.

Dated: December 30, 2003.

Kyle E. McSlarrow,
Deputy Secretary.

Rate Schedule L–AS1, Schedule 1 to Tariff, March 1, 2004; Rocky Mountain Region, Loveland Area Projects Scheduling, System Control, and Dispatch Service

Applicable

This service is required to schedule the movement of power through, out of, within, or into the Western Area Colorado Missouri control area (WACM). The charges for Scheduling, System Control, and Dispatch Service are to be based on the rate referred to below.

The rate will be applied to all electronic tags for WACM non-transmission customers. The Rocky Mountain Region (RMR) will accept any number of tagging changes over the course of the day without any additional charge.

The Loveland Area Projects' charges for Scheduling, System Control, and Dispatch Service may be modified upon written notice to the customer. Any change to the charges for the Scheduling, System Control, and Dispatch Service will be listed in a revision to this rate schedule issued under applicable Federal laws, regulations, and policies and made part of the applicable service agreement.

RMR will charge the non-transmission customer the rate then in effect. The charge will be assessed to the last transmission provider displayed in the electronic tag, unless other arrangements are made with WACM.

Effective

The first day of the first full billing period beginning on or after March 1, 2004, through February 28, 2009.

Formula Rate

$$\text{Cost per Tag} = \frac{\text{Annual Cost of Scheduling and Dispatch Personnel, and Related Costs}}{\text{Number of Tags per Year}}$$

Rate

The rate to be in effect March 1, 2004, through September 30, 2004, is $25.22 per tag per day. This rate is based on the above formula and on FY 2002 data.

Rate Schedule L–AS2, Schedule 2 to Tariff, March 1, 2004; Reactive Supply and Voltage Control From Generation Sources Service

Applicable

To maintain transmission voltages on all transmission facilities within acceptable limits, generation facilities under the control of the Western Area Colorado Missouri control area (WACM) are operated to produce or absorb reactive power. Thus, Reactive Supply and Voltage Control from Generation Sources Service (VAR Support) must be provided for each transaction on the transmission facilities. The amount of VAR Support supplied to the Customer's (Loveland Area Projects (LAP) Transmission Customers and customers on others' transmission systems within the WACM) transactions will be based on the VAR Support necessary to maintain transmission voltages within limits that are generally accepted in the region and consistently adhered to by WACM.

The Customer must purchase this service from the WACM operator. The charges for such service will be based upon the rate outlined below.

The LAP charges for VAR Support may be modified upon written notice to the Customer. Any change to the charges for VAR Support will be listed in a revision to this rate schedule issued under applicable Federal laws, regulations, and policies and made part of the applicable service agreement. The Rocky Mountain Region will charge the Customer under the rate then in effect.

Credit may be given to those Customers with generators providing WACM with VAR Support. Any crediting arrangements must be documented in the Customer's Service Agreement.

Unauthorized Use of Control Area Services

If a Customer (including the transmission provider for third-party sales) engages in unauthorized use of RMR-managed transmission systems, the Customer shall be charged 150 percent of the demand charge for the type of service at issue (reserved); *e.g.*, hourly, daily, weekly, or monthly, with a maximum demand charge set at monthly.

Unauthorized use is defined as unscheduled or untagged use of the transmission system and any affiliated ancillary service, exceeding reserved capacity at any point of delivery or receipt. Unauthorized use may also include a Customer's failure to curtail transmission when requested.

Effective

The first day of the first full billing period beginning on or after March 1, 2004, through February 28, 2009.

Formula Rate

Total Annual Revenue Requirement for Generation = TARRG

Percentage of Resource Capacity Used for VAR Support = % of Resource

$$\text{WACM VAR Support Rate} = \frac{\text{TARRG} \times \text{\% of Resource}}{\text{Load in the Control Area Requiring VAR Support}}$$

Rate

The rate to be in effect March 1, 2004, through September 30, 2004, is:

Monthly: $0.106/kW-month
Weekly: $0.024/kW-week
Daily: $0.003/kW-day
Hourly: $0.000125/kWh

This rate is based on the above formula and on FY 2002 financial and load data.

Rate Schedule L–AS3, Schedule 3 to Tariff, March 1, 2004; Regulation and Frequency Response Service

Applicable

Regulation and Frequency Response Service (Regulation) is necessary to provide for the continuous balancing of resources, generation, and interchange, with load and for maintaining scheduled interconnection frequency at sixty cycles per second (60 Hz). Regulation is accomplished by committing on-line generation whose output is raised or lowered, predominantly through the use of automatic generating control equipment, as necessary to follow the moment-by-moment changes in load. The obligation to maintain this balance between resources and load lies with the Western Area Colorado Missouri control area (WACM) operator. The Customers (Loveland Area Projects (LAP) Transmission Customers and customers on others' transmission systems within WACM) must either purchase this service from WACM or make alternative comparable arrangements to satisfy their Regulation obligations. The charges for Regulation are outlined below.

The LAP charges for Regulation may be modified upon written notice to the Customer. Any change to the Regulation charges will be listed in a revision to this rate schedule issued under applicable Federal laws, regulations, and policies and made part of the applicable service agreement. The Rocky Mountain Region (RMR) will charge the Customer under the rate then in effect.

Credit will be given to those Customers who provide WACM with Regulation. These types of crediting arrangements must be documented in the Customer's Service Agreement.

Effective

The first day of the first full billing period beginning on or after March 1, 2004, through February 28, 2009.

Formula Rate

$$\text{WACM Regulation Rate} = \frac{\text{Total Annual Revenue Requirement for Regulation}}{\text{Load in the Control Area Requiring Regulation}}$$

Rate

The rate to be in effect March 1, 2004, through September 30, 2004, is:

Monthly: $0.175/kW-month
Weekly: $0.040/kW-week
Daily: $0.006/kW-day
Hourly: $0.000250/kWh

This rate is based on the above formula and on FY 2002 financial and load data.

Rate Schedule L–AS4, SCHEDULE 4 to Tariff, March 1, 2004; Energy Imbalance Service

Applicable:

This rate applies to all customers receiving Energy Imbalance Service from the Rocky Mountain Customer Service Region's Western Area Colorado Missouri control area (WACM).

WACM provides Energy Imbalance Service when there is a difference between a Customer's (Loveland Area Projects Transmission Customers and customers on others' transmission systems within WACM) resources and obligations. Energy Imbalance is calculated as resources minus obligations (adjusted for transmission and transformer losses) for any combination of scheduled transfers, transactions, or actual load integrated over each hour. Customers within WACM must either obtain this service from WACM or make alternative comparable arrangements to satisfy their Energy Imbalance Service obligation.

Effective

The first day of the first full billing period beginning on or after March 1, 2004, through February 28, 2009.

Formula Rate

All Energy Imbalance Service provided, both inside and outside the bandwidth, will be settled financially, accounted for hourly at the end of each month. WACM will establish a deviation band of ± 5 percent (with a minimum of 4 MW) of the actual load to be applied hourly to any energy imbalance that occurs as a result of a Customer's schedules and/or meter data.

Normally, there are four scenarios for Energy Imbalance Service. They are: (1) over delivery within the bandwidth; (2) under delivery within the bandwidth; (3) over delivery outside the bandwidth; and (4) under delivery outside the bandwidth. During periods of control area operating constraints, Western reserves the right to eliminate credits for over deliveries and parties over or under delivering may share in the cost to Western of any penalty.

Within the Bandwidth

The gross energy imbalance for each applicable entity within WACM shall be totaled and netted to determine an aggregate energy imbalance for WACM. The sign of the aggregate energy imbalance will determine whether sale or purchase pricing will be used (surplus conditions use sale pricing and deficit conditions use purchase pricing).

Depending upon the sign of the aggregate energy imbalance for all entities within WACM, the pricing for charges and credits within the bandwidth will be: Weighted Average Real-Time Sale or Purchase Price.

Outside the Bandwidth

Each entity within WACM will be charged or credited independently for Energy Imbalance Service taken, depending on its over-or under-delivery status.

Under Delivery (customer deficit) = Customer will be charged 125% of the weighted average real-time purchase price.

Over Delivery (customer surplus) = Customer will be credited 75% of the weighted average real-time sale price.

Expansion of the bandwidth will be allowed during the following instances:

—The loss of a physical resource.
—Upon evidence of proven frequency bias contribution for control area needs.
—The transition (start up/shut down) period for large generating resources.

Jointly-Owned Generation or Generation Without Designated Load

For jointly-owned generators and any other generators within the control area without designated load, the bandwidth established for Energy Imbalance Service will be +/ − 2 percent of the actual hourly generation output of the units at issue. The charges or credits for Energy Imbalance Service will be assigned to the operating agent of the generator, unless WACM is provided with a copy of a signed agreement from all of the owners designating a specific methodology to allocate among owners and entitlees. Western reserves the right to refuse a designation that does not provide for the full and accurate recovery of all generator energy imbalances existing among owners and/or entitlees. The generator owners will be responsible for proper tagging and scheduling of the generation to ensure that the Energy Imbalance Service is assigned accurately.

Pricing Defaults

When no hourly data is available, the pricing defaults for sales and purchase pricing both within and outside the bandwidth will be applied in the following order:

1. Weighted average real-time sale or purchase pricing for the day (on and off peak).
2. Weighted average real-time sale or purchase pricing for the month (on and off peak).
3. Weighted average real-time sale or purchase pricing for the prior month.
4. Weighted average real-time sale or purchase pricing for the month prior to the prior month (and continuing until sale or purchase pricing is located) (on and off peak).

Rate

This bandwidth applicable to load is in effect March 1, 2004, through February 28, 2009, and is +/ − 5 percent of hourly actual load, with a 4 MW minimum deviation.

The bandwidth applicable to jointly owned generators or generators without designated load is in effect March 1, 2004, through February 28, 2009, and is +/ − 2 percent of hourly actual generation, with a 4 MW minimum deviation.

The pricing and penalty for deviations inside and outside the bandwidth is described above.

Rate Schedule L-AS5, Schedule 5 to Tariff, March 1, 2004; Operating Reserve—Spinning Reserve Service

Applicable

Spinning Reserve Service (Reserves) is needed to serve load immediately in the event of a system contingency. Reserves may be provided by generating units that are on-line and loaded at less than maximum output. The Customers (Loveland Area Projects Transmission Customers and customers on others' transmission system within Western Area Colorado Missouri control area (WACM)) must either purchase this service from WACM or make alternative comparable arrangements to satisfy their Reserve obligations. The charges for Reserves are shown below. The amount of Reserves will be outlined in the service agreement.

Effective

The first day of the first full billing period beginning on or after March 1, 2004, through February 28, 2009.

Formula Rate

No long-term Reserves are available beyond internal WACM requirements.

At a Customer's request, Western may purchase Reserves and pass through that cost, plus an amount for administration. Additionally, the Customer would be

responsible for providing the transmission to deliver the Reserves.

Rate Schedule L–AS6, Schedule 6 to Tariff, March 1, 2004; Operating Reserve—Supplemental Reserve Service

Applicable

Supplemental Reserve Service (Reserves) is needed to serve load in the event of a system contingency; however, it is not available immediately to serve load but rather within a short period of time. Reserves may be provided by generating units that are on-line but unloaded, by quick-start generation or by interruptible load. The Customers (Loveland Area Projects' Transmission Customers and customers on others' transmission system within Western Area Colorado Missouri control area (WACM)) must either purchase this service from WACM or make alternative comparable arrangements to satisfy their Reserve obligations. The charges for Reserves are outlined below. The amount of Reserves will be listed in the service agreement.

Effective

The first day of the first full billing period beginning on or after March 1, 2004, through February 28, 2009.

Formula Rate

No long-term Reserves are available beyond internal WACM requirements.

At a Customer's request, Western may purchase Reserves and pass through that cost, plus an amount for administration. Additionally, the Customer would be responsible for providing the transmission to deliver the Reserves.

Rate Schedule L–AS7, Schedule 9 to Tariff, March 1, 2004; Transmission Losses Service

Applicable

This rate schedule covers providing transmission losses for transactions within WACM as posted on the Rocky Mountain Region OASIS Web site.

Effective

The first day of the first full billing period beginning on or after March 1, 2004, through February 28, 2009.

Formula Rate

Transmission losses will be assessed for all real-time and prescheduled transactions on transmission facilities managed by Western-RMR or within WACM. Transmission Customers will be allowed the option of energy repayment either concurrently or 7 days later, same profile. Transmission Customers must declare their preference annually, as to which method of energy payback they wish to use.

However, when a transmission loss energy obligation is not provided (or is under provided) by a Transmission Customer for a transmission transaction, the energy still owed for losses will be calculated and a charge will be assessed to the Transmission Customer, based on the LAP weighted average hourly real-time purchase price.

Pricing for loss energy due 7 days later, and not received by WACM, will be priced at the 7 day later-price (the LAP weighted average hourly real-time purchase price with same defaults as Energy Imbalance Service).

There will be no financial compensation or energy return to Transmission Customers for over delivery of transmission losses, as there should be no condition beyond the control of the Transmission Customer that results in overpayment.

Rate

This rate is in effect March 1, 2004, through February 28, 2009. Transmission Customers may settle financially or with energy. The pricing for this service will be the LAP weighted average hourly real-time purchase price with the same defaults as Energy Imbalance Service.

Rate Schedule L–FPT1, Schedule 7 to Tariff, March 1, 2004; Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service

Applicable

The Transmission Customer shall compensate the Rocky Mountain Region (RMR) each month for Reserved Capacity under the applicable Firm Point-to-Point Transmission Service Agreement and rates outlined below. The formula rates used to calculate the charges for service under this schedule were issued and may be modified under applicable Federal laws, regulations, and policies.

RMR may modify the charges for Firm Point-to-Point Transmission Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Firm Point-to-Point Transmission Service will be listed in a revision to this rate schedule and made part of the applicable service agreement. RMR shall charge the Transmission Customer under the rate then in effect.

Discounts

Three principal requirements apply to discounts for transmission service as follows: (1) any offer of a discount made by RMR must be announced to all eligible customers solely by posting on the Open Access Same-Time Information System (OASIS), (2) any customer-initiated requests for discounts, including requests for use by one's wholesale merchant or an affiliate's use, must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from Point(s) of Receipt to Point(s) of Delivery, RMR must offer the same discounted transmission service rate for the same time period to all eligible customers on all unconstrained transmission paths that go to the same point(s) of delivery on the transmission system.

Unauthorized Use of Transmission

If a Transmission Customer (including the transmission provider for third-party sales) engages in unauthorized use of RMR-managed transmission systems, the Transmission Customer shall be charged 150 percent of the demand charge for the type of service at issue (reserved); *e.g.*, hourly, daily, weekly, or monthly, with a maximum demand charge set at monthly.

Unauthorized use is defined as unscheduled or untagged use of the transmission system and any affiliated ancillary service, exceeding reserved capacity at any point of delivery or receipt. Unauthorized use may also include a Transmission Customer's failure to curtail transmission when requested.

Formula Rate

$$\text{Firm Point-to-Point Transmission Rate} = \frac{\text{Annual Transmission Revenue Requirement}}{\text{LAP Transmission System Total Load}}$$

If a Transmission Customer requires use of subtransmission facilities, a specific facility use charge will be assessed in addition to this formula rate.

Effective

The first day of the first full billing period beginning on or after March 1, 2004, through February 28, 2009.

Rate

The rate to be in effect March 1, 2004, through September 30, 2004, is as follows:

Maximum of:

Yearly: $32.13/kW of reserved capacity per year

Monthly: $2.68/kW of reserved capacity per month

Weekly: $0.62/kW of reserved capacity per week

Daily: $0.09/kW of reserved capacity per day

This rate is based on the above formula and FY 2002 data.

Rate Schedule L–NFPT1, Schedule 8 to Tariff, March 1, 2004; Non-Firm Point-to-Point Transmission Service

Applicable

The Transmission Customers will compensate Rocky Mountain Region (RMR) for Non-Firm Point-to-Point Transmission Service under the applicable Non-Firm Point-to-Point Transmission Service Agreement and rate outlined below. The formula rates used to calculate charges for service under this schedule were issued and may be modified under applicable Federal laws, regulations, and policies.

RMR may modify the charges for Non-Firm Point-to-Point Transmission Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Non-Firm Point-to-Point Transmission Service will be listed in a revision to this rate schedule and made part of the applicable service agreement. RMR will charge the Transmission Customer under the rate then in effect.

Discounts

Three principal requirements apply to discounts for transmission service: (1) Any offer of a discount made by RMR must be announced to all eligible customers solely by posting on the Open Access Same-Time Information System (OASIS), (2) any customer-initiated requests for discounts, including requests for use by one's wholesale merchant or an affiliate's use, must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from Point(s) of Receipt to Point(s) of Delivery, RMR must offer the same discounted transmission service rate for the same time period to all eligible customers on all unconstrained transmission paths that go to the same point(s) of delivery on the transmission system.

Unauthorized Use of Transmission

If a Transmission Customer (including the transmission provider for third-party sales) engages in unauthorized use of RMR-managed transmission systems, the Transmission Customer will be charged 150 percent of the demand charge for the type of service at issue (reserved); *e.g.*, hourly, daily, weekly, or monthly, with a maximum demand charge set at monthly.

Unauthorized use is defined as unscheduled or untagged use of the transmission system and any affiliated ancillary service, exceeding reserved capacity at any point of delivery or receipt. Unauthorized use may also include a Transmission Customer's failure to curtail transmission when requested.

Effective

The first day of the first full billing period beginning on or after March 1, 2004, through February 28, 2009.

Formula Rate

$$\text{Maximum Non-Firm Point-to-Point Transmission Rate} = \text{Firm Point-to-Point Transmission Rate}$$

Rate

The rate to be in effect March 1, 2004, through September 30, 2004, is:

Maximum of:

Monthly: $2.68/kW of reserved capacity per month

Weekly: $0.62/kW of reserved capacity per week

Daily: $0.09/kW of reserved capacity per day

Hourly: 3.75 mills/kWh

This rate is based on the above formula and FY 2002 data.

Rate Schedule L–NT1, Attachment H to Tariff, March 1, 2004; Annual Transmission Revenue Requirement for Network Integration Transmission Service

Applicable

Transmission Customers will compensate the Rocky Mountain Region (RMR) each month for Network Transmission Service under the applicable Network Integration Service Agreement and annual revenue requirement referred to below. The formula for the annual revenue requirement used to calculate the charges for this service under this schedule was issued and may be modified under applicable Federal laws, regulations, and policies.

RMR may modify the charges for Network Integration Transmission Service upon written notice to the Transmission Customer. Any change to the charges to the Transmission Customer for Network Integration Transmission Service will be listed in a revision to this rate schedule and made part of the applicable service agreement. RMR will charge the Transmission Customer in accordance with the revenue requirement then in effect.

Effective

The first day of the first full billing period beginning on or after March 1, 2004, through February 28, 2009.

Formula Rate

$$\text{Monthly Charge} = \text{Transmission Customer's Load-Ratio Share} \times \frac{\text{Revenue Requirement}}{12}$$

If a Transmission Customer requires use of subtransmission facilities, a specific facility use charge will be assessed in addition to this formula rate.

If an existing Transmission Customer elects to retain its Transmission Contract and the contract terms are payment on an energy basis, the capacity-unit rate under the formula rate will be converted to an energy-unit rate based on the individual customer's total load factor.

Rate

The revenue requirement in effect March 1, 2004, through September 30, 2004, is $38,776,237. This revenue requirement is based on FY 2002 data.

[FR Doc. 04–575 Filed 1–9–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0073; FRL–7340–4]

Reporting and Recordkeeping for Asbestos Abatement Worker Protection; Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) EPA is seeking public comment and information on the following Information Collection Request (ICR): Reporting and Recordkeeping for Asbestos Abatement Worker Protection (EPA ICR No. 1246.09, OMB Control No. 2070–0072). This ICR involves a collection activity that is currently approved and scheduled to expire on July 31, 2004. The information collected under this ICR helps EPA protect public health by establishing workplace standards for state and local government employees who work with asbestos and who are not covered by an Occupational Safety and Health Administration (OSHA)-approved state asbestos plan or state asbestos worker protection plan. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPPT–2003–0073, must be received on or before March 12, 2004.

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

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Robert Courtnage, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–1081; fax number: (202) 566–0473; e-mail address: *courtnage.robert@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a state or local government employer in a state without an OSHA-approved state asbestos plan or state asbestos worker protection plan that has employees engaged in asbestos-related construction, custodial, and brake and clutch repair activities. Potentially affected entities may include, but are not limited to:

- Public administration (NAICS 92), e.g., State or local government employers.
- Educational services (NAICS 611), e.g., School districts.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0073. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*.You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available

docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit the Comments?

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

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2003–0073. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–0073. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0073. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

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

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider when I Prepare My Comments for EPA?

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

II. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Reporting and Recordkeeping for Asbestos Abatement Worker Protection.

ICR numbers: EPA ICR No. 1246.09, OMB Control No. 2070–0072.

ICR status: This ICR is currently scheduled to expire on July 31, 2004. 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 title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

Abstract: EPA's asbestos worker protection rule is designed to provide occupational exposure protection to state and local government employees who are engaged in asbestos abatement activities in states that do not have state plans approved by OSHA. The rule provides protection for public employees not covered by the OSHA standard from the adverse health effects associated with occupational exposure to asbestos.

This rule requires state and local governments to monitor employee exposure to asbestos, take action to reduce exposure, monitor employee health, train employees about asbestos hazards, and provide employees with information about exposures to asbestos and the associated health effects. The rule also requires state and local governments to notify EPA before commencing any asbestos abatement project. State and local governments must maintain medical surveillance and monitoring records and training records on their employees, must establish a set of written procedures for respirator programs, and must maintain procedures and records of respirator fit tests. EPA will use the information to monitor compliance with the asbestos worker protection rule.

Responses to the collection of information are mandatory (see 40 CFR part 763, subpart G). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in the Toxic Substances Control Act (TSCA) section 14 and 40 CFR part 2.

III. What are EPA's Burden and Cost Estimates for this ICR?

Under PRA, ''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. For this collection it 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 0.33 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: 25,312.

Estimated total number of potential respondents: 25,312.

Frequency of response: On occasion; includes third-party notification.

Estimated average number of responses for each respondent: 50.

Estimated total annual burden hours: 412,243 hours.

Estimated total annual burden costs: $13,281,559.

IV. Are There Changes in the Estimates from the Last Approval?

This request reflects a decrease of 24,046 hours (from 436,289 hours to 412,243 hours) in the total estimated respondent burden from that currently in the OMB inventory. This decrease is due to a reduction in the number of supervisors at affected entities that need to read and interpret the regulation. In the previous ICR EPA anticipated that all supervisors undertook this activity. In the current ICR EPA expects that only new supervisors must do so. The change in burden represents an adjustment.

V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 24, 2003.

William H. Sanders III,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 04–562 Filed 1–9–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0070; FRL–7339–5]

Residential Lead-Based Paint Hazard Disclosure Requirements; Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) EPA is seeking public comment and information on the following Information Collection Request (ICR): Residential Lead-Based Paint Hazard Disclosure Requirements (EPA ICR No. 1710.04, OMB Control No. 2070–0151). This ICR involves a

collection activity that is currently approved and scheduled to expire on July 31, 2004. The information collected under this ICR helps EPA protect public health by assuring that sellers and lessors of residential housing units inform purchasers and renters of the presence of lead-based paint in such residences. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPPT–2003–0070, must be received on or before March 12, 2004.

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

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Cindy Wheeler, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0484; fax number: (202) 566–0473; e-mail address: *wheeler.cindy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are engaged in selling, purchasing, or leasing certain residential dwellings built before 1978, or are a real estate agent representing such parties. Potentially affected entities may include, but are not limited to:

- Lessors of real estate (NAICS 5311), e.g., Lessors of residential buildings and dwellings.
- Offices of real estate agents and brokers (NAICS 5312), e.g., Real estate agents and brokers.
- Private parties engaged in real estate sales or lease transactions (no corresponding NAICS codes), e.g., Sellers and buyers of residential dwellings, landlords and tenants of residential dwellings.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0070. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.*You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit the Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on

the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2003–0070. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–0070. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0070. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

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

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider when I Prepare My Comments for EPA?

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

II. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Residential Lead-Based Paint Hazard Disclosure Requirements.

ICR numbers: EPA ICR No. 1710.04, OMB Control No. 2070–0151.

ICR status: This ICR is currently scheduled to expire on July 31, 2004. 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 title 40 of the CFR, after appearing in the **Federal Register**,

are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

Abstract: Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4852d) requires that sellers and lessors of most residential housing built before 1978 disclose known information on the presence of lead-based paint and lead-based paint hazards and provide an EPA-approved pamphlet to purchasers and renters before selling or leasing the housing. Sellers of pre-1978 housing are also required to provide prospective purchasers with 10 days to conduct an inspection or risk assessment for lead-based paint hazards before obligating purchasers under contracts to purchase the property. The rule does not apply to rental housing that has been found to be free of lead-based paint, zero-bedroom dwellings, housing for the elderly, housing for the handicapped, or short-term leases. The affected parties and the information collection-related requirements related to each are described below:

1. *Sellers of pre-1978 residential housing*. Sellers of pre-1978 housing must attach certain notification and disclosure language to their sales/leasing contracts. The attachment lists the information disclosed and acknowledges compliance by the seller, purchaser, and any agents involved in the transaction.

2. *Lessors of pre-1978 residential housing*. Lessors of pre-1978 housing must attach notification and disclosure language to their leasing contracts. The attachment, which lists the information disclosed and acknowledges compliance with all elements of the rule, must be signed by the lessor, lessee, and any agents acting on their behalf. Agents and lessees must retain the information for 3 years from the completion of the transaction.

3. *Agents acting on behalf of sellers or lessors*. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 specifically directs EPA and the Department of Housing and Urban Development (HUD) to require agents acting on behalf of sellers or lessors to ensure compliance with the disclosure regulations.

Responses to the collection of information are mandatory (see 40 CFR part 745, subpart F and 24 CFR part 35, subpart H). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in the Toxic Substances Control Act (TSCA) section 14 and 40 CFR part 2.

III. What are EPA's Burden and Cost Estimates for this ICR?

Under PRA, ''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. For this collection it 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 0.19 hours. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: 47,516,400.

Estimated total number of potential respondents: Unknown.

Frequency of response: On occasion; third-party notification only.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 8,855,610 hours.

Estimated total annual burden costs: $135,775,347.

IV. Are There Changes in the Estimates from the Last Approval?

This request reflects a net increase of 1,199,725 hours (from 7,655,885 hours to 8,855,610 hours) in the total estimated respondent burden from that currently in the OMB inventory. This increase is due largely to an increase in projected real estate sales, presumably associated with historically low interest rates. The previous ICR analysis projected sales of target housing units at a rate of 3,429,447 per year. The current analysis projects sales of 4,324,000 units per year, or an increase of about 895,000 units per year. The increase in real estate sales is partially offset by a projected decrease in the number of rental transactions, down from 8,930,274 transactions to 8,252,000 transactions. The change in burden represents an adjustment.

V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 24, 2003.

William H. Sanders III,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 04–563 Filed 1–9–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7608–2]

Notice of Draft National Pollutant Discharge Elimination System (NPDES) General Permit for the Eastern Portion of Outer Continental Shelf (OCS) of the Gulf of Mexico (GMG280000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Reissuance of NPDES General Permit, Notice to States of Mississippi, Alabama and Florida for Consistency Review with approved Coastal Management Programs.

SUMMARY: The Regional Administrator of EPA Region 4 (the ''Region'') is today proposing to reissue the National Pollutant Discharge Elimination System (NPDES) general permit for the Outer Continental Shelf (OCS) of the Gulf of Mexico (General Permit No. GMG28A000) for discharges in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 Code of Federal Regulations (CFR) part 435, subpart A).

DATES: Comments on this proposed action must be received by March 12, 2004.

ADDRESSES: Persons wishing to comment upon or object to any aspects of this permit reissuance are invited to

submit same in writing within sixty (60) days of this notice to the Water Management Division, U.S. EPA—Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960, Attention: Ms. Karrie-Jo Robinson-Shell. Public hearings will be scheduled and held in Ocean Springs, MS, Gulf Shores, AL and Pensacola, FL, in March 2004; see section VI. Public notices announcing these hearings will be published in local newspapers at least 30 days prior to the date of the first hearing. Persons wishing to receive advance notification of these hearings directly are asked to submit that request to Ms. Ann Brown at the address above or via e-mail at: *brown.anng@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Karrie-Jo Robinson-Shell, Offshore Oil and Gas Contact, at telephone (404) 562–9308 or at the following address: Water Management Division, NPDES and Biosolids Permits Section, U.S. EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960.

SUPPLEMENTARY INFORMATION: The existing permit, issued by EPA Region 4 and published at 63 FR 55718 on October 16, 1998, and revised on March 14, 2001 at 63 FR 14988, authorizes discharges from exploration, development, and production facilities located in and discharging, to all Federal waters of the eastern portion of the Gulf of Mexico seaward of the outer boundary of the territorial seas. Today's draft NPDES permit covers existing and new source facilities in the Eastern Planning Area with operations located on Federal leases occurring in water depths seaward of 200 meters, occurring offshore the coasts of Alabama and Florida. The western boundary of the coverage area is demarcated by Mobile and Visoca Knoll lease blocks located seaward of the outer boundary of the territorial seas from the coasts of Mississippi and Alabama in the Central Planning Area (CPA).

In order to obtain coverage under the reissued general permit, all permittees covered under the previous NPDES general permit must have submitted a timely and complete notice of intent (NOI) no later than October 31, 2003 (the expiration date of the previous NPDES general permit). All facility owners of newly acquired leases, on which a discharge will take place before the effective date of the reissued general permit (operating facilities) in the water depths seaward of 200 meters, must file a written NOI to be covered by the new general permit for existing and new sources no later than 14 days prior to discharge. Non-operational leases, *i.e.*, those on which no discharges have taken place in the two (2) years prior to the effective date of the reissued general permit, are only eligible for coverage under the reissued general permit once the Exploration Plan Document or the Development Operational Coordination Document are submitted to EPA. Otherwise, their coverage under the previous general permit will terminate on the effective date of the reissued general permit. No NOIs will be accepted on non-operational or newly acquired leases until such time as an exploration plan or development production plan has been prepared for submission to Minerals Management Service (MMS). The NOI must contain the information set forth in 40 CFR 122.28(b)(2)(ii) and part A.4 of the NPDES permit.

In accordance with Oil and Gas Extraction Point Source Category, Offshore Subcategory Effluent Guidelines and New Source Performance Standards (NSPS) published at 58 FR 12454 on March 4, 1993, and amended at 66 FR 6850 on January 22, 2001, EPA Region 4 is making a draft Supplemental Environmental Impact Statement (SEIS) available for review at least 30 days prior to the end of the public comment period for this general permit. (A separate **Federal Register** Notice announcing this document is forthcoming.) The draft SEIS addresses potential impacts from facilities that may be defined as new sources in the context of a comprehensive offshore permitting strategy. As set forth in section 2.4.2 of the final Environmental Impact Statement (EIS) (EPA 904/9–98–003), which was prepared for the previous NPDES general permit, the Regional Administrator has determined that the area shoreward of the 200 meter depth includes extensive live bottom and other valuable marine habitats and includes areas of biological concern, which should be subject to more stringent review based on the ocean discharge criteria under section 403 of the Clean Water Act (CWA or the Act) and findings of the draft SEIS. Accordingly, individual permits will be issued for operating facilities on lease blocks traversed by and shoreward of the 200 meter water depth.

As proposed, this draft NPDES general permit includes, best conventional pollutant control technology (BCT), and best available technology economically achievable (BAT) limitations for existing sources and new source performance standards (NSPS) limitations for new sources as promulgated in the effluent guidelines for the offshore subcategory at 58 FR 12454 and amended at 66 FR 6850 (March 4, 1993 and January 22, 2001, respectively).

I. Procedures For Reaching a Final Permit Decision

Pursuant to 40 CFR 124.13, any person who believes any condition of the permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments in full, supporting their position, by the close of the comment period. All comments on the draft NPDES general permit and the draft SEIS received within the 60-day comment period will be considered in the formulation of final determination regarding the permit reissuance. In addition, public hearings will be held in coastal Mississippi, Alabama and Florida communities where the public may have an interest in the permit issuance action.

After consideration of all written comments, comments taken at the public hearings and the requirements and policies in the CWA and appropriate regulations, the EPA Regional Administrator will make a determination regarding the permit reissuance. If the determination results in a permit that is substantially unchanged from the draft permit announced by this notice, the Regional Administrator will so notify all persons submitting written comments. If the determination results in a permit that is substantially changed, the Regional Administrator will issue a public notice indicating the revised determination.

A formal hearing is available to challenge any NPDES permit issued according to the regulations at 40 CFR 124.15, except for a general permit as cited at 40 CFR 124.71. Persons affected by a general permit may not challenge the conditions of a general permit as a right in further Agency proceedings. They may instead either challenge the general permit in court, or apply for an individual permit as specified at 40 CFR 122.21 as authorized at 40 CFR 122.28, and then request a formal hearing on the issuance or denial of an individual permit. Additional information regarding these procedures is available by contacting Mr. Kevin Smith, Associate Regional Counsel Office of Environmental Accountability, at (404) 562–9525.

II. Procedures For Obtaining General Permit Coverage

Notice of Intent requirements for obtaining coverage for operating facilities are stated in part I, section A.4 of the general permit. Coverage under

the reissued general permit is effective upon receipt of notification of coverage with an assignment of an NPDES general permit number from the EPA Region 4, Director of the Water Management Division. EPA will act on the NOI within a reasonable period of time.

III. Exclusion of Non-Operational Leases

This permit does not apply to non-operational leases, *i.e.*, those on which no discharge has taken place in the two (2) years prior to the effective date of the reissued general permit. EPA will not accept NOIs for such leases, and the general permit will not cover such leases. Non-operational leases will lose coverage under the previous general permit on the effective date of the reissued general permit. No subsequent exploration, development or production activities may take place on these leases until and unless the lessee has obtained coverage under the new general permit or an individual permit. EPA will not accept an NOI or individual permit application for non-operational or new acquired leases until such time as an Exploration Plan Document or the Development Operational Coordination Document has been prepared and submitted to MMS.

IV. State Water Quality Certification

Because state waters are not included in the area covered by the OCS general permit, its effluent limitations and monitoring requirements are not subject to state water quality certification under CWA Section 401. However, the states of Alabama, Florida and Mississippi have been provided a copy of this draft general permit to review and submit comments. A copy has also been provided to EPA Region 6 for their review.

V. State Consistency Determination

This notice will also serve as Region 4's requirement under the Coastal Zone Management Act (CZMA) to provide all necessary information for the States of Mississippi, Alabama and Florida to review this action for consistency with their approved Coastal Management Programs. A copy of the consistency determination on the proposed activities is being sent to each affected State, along with draft copies of the draft NPDES general permit, Fact Sheet, preliminary Ocean Discharge Criteria Evaluation, a CWA Section 403(c) determination, and draft SEIS. Other relevant information is available upon request from each State for their review. Comments regarding State Consistency are invited in writing within 60 days of this notice to the Water Management Division, U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960, Attention: Ms. Karrie-Jo Robinson-Shell.

VI. Public Comment Period and Public Hearings

The public comment period for the draft NPDES permit will begin on the date of publication of this notice and end 60 days later. Three (3) public hearings have been scheduled on this proposed action. The first hearing is scheduled for Tuesday, March 16, 2004, at 6 p.m in Ocean Springs, Mississippi at the Gulf Coast Research Laboratory, 703 East Beach Drive. The second hearing is scheduled for Wednesday, March 17, 2004, at 6 p.m. in Gulf Shores, Alabama at the Marriott Courtyard Gulf Shores Craft Farms, 3750 Gulf Shores Parkway. The third hearing is scheduled for Thursday, March 18, 2004, at 6 p.m. in Pensacola, Florida at the Booker T. Washington High School, 6000 College Parkway. Comments from persons attending any of the hearings will be received no later than April 2, 2004 (14 days after the last public hearing). Any person wishing to participate in a public hearing who needs special accommodations or any person interested in obtaining directions to these hearing should contact Ms. Ann Brown, at (404) 562–9288 before March 1, 2004.

VII. Administrative Record

The draft NPDES general permit, fact sheet, preliminary Section 403(c) determination, draft SEIS and other relevant documents are on file and may be inspected any time between 8:15 a.m. and 4:30 p.m., Monday through Friday at the address shown below. Copies of the draft NPDES general permit, fact sheet, preliminary 403(c) determination, draft SEIS and other relevant documents may be obtained by writing the U.S. EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, Attention: Ms. Karrie-Jo Robinson-Shell, or by calling (404) 562–9308. In addition, copies of the draft NPDES general permit and fact sheet may be downloaded at *http://www.epa.gov/region4/water/permits.*

VIII. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action in ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health, or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has exempted review of NPDES general permits under the terms of Executive Order 12866.

IX. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rule making requirements under the Administrative Procedures Act (APA) or any other statue, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

Issuance of an NPDES general permit is not subject to rule making requirements, including the requirement for a general notice of proposed rule making, under APA section 533 or any other law, and is thus not subject to the RFA requirements.

The APA defines two broad, mutually exclusive categories of agency action—''rules'' and ''orders.'' APA section 551(4) defines rule as ''an agency statement of general or particular applicability and future effect designed to implement, interpret or prescribe law or policy or describing the organization, procedure, or practice or requirements of an agency * * *'' APA section 551(6) defines orders as ''a final disposition * * * of an agency in a matter other than rule making but including licensing.'' APA section 551(8) defines ''license'' to ''include * * * an agency permit * * *'' The APA thus categorizes a permit as an order, which by the APA's definition is not a rule. Section 553 of the APA establishes ''rule making'' requirements. APA section 551(5) defines ''rule making'' as ''the agency process for formulating, amending, or repealing a rule.'' By its terms, section 553 applies only to rules

and not to orders, exempting by definition permits.

X. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their ''regulatory actions'' to refer to regulations. (See, *e.g.*, UMRA section 401, ''Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law).'') UMRA section 102 defines ''regulation'' by reference to 2 U.S.C. 658 which in turn defines ''regulation'' and ''rule'' by reference to section 601(2) of the RFA. That section of the RFA defines ''rule'' as ''any rule for which the agency publishes a notice of proposed rule making pursuant to section 553(b) of the APA, or any other law.''

As discussed in the RFA section of this notice, NPDES general permits are not ''rules'' by definition under the APA and thus not subject to the APA requirement to publish a notice of proposed rule making. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide an opportunity for a hearing. Therefore, NPDES general permits are not ''rules'' for RFA or UMRA purposes.

XI. Paperwork Reduction Act

The information collection required by this permit has been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (NPDES Discharge Monitoring Reports (DMRs)).

Since this permit is very similar in reporting and application requirements and in discharges which are required to be monitored as the previous Eastern Gulf of Mexico OCS general permit (GMG280000) the paperwork burdens are expected to be nearly identical. When it issued the previous OCS general permit, EPA estimated it would take an affected facility three hours to prepare the request for coverage and 38 hours per year to prepare DMRs. It is estimated that the time required to prepare the request for coverage and DMRs for the reissued permit will be approximately the same.

James S. Kutzman,

Acting Director, Water Management Division.

[FR Doc. 04–376 Filed 1–9–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CCB/CPD 98–2; DA 03–4054]

Definition of Payphone Customer; Tariff Notice Requirements for Non-Dominant Carriers; NYNEX Waiver of Access Charges; Application of Presubscribed Interexchange Carrier Charge to Discontinued Customers

AGENCY: Federal Communications Commission.

ACTION: Notice; termination of proceedings.

SUMMARY: This document is a notification of final termination of four proceedings, involving the definition of a payphone customer, tariff notice requirements for non-dominant carriers, NYNEX's application for a waiver of access charges, and the application of presubscribed interexchange carrier charges to discontinued customers. No oppositions to the prior notices of termination were received; therefore, interested parties are hereby notified that these proceedings have been terminated.

DATES: These proceedings were terminated effective December 5, 2003.

FOR FURTHER INFORMATION CONTACT: Jennifer McKee, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530.

SUPPLEMENTARY INFORMATION: On October 24, 2003, the Wireline Competition Bureau's Pricing Policy Division issued Public Notices in four proceedings stating that the proceedings would be terminated effective 30 days after publication of the Public Notices in the **Federal Register**, unless the Bureau received oppositions to the terminations before that date. These proceedings were Atlantic Telco, Inc. and Tel & Tel Payphones, Inc. Request for Declaratory Ruling (regarding the definition of a payphone customer); Teleport Communications Group Operating Companies Tariff F.C.C. No. 1 Transmittal No. 1, *et al.* (regarding tariff notice requirements for non-dominant carriers); NYNEX Telephone Companies Petition for Waiver; Transition Plan to Preserve Universal Service in a Competitive Environment (regarding NYNEX's application for a waiver of access charges); and Sprint Corporation Request for Declaratory Ruling Regarding Application of PICCs (regarding the application of presubscribed interexchange carrier charges to discontinued customers). The notices were published in the **Federal Register** on November 5, 2003. *See* 68 FR 62593, November 5, 2003; 68 FR 62593, November 5, 2003; 68 FR 62592, November 5, 2003; 68 FR 62594, November 5, 2003. The Bureau did not receive any oppositions to the terminations of these proceedings within 30 days of **Federal Register** publication of the notices; therefore, the above-listed proceedings were terminated as of December 5, 2003.

Authority: 47 U.S.C. 152, 153, 154, 155, 303, 307, 308, 309, 315, 317; 44 FR 18501, 67 FR 13223, 47 CFR 0.291, 1.749.

Federal Communications Commission.

William F. Maher, Jr.,

Chief, Wireline Competition Bureau.

[FR Doc. 04–480 Filed 1–9–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE & TIME: Thursday, January 15, 2004 at 10 A.M.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes. Discussion of Regulations Priorities for 2004. Routine Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Robert Biersack, Deputy Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 04–659 Filed 1–8–04; 11:26 am]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing a Closed Meeting of the Board of Directors

TIME AND DATE: The meeting of the Board of Directors is scheduled to begin at approximately 11 a.m. on Wednesday, January 14, 2004. It will follow immediately the previously announced open meeting of the Board of Directors. *See* 69 FR 1289 (January 8, 2004).

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The entire meeting will be closed to the public.

MATTERS TO BE CONSIDERED: *Periodic Update of Examination Program Development and Supervisory Findings.*

FOR FURTHER INFORMATION CONTACT: Mary Gottlieb, Paralegal Specialist, Office of General Counsel, by telephone at (202) 408–2826 or by electronic mail at *gottliebm@fhfb.gov.*

Dated: January 8, 2004.

By the Federal Housing Finance Board.

Arnold Intrater,

General Counsel.

[FR Doc. 04–661 Filed 1–8–04; 11:36 am]

BILLING CODE 6725–01–P

GENERAL SERVICES ADMINISTRATION

Office of Governmentwide Policy; Cancellation of an Optional Form by the Department of State

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Department of State has cancelled the following Optional Form because it is no longer required:

OF 140, Election to Receive Extra Service Credit Toward Retirement and Support of Residence of Spouse.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Cunningham, Department of State, (202) 312–9605.

DATES: Effective January 12, 2004.

Dated: January 2, 2004.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 04–505 Filed 1–9–04; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04077]

Rapid Strengthening of Blood Transfusion Services in Selected Countries in Africa and the Caribbean for the Ministries of Health and National Transfusion Services; Notice of Availability of Funds; Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for cooperative agreements for Rapid Strengthening of Blood Transfusion Services in Selected Countries in Africa and the Caribbean for the Ministries of Health and National Transfusion Services Under the President's Emergency Plan for AIDS Relief was published in the **Federal Register** December 1, 2003, Volume 68, Number 230, pages 67177–67180. The notice is amended as follows:

Page 67178, first column, section ''III.1. Eligible Applicants'', delete the text in this section, and replace with, ''Applications may be submitted by the National Blood Transfusion Service or Agency in the 14 targeted countries: Botswana, Cote d'Ivoire, Ethiopia, Haiti, Guyana, Kenya, Mozambique, Namibia, Nigeria, Rwanda, South Africa, Tanzania, Uganda, and Zambia. If there is no National Blood Transfusion Service or Agency, the Ministry of Health may submit the application directly on behalf of it's hospitals and operating units. Organizations that can provide support to official National Blood Transfusion Services or Agencies are guided to Program Announcement 04078, intended to provide resources to such assisting organizations.''

Dated: January 6, 2004.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–532 Filed 1–9–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Federal Tax Offset, Administrative Offset, and Passport Denial Program.

OMB No.: 0970–0161.

Description: The Tax Refund Offset and Administrative Offset Programs, collect past-due child support by intercepting certain federal payments, including federal tax refunds, of parents who have been ordered to pay child support and are behind in paying the debt. The program is a cooperative effort including the Department of Treasury's Financial Management Service (FMS), the Federal Office of Child Support Enforcement (OCSE) and state Child Support Enforcement (CSE) agencies. The Passport Denial Program reports non-custodial parents who owe arrears above a threshhold to the Department of State (DOES), which will then deny passports to these individuals. On an ongoing basis, CSE agencies submit to OCSE the names, Social Security numbers (SSNs) and the amount(s) of past-due child support to people who are delinquent in making child support payments.

Respondents: State IV–D Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Input Record	54	52	.3 hours	842.4 hours
Output Record	54	52	.46 hours	1,292 hours
Payment File	54	26	.27 hours	379 hours
Certification Letter	54	1	.4 hours	21.6 hours

Estimated Total Annual Burden Hours: 2535 hours.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be

identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 5, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–551 Filed 1–9–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee.

General Function of the Subcommittee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 3, 2004, from 9 a.m. to 4:45 p.m., and February 4, 2004, from 8 a.m. to 12 noon.

Location: CDER Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Thomas H. Perez, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or by e-mail: *perezt@cder.fda.gov*. Please call the FDA Advisory Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512530, for up-to-date information on this meeting.

Agenda: On February 3, 2004, the subcommittee will meet between 9 a.m. and 10:15 a.m., and the agency will report to the subcommittee on Adverse Event Reporting as mandated in Section 17 of the Best Pharmaceuticals for Children Act (BPCA). The products to be reported during this portion of the meeting include: Paxil (paroxetine), Celexa (citalopram), Pravachol (pravastatin), and Navelbine (vinorelbine). Following this, from approximately 10:30 a.m. to 4:45 p.m., the subcommittee will discuss the use of imaging drugs in conjunction with cardiac imaging procedures in the pediatric population.

On February 4, 2004, the subcommittee will meet between 8 a.m. and 12 noon to continue the discussion on the use of imaging drugs in conjunction with cardiac imaging procedures in the pediatric population.

The background material for this meeting will be posted on the Internet when available or 1 working day before the meeting at *www.fda.gov/ohrms/dockets/ac/menu.htm.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by January 23, 2004. On February 3, 2004, oral presentations from the public will be scheduled between approximately 9:45 a.m. and 10:15 a.m. for issues related to the Section 17 adverse event reports. Also, on February 3, 2004, oral presentations from the public will be scheduled between approximately 3:45 p.m. and 4:45 p.m. for issues related to cardiac imaging in pediatric patients. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person by January 23, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please notify Thomas Perez at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 5, 2004.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 04–503 Filed 1–9–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Psychopharmacologic Drugs Advisory Committee and the Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of the meeting of the Psychopharmacologic Drugs Advisory Committee and the Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee. This meeting was announced in the **Federal Register** of October 31, 2003 (68 FR 62088). The amendment is being made to reflect a change in the *Contact Person* for the FDA advisory committee telephone line extension codes (namely from 5-digit to a 10-digit format), *Agenda*, and *Procedure* portions of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Anuja Patel, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776 or e-mail: *patelA@cder.fda.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 31, 2003 (68 FR 62088), FDA announced that a meeting of the Psychopharmacologic Drugs Advisory Committee and the Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee will be held on February 2, 2004. On page 62088, in the second and third columns, the *Contact Person*, *Agenda*, and *Procedure* portions of the meeting are amended to read as follows:

Contact Person: Anuja Patel, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville,

MD 20857, 301–827–7001, FAX: 301–827–6776 or e-mail: *patelA@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area) code 3014512544. Please call the Information Line for up to date information on this meeting.

Agenda: The Psychopharmacologic Drugs Advisory Committee and the Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee will discuss reports of the occurrence of suicidality (both suicidal ideation and suicide attempts) in clinical trials for various anti-depressant drugs in pediatric patients with major depressive disorder (MDD). The committee will consider optimal approaches to the analysis of data from these trials as well as further research needs to address these issues. The committee will not be considering options for definitive regulatory action at this meeting because definitive analyses of the data have not been completed. This topic will be covered in a second meeting to be scheduled by summer 2004.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 26, 2004. Oral presentations from the public will be scheduled between approximately 9:30 a.m. to 11:30 a.m., and 2 p.m. to 2:30 p.m.

This notice is given under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: January 5, 2004.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 04–502 Filed 1–9–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of 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 open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The 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: Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Date: February 23–25, 2004.

Open: February 23, 2004, 8 a.m. to 9 a.m.

Agenda: To discuss planning and other issues.

Place: Gaithersburg Marriott, Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

Closed: February 23, 2004, 9 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott, Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

Contact Person: D.G. Patel, PhD, Scientific Review Administrator, National Institutes of Health, National Center for Research Resources, Office of Review, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1070, Bethesda, MD 20892, 301–435–0824, *pateldg@mail.nih.gov*.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Research Infrastructure.

Date: February 25–26, 2004.

Time: February 25, 2004, 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Marriott Gaithersburg, Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Eric H. Brown, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd, MSC 4874, Room 1068, Bethesda, MD 20892–4874, 301–435–0815, *browne@mail.nih.gov*.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Research Infrastructure.

Date: March 10–11, 2004.

Time: March 10, 2004, 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Marriott Gaithersburg, Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Eric H. Brown, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd, MSC 4874, Room 1068, Bethesda, MD 20892, 301–435–0815, *browne@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: January 6, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–578 Filed 1–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5. U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Unsolicited P01.

Date: January 21, 2004.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Cheryl K. Lapham, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEA/NIH/DHHS, 6700–B Rockledge Drive, MSC 7616, Room 3127, Bethesda, MD 20892–7616, 301–402–4598, *clapham@niaid.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Unsolicited Program Project Application.

Date: February 4, 2004.

Time: 9 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Brenda Lange-Gustafson, PhD, Scientific Review Administrator, NIAID, DEA, Scientific Review Program, Room 3122, 6700–B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–496–2550, *bgustafson@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Unsolicited Grant Application.

Date: February 12, 2004.

Time: 9 a.m. to 1 p.m.

Agenda: To review and and evaluate grant applications.

Place: 6700B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Brenda Lange-Gustafson, PhD, Scientific Review Administrator, NIAID, DEA, Scientific Review Program, Room 3122, 6700–B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–496–2550, *bgustafson@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transportation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 6, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–577 Filed 1–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Cooperative Research for the Development of Vaccines, Adjuvants, Therapeutics, Immunotherapeutics, and Diagnostics for Biodefense.

Date: February 3–5, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Geetha P. Bansal, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3145, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 402–5658, *gbansal@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 6, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–579 Filed 1–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Research Center in Trauma, Burn and Perioperative Injury.

Date: January 27, 2004.

Time: 3 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 45, 45 Center Drive, Room 3AN18, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18B, Bethesda, MD 20892, 301–594–2848, *latkerc@nigms.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: January 6, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–580 Filed 1–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, IAIMS (G08) Site Visit.

Date: January 11–13, 2004.

Time: January 11, 2004, 7 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Indiana University, Research and Sponsored Programs, 620 Union Drive, Room 618, Indianapolis, IN 46202.

Time: January 12, 2004, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Indiana University, Research and Sponsored Programs, 620 Union Drive, Room 618, Indianapolis, IN 46202.

Time: January 13, 2004, 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Indiana University, Research and Sponsored Programs, 620 Union Drive, Room 618, Indianapolis, IN 46202.

Contact Person: Hua-Chuan Sim, MD, Health Science Administrator, National Library of Medicine, Extramural Programs, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: January 6, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–582 Filed 1–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the The Board of Scientific Counselors of the Warren Grant Magnuson Clinical Center.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the Clinical Center, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: The Board of Scientific Counselors of the Warren Grant Magnuson Clinical Center.

Date: February 9–10, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 10, 10 Center Drive, Clinical Center Med Brd RM 2C116, Bethesda, MD 20892.

Contact Person: David K. Henderson, MD, Deputy Director for Clinical Care, Office of the Director, Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/402–0244.

Dated: January 6, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–581 Filed 1–9–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1504–DR]

Federated States of Micronesia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Federated States of Micronesia (FEMA–1504–DR), dated December 19, 2003, and related determinations.

DATES: Effective Date: December 19, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 19, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Federated States of Micronesia resulting from Typhoon Lupit on November 22–26, 2003, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the Federated States of Micronesia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance limited to Emergency Food Assistance (Food Commodities) and Public Assistance, including direct Federal assistance in the designated areas. You are also authorized to provide Hazard Mitigation throughout the Federated States of Micronesia, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, including direct Federal assistance, and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under section 408 of the Stafford Act is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Michael Karl, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas within the Federated States of Micronesia to have been affected adversely by this declared major disaster:

Individual Assistance limited to Emergency Food Assistance through USDA for the islands of Eauripik, Elato, Fais, Faraulap, Ifalik, Lamotrek, Satawal, Ulithi, and Woleai Islands within Yap State.

Yap State for Public Assistance.

All areas within the Federated States of Micronesia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–539 Filed 1–9–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1504–DR]

Federated States of Micronesia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Federated States of Micronesia (FEMA–1504–DR), dated December 19, 2003, and related determinations.

EFFECTIVE DATE: January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Federated States of Micronesia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 19, 2003:

Individual Assistance limited to Emergency Food Assistance through USDA for the islands of Namonuito Atoll, the Hall Islands, and the Western Islands within Chuuk State.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response Department of Homeland Security.

[FR Doc. 04–540 Filed 1–9–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1501–DR]

Puerto Rico; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–1501–DR), dated November 21, 2003, and related determinations.

DATES: Effective Date: January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 21, 2003:

The municipality of Rio Grande for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–538 Filed 1–9–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4907–N–01]

Notice of Proposed Information Collection: Comment Request; Certificate of Need for Health Facility and Assurance of Enforcement of State Standards

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 12, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003,a Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1142, (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection

techniques or other forms of information technology, e.g., permitting electronic submission responses.

This Notice also lists the following information:

Title of Proposal: Certificate of Need (CoN) for Health Facility and Assurance of Enforcement of State Standards.

OMB Control Number, if applicable: 2502–0210.

Description of the need for the information and proposed use: Form HUD–2576–HF is prepared by State agencies designated in accordance with Section 604(a)(1) or Section 1521 of the Public Health Service Act. Sections 232 and 242 require State certification that there is a need for the facility that there are minimum standards of licensing and for operating the project, and that the standards will be enforced for the insured project.

Agency form numbers, if applicable: HUD–2576–HF.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 50, frequency of responses is 1 per year; the estimated time to prepare form is approximately 30 minutes (.5 hours), and the estimated total annual burden hours are 25.

Status of the proposed information collection: Reinstatement, with change, of previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 23, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Deputy Federal Housing Commissioner.

[FR Doc. 04–510 Filed 1–9–04; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Notice of Proposed Information Collection: Comment Request; Insurance of Adjustable Rate Mortgages (ARMS)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 12, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Adjustable Rate Mortgages (ARMS).

OMB Control Number, if applicable: 2502–0322.

Description of the need for the information and proposed use: The Housing and Urban-Rural Recovery Act of 1983 amended the National Housing Act to permit FHA to insure adjustable rate mortgages (ARMS). The term of all ARMS insured by HUD–FHA is required to be fully disclosed as part of the loan approval process. Additionally, an annual disclosure is required to reflect the adjustment to the interest rate and monthly mortgage amount. Lenders must electronically indicate that the mortgage to be insured is an ARM and the term or type of the ARM.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 20,000 frequency of responses is 5, the total annual responses are 100,000, and the estimated annual burden hours requested is 7,000.

Status of the proposed information collection: The extension of currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: January 6, 2004.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 04–511 Filed 1–9–04; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4907–N–03]

Notice of Proposed Information Collection: Comment Request; Description of Materials

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 12, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Wayne_Eddins@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of proposal: Description of Materials.

OMB Control Number, if applicable: 2502–0192.

Description of the need for the information and proposed use: This information collection provides information on the materials used and assembly required for new single family home construction and improvements. HUD–FHA uses this information to estimate the value of the homes and compute the maximum mortgage amount for FHA insurance.

Agency form numbers, if applicable: HUD–92005.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 2,500, frequency of responses is 20, the total annual responses are 50,000, and the estimated annual burden hours requested is 25,000.

Status of the proposed information collection: The extension of currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: January 6, 2004.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 04–512 Filed 1–9–04; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4907–N–04]

Notice of Proposed Information Collection: Comment Request; Request for Final Endorsement of Credit Instrument

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 12, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 471 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1142 (this is not a toll free number), for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of proposal: Request for Final Endorsement of Credit Instrument.

OMB Control Number, if applicable: 2502–0016.

Description of the need for the information and proposed use: Form HUD–92023 is used to request final endorsement of the credit instrument by the Department. It is completed by the mortgagee to indicate the schedule of advances made on the project and the final advance to be disbursed immediately upon final endorsement. The reverse side of the form provides for certifications by the mortgagor and the general contractor that there will not be any outstanding unpaid obligations following receipt of the final advance of mortgage proceeds, except such obligations as may be approved by the Commissioner as to term, form and amount.

Agency form numbers, if applicable: HUD–92023.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 465, frequency of responses is 1, and the total number of annual burden hours requested is 465.

Status of the proposed information collection: Extension of currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: December 31, 2003.

Margaret Young,

Deputy Assistant Secretary for Finance and Budget.

[FR Doc. 04–513 Filed 1–9–04; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4513–N–14]

Credit Watch Termination Initiative

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration against HUD-approved mortgagees through its Credit Watch Termination Initiative. This notice

includes a list of mortgagees which have had their Origination Approval Agreements (Agreements) terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh St., SW., Room B133–P3214, Washington, DC 20410–8000; telephone (202) 708–2830 (this is not a toll free number). Persons with hearing or speech impairments may access that number through TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in the HUD mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 (64 FR 26769), HUD published a notice on its procedures for terminating origination approval agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement: Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Agreement between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single-family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The Termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause: HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the sixteenth review period, HUD is only terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 225 percent of the field office rate.

Effect: Termination of the Agreement precludes a branch or branches of the mortgagee from originating FHA-insured single family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the Termination became effective may be submitted for insurance endorsement. Approved loans are (1) those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender and (2) cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA insured mortgages in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for a new Origination Approval Agreement if the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 or 202.10 and 202.12, if there has been no Origination Approval Agreement for at least six months, and if the Secretary determines that the underlying causes for termination have been remedied. To enable the Secretary to ascertain whether the underlying causes for termination have been remedied, a mortgagee applying for a new Origination Approval Agreement must obtain an independent review of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The review must be conducted and issued by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as set forth by the General Accounting Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024.

Action: The following mortgagees have had their Agreements terminated by HUD:

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Home ownership centers
Ace Mortgage Funding Inc.	777 Beachway Drive, Ste 300, Indianapolis, IN 46224.	Indianapolis, IN	9/18/2003	Atlanta.
All American Home Mortgage Corp.	300 Garden City Plaza, 226 Garden City, NY 11530.	New York, NY	9/18/2003	Philadelphia.
Central Bank for Savings.	240 Eisenhower Drive, Biloxi, MS 39535	Jackson, MS	9/18/2003	Atlanta.
CTX Mortgage Company.	3701 Grand Ave., Ste E, Gurnee, IL 60031	Springfield, IL	9/23/2003	Atlanta.
De Oro Inc.	1455 South Stapley, Ste 2, Mesa, AZ 85204	Phoenix, AZ	9/18/2003	Santa Ana.
International Home Capital Corp.	2835 South Jones Blvd., Ste 3, Las Vegas, NV 89146.	Las Vegas, NV	8/5/2003	Santa Ana.
Major Mortgage Corp	18951 W 12 Mile, Lathrup Village, MI 48076	Detroit, MI	9/18/2003	Philadelphia.
Mid America Mortgage	7907 W Cermak Road, North Riverside, IL 60546.	Chicago, IL	9/18/2003	Atlanta.
Mortgagestream Financial Services.	8758 Wolf Ct., Ste 203, Westminster, CO 80031.	Denver, CO	9/23/2003	Denver.
Suburban Mortgage, Inc	7400 E Caley Ave., Ste 210, Denver, CO 80111.	Denver, CO	9/18/2003	Denver.
Transland Financial Service, Inc.	2738 N. Mt. Juliet Road, Mt. Juliet, TN 37122	Nashville, TN	9/18/2003	Atlanta.

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Home ownership centers
Transland Financial Service, Inc.	311 Germantown Bend Cove, Cordova, TN 38018.	Memphis, TN	9/18/2003	Atlanta.
Trust America Mortgage, Inc.	2503 Del Prado Blvd., Ste 505, Cape Coral, FL 33904.	Coral Gables, FL	9/18/2003	Atlanta.
Union Planters Bank, NA.	5201 California Ave., #370, Bakersfield, CA 93309.	Fresno, CA	9/18/2003	Santa Ana.
United Mortgage Investors, Inc.	4290 Memorial Dr., Ste C, Decatur, GA 30032	Atlanta, GA	9/18/2003	Atlanta.

Dated: December 21, 2003.

Margaret Young,

Deputy Assistant Secretary for Finance and Budget.

[FR Doc. 04–509 Filed 1–9–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Big Branch Marsh National Wildlife Refuges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a Comprehensive Conservation Plan and Environmental Assessment for Big Branch Marsh Wildlife Refuge, located in St. Tammany Parish, Louisiana.

SUMMARY: The Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a comprehensive conservation plan and environmental assessment pursuant to the National Environmental Policy Act and its implementing regulations. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*), to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues to include in the environmental document.

Special mailings, newspaper articles, and other media announcements will be used to inform the public and state and local government agencies of the opportunities for input throughout the planning process. Open house style meetings and focus group meetings also will be held throughout the scoping phase of the comprehensive conservation plan development process. In addition, the Service will be inviting comments on archaeological, historic, and traditional cultural sites in accordance with the National Historic Preservation Act.

DATES: To ensure consideration, we must receive written comments on or before February 26, 2004.

ADDRESSES: Address comments, questions, and requests for more information to Barbara Boyle, Deputy Project Leader, Southeast Louisiana Refuges, 61389 Highway 434, Lacombe, Louisiana 70445. Additional information concerning this refuge may be found on the Fish and Wildlife Services's Internet site at *http://www.fws.gov.*

SUPPLEMENTARY INFORMATION: By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved comprehensive conservation plan. This plan guides management decisions and identifies the goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements, including wildlife and habitat management, habitat protection and acquisition, wilderness preservation, public recreational activities, industrial use, and cultural resource preservation. Public input into this planning process is essential.

Big Branch Marsh National Wildlife Refuge, established in 1994, is one of seven refuges administered by the Southeast Louisiana National Wildlife Refuge Complex, and is managed primarily to provide habitat for a natural diversity of wildlife associated with Big Branch Marsh. Refuge objectives are to provide wintering habitat for migratory waterfowl; habitat for non-game migratory birds; habitat for threatened and endangered species; nesting habitat for wood ducks; and, to provide opportunities for outdoor recreation such as hunting, fishing, hiking, birdwatching, and environmental education and interpretation—whenever compatible with the purposes of the refuge.

FOR FURTHER INFORMATION CONTACT: Deputy Project Leader, Southeast Louisiana Refuges, telephone: 985/882–2000; fax: 985/882–9133; e-mail: *barbara_boyle@fws.gov;* or mail (write to the Deputy Project Leader at address in **ADDRESSES** section).

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Pub. L. 105–57.

Dated: December 5, 2003.

J. Mitch King,

Acting Regional Director.

[FR Doc. 04–544 Filed 1–9–04; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Change in Administrative Jurisdiction of Midway Atoll National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice clarifies that jurisdiction and control of submerged lands and marine waters at and surrounding Midway Atoll, located in the Pacific Ocean, are the responsibility of the U.S. Fish and Wildlife Service based on an agreement with the Department of the Interior Office of Insular Affairs.

FOR FURTHER INFORMATION CONTACT: A. Eric Alvarez, Chief, Division of Realty, U.S. Fish and Wildlife Service, Telephone (703) 358–1713.

SUPPLEMENTARY INFORMATION: This gives public notice of the transfer of jurisdiction and control of marine waters at and surrounding Midway Atoll from the Department of the Interior Office of Insular Affairs to the U.S. Fish and Wildlife Service. A Memorandum of Understanding (MOU) between the Director of the U.S. Fish and Wildlife Service and the Deputy Assistant Secretary of Insular Affairs (both within the Department of the Interior) transferred the management of submerged lands and waters associated with Midway Atoll to the Fish and Wildlife Service on March 26, 2003. Upon execution of the MOU, the U.S. Fish and Wildlife Service assumed

jurisdiction and control of the submerged lands and waters within the 12-nautical mile territorial sea in order to manage the natural resources (i.e., fish, wildlife, plants, and other associated resources) associated with this area as part of the Midway Atoll National Wildlife Refuge.

The Service will continue to administer and manage this area under the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee, as amended); the general regulations governing the National Wildlife Refuge System published in Title 50, Subchapter C, Code of Federal Regulations; and in accordance with all applicable laws, policies, and rules.

The refuge consists of all of the islands and submerged lands of Midway Atoll together with the surrounding territorial sea, which currently extends outward to 12 nautical miles. Executive Order 13022 transferred the authority over the Midway Islands from the Department of the Navy to the Department of the Interior on October 31, 1996. The MOU clarifies that the authority over submerged lands and waters of Midway Atoll has been delegated to the Director of the U.S. Fish and Wildlife Service by the Secretary of the Interior through the Office of Insular Affairs. We took this action in furtherance of United States sovereignty over Midway Atoll and to protect the unique ecosystem of Midway Atoll, including the adjacent coral reefs and marine waters.

The Service, which has been managing the refuge pursuant to the Executive order, will continue to manage it under all applicable laws, policies, and regulations that govern the National Wildlife Refuge System. In carrying out those responsibilities, and consistent with those authorities, we shall ensure that the service will manage the unique ecosystem of the refuge to preserve its character in support of the protection and conservation of the fish and wildlife in the refuge.

Dated: December 8, 2003.

Matt Hogan,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 04–536 Filed 1–9–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Thirteenth Regular Meeting; Proposed Resolutions, Decisions, and Agenda Items Being Considered; Taxa Being Considered for Amendments to the CITES Appendices; Public Meeting; Observer Information

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The United States, as a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), may submit proposed resolutions, decisions, and agenda items for consideration at meetings of the Conference of the Parties to CITES. The United States may also propose amendments to the CITES Appendices for consideration at meetings of the Conference of the Parties. The thirteenth regular meeting of the Conference of the Parties to CITES (COP13) will be held in Bangkok, Thailand, October 2–14, 2004.

With this notice, we: list proposed resolutions, proposed decisions, and agenda items that the United States is considering submitting for consideration at COP13; list proposed amendments to the CITES Appendices (species proposals) that the United States is considering submitting for consideration at COP13; invite your comments and information on these potential proposals; announce a public meeting to discuss these potential proposals; and provide information on how non-governmental organizations based in the United States can attend COP13 as observers. We have posted an extended version of this notice on our Web site at *http://international.fws.gov,* with text describing each of these issues and explaining the rationale for the tentative U.S. position on each issue.

DATES: The public meeting will be held on February 5, 2004, at 1:30 p.m. We will consider written information and comments you submit concerning potential species proposals, proposed resolutions, proposed decisions, and agenda items that the United States is considering submitting for consideration at COP13, and other items relating to COP13, if we receive them by March 12, 2004.

ADDRESSES: *Public Meeting:* The public meeting will be held in the Rachel Carson Room, in the Department of the Interior at 18th and C Streets, NW., Washington, DC. Directions to the building can be obtained by contacting the Division of Management Authority (see **FOR FURTHER INFORMATION CONTACT,** below).

Please note that the Rachel Carson Room is accessible to the handicapped and all persons planning to attend the meeting will be required to present photo identification when entering the building. Persons who plan to attend the meeting and who require interpretation for the hearing impaired should notify the Division of Management Authority as soon as possible.

Comment Submission: Comments pertaining to proposed resolutions, proposed decisions, and/or agenda items should be sent to the Division of Management Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 700; Arlington, VA 22203; or via E-mail at: *citescop13@fws.gov;* or via fax at: 703–358–2298. Comments pertaining to species proposals should be sent to the Division of Scientific Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 750; Arlington, VA 22203; or via E-mail at: *scientificauthority@fws.gov;* or via fax at: 703–358–2276. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at either the Division of Management Authority or the Division of Scientific Authority.

FOR FURTHER INFORMATION CONTACT: For information pertaining to resolutions, decisions, and agenda items: Peter O. Thomas, Chief, Division of Management Authority; phone: 703–358–2095; fax: 703–358–2298; E-mail: *citescop13@fws.gov.* For information pertaining to species proposals: Robert R. Gabel, Chief, Division of Scientific Authority; phone 703–358–1708; fax 703–358–2276; E-mail: *scientificauthority@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may be threatened with extinction. These species are listed in Appendices to CITES, which are available on the CITES Secretariat's Web site at *http://www.cites.org/eng/append/index.shtml.* Currently, 164 countries, including the United States, are Parties to CITES. The Convention calls for

biennial meetings of the Conference of the Parties, which reviews its implementation, makes provisions enabling the CITES Secretariat in Switzerland to carry out its functions, considers amendments to the list of species in Appendices I and II, considers reports presented by the Secretariat, and makes recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose amendments to Appendices I and II, resolutions, decisions, and/or agenda items for consideration by all the Parties.

This is our second in a series of **Federal Register** notices that, together with announced public meetings, provide you with an opportunity to participate in the development of the U.S. negotiating positions for the thirteenth regular meeting of the Conference of the Parties to CITES (COP13). We published our first such **Federal Register** notice on June 19, 2003 (68 FR 36831), and with it we requested information and recommendations on species proposals, proposed resolutions, proposed decisions, and agenda items for the United States to consider submitting for consideration at COP13.

You may obtain information on that **Federal Register** notice from the following sources: for information on proposed resolutions, proposed decisions, and agenda items, contact the Division of Management Authority at the above address; and for information on species proposals, contact the Division of Scientific Authority at the above address. Our regulations governing this public process are found in 50 CFR 23.31–23.39.

COP13 is scheduled to be held in Bangkok, Thailand, October 2–14, 2004.

I. Recommendations for Resolutions, Decisions, and Agenda Items for the United States To Consider Submitting for COP13

In our **Federal Register** notice published on June 19, 2003 (68 FR 36831), we requested information and recommendations on potential resolutions, decisions, and agenda items for the United States to submit for consideration at COP13. We received recommendations for resolutions, decisions, and agenda items from the following organizations: Defenders of Wildlife; TRAFFIC North America; and the World Wildlife Fund.

We considered all of the recommendations of the above organizations, as well as the U.S. approach for COP13 discussed in our June 19, 2003, **Federal Register** notice, when compiling a list of possible resolutions, decisions, and agenda items that the United States is likely to submit for consideration by the Parties at COP13, and lists of resolutions, decisions, and agenda items for consideration at COP13 that the United States either is currently undecided about submitting, is not considering submitting at this time, or plans to address in other ways. The United States may consider submitting documents for some of the issues for which it is currently undecided or not considering submitting at this time, depending on the outcome of discussions of these issues in the CITES Animals, Plants, and Standing Committees, or additional consultations with range country governments and knowledgeable experts.

Please note that, in sections A, B, and C below, we have listed only those resolutions, decisions, and agenda items that the United States is likely to submit, currently undecided about submitting, or currently not planning to submit. We have posted an extended version of this notice on our Web site at *http://international.fws.gov,* with text describing each of these issues and explaining the rationale for the tentative U.S. position on each issue. Copies of the extended version of the notice are also available from the Division of Management Authority at the above address.

We welcome your submissions of comments and information regarding the resolutions, decisions, and agenda items that the United States is likely to submit, currently undecided about submitting, or currently planning not to submit.

A. What Resolutions, Decisions, and Agenda Items Is the United States Likely To Submit for Consideration at COP13?

1. A discussion document or proposed resolution on the issue of ''introduction from the sea.''

2. A proposed revision of Resolution Conf. 4.25, on effects of reservations.

3. A proposed revision of Resolution Conf. 5.11, on the definition of the term ''pre-Convention specimen.''

4. A proposed revision of Resolution Conf. 10.13, on implementation of the Convention for timber species, to address plywood.

5. A proposed revision of Resolution Conf. 9.21, on quotas for Appendix-I species.

B. On What Resolutions, Decisions, and Agenda Items Is the United States Still Undecided, Pending Additional Information and Consultations?

1. Agenda item to allow reports on activities related to seahorse management.

2. Document on the issue of cooperation between CITES and the Food and Agriculture Organization of the United Nations (FAO).

3. Proposed resolution or discussion document on whaling and whale stocks.

4. Document on the Implementation Working Group.

5. Proposed revision of Resolution Conf. 12.3, to include timber identification marks and numbers on CITES timber permits and certificates.

6. Proposed revision of Resolution Conf. 11.11, on regulation of trade in plants.

7. Proposed resolution on the facilitated movement of samples.

8. Document on Appendix-II export quotas.

9. Proposed resolution clarifying the use of the ''ranching'' code on CITES permits and certificates.

C. What Resolutions, Decisions, and Agenda Items Is the United States Not Planning To Submit for Consideration at COP13, Unless We Receive Significant Additional Information?

1. Document on the live reef food fish trade.

2. Document to provide guidance concerning trade with non-Parties.

3. Agenda items to discuss the issues of clarification of the term ''primarily commercial purposes'' and the relationship between *in situ* and *ex situ* conservation for Appendix-I species.

4. Agenda item to discuss the issue of the authority and scope of activity for the CITES Secretariat.

5. Agenda item to discuss model Terms of Reference for CITES working groups.

II. Recommendations for Species Proposals for the United States to Consider Submitting for COP13

In our **Federal Register** notice of June 19, 2003 (68 FR 36831), we requested information and recommendations on potential species amendments for the United States to consider proposing for COP13. We received recommendations from the public for possible proposals involving 46 taxa (1 family and 45 individual species). We note, however, that a number of comments involved statements of support or disagreement for given species proposals, with no biological or trade information supporting such statements. We have

undertaken initial assessments of the available trade and biological information on all of these taxa. Based on these assessments, we have made provisional determinations of whether or not to proceed with the development of proposals to list or delist species, or transfer them from one Appendix to another. These determinations were made by considering the quality of biological and trade information available on the species; the presence, absence, and effectiveness of other mechanisms that may preclude the need for a CITES listing (e.g., range country actions or other international agreements); and availability of resources. Furthermore, our assignment of a taxon to one of these categories, which reflects the likelihood of our submitting a proposal, included consideration of the following factors, which reflect the U.S. approach for COP13 discussed in our June 19, 2003, **Federal Register** notice:

(1) Is it a native U.S. species that is or may be significantly affected by trade, or if it is a currently listed U.S. species, does the listing accurately reflect the biological and trade status of the species?

(2) Is it a native U.S. species that is not at this time significantly impacted by trade within the United States, but is being significantly impacted elsewhere in its range?

(3) Is it a foreign species, not native to the United States, but which is or may be significantly affected by trade, and the United States is a significant component of the trade (*i.e.*, as an importing country)?

(4) Is it a species for which the United States is neither a range country nor a country significantly involved in trade, but for which trade is a serious threat to the continued existence of the species, other mechanisms are lacking or ineffective for bringing trade under control, and action is urgently needed?

In sections A, B, and C below, we have listed the current status of each species proposal recommended by the public, as well as species proposals we have been developing on our own. Please note that we have only listed these possible proposals. We have posted an extended version of this notice on our Web site at *http://international.fws.gov,* with text describing each possible proposal and explaining the rationale for the tentative U.S. position on each possible proposal. Copies of the extended version of the notice are also available from the Division of Management Authority at the above address.

A. What Species Proposals Is the United States Likely To Submit for Consideration at COP13?

The United States is likely to develop and submit proposals for the following taxa. We welcome your comments, especially any biological or trade information on these species. For each species, more detailed information is on file with the Division of Scientific Authority. For some of the species below, particularly those not native to the United States, additional consultations with range countries and knowledgeable experts are proceeding (see discussion), and final decisions are pending, based on the outcomes of those consultations and any additional information received.

Plants

1. Asian yews (*Taxus* spp.)—Proposal for inclusion of additional species in Appendix II and removal of the annotation from *Taxus wallichiana.*

Fish

2. Humphead wrasse (*Cheilinus undulatus*)—Proposal for inclusion in Appendix II.

Reptiles and Amphibians

3. Asian Freshwater Turtles and Tortoises—Proposals for inclusion in Appendices I and II.

Birds

4. Bald eagle (*Haliaeetus leucocephalus*)—Proposal for transfer from Appendix I to Appendix II.

5. Black-winged lovebird (*Agapornis taranta*) and peach-faced lovebird (*Agapornis roseicollis*)—Proposal for removal from Appendix II.

B. On What Species Proposals is the United States Still Undecided, Pending Additional Information and Consultations?

The United States is still undecided on whether to submit proposals for COP13 for the following taxa. In some cases, we have not completed our consultations with relevant range countries. In other cases, meetings of experts are expected to occur in the immediate future and generate important recommendations, trade analyses, or biological information on the taxon in question. For each species, more detailed information is available from the Division of Scientific Authority. We welcome your comments, and especially any biological and trade information on these species.

Invertebrates

1. Sea cucumbers (Families Holothuridae and Stichopodidae)—Action awaiting outcome of workshop in early 2004.

2. Eastern Hemisphere tarantulas (*Poecilotheria* spp.)—Proposal for inclusion in Appendix II.

Fish

3. Spiny dogfish (*Squalus acanthias*)—Proposal for inclusion in Appendix II.

4. Sharks (Class Chondrichthyes)—Proposal for inclusion in Appendix II.

Birds.

5. Painted bunting (*Passerina ciris*)—Proposal for inclusion in Appendix I or II.

6. Finsch's amazon (*Amazona finschi*)—Proposal for transfer from Appendix II to Appendix I.

7. African grey parrot (*Psittacus erithacus*)—Proposal to transfer from Appendix II to Appendix I.

Mammals

8. Bobcat (*Lynx rufus*)—Proposal for removal from Appendix II.

C. What Species Proposals is the United States Not Planning to Submit for Consideration at COP13, Unless It Receives Significant Additional Information?

The United States does not intend to submit proposals for the following taxa unless we receive significant additional information indicating that a proposal is warranted. Information currently available for each of the taxa listed below does not support a defensible listing proposal. We welcome your comments, especially any biological and trade information on these species that may cause us to reconsider the submission of a proposal. For each species, more detailed information is available from the Division of Scientific Authority.

Plants

1. Alerce (*Fitzroya cupressoides*)—Proposal for transfer from Appendix I to Appendix II.

Fish

2. Orange roughy (*Hoplostethus atlanticus*)—Proposal for inclusion in Appendix II.

3. Patagonian toothfish (*Dissostichus eleginoides*) and Antarctic toothfish (*Dissostichus mawsonii*)—Proposal for inclusion in Appendix II.

4. White shark (*Carcharadon carcharias*)—Proposal for inclusion in Appendix I or II.

5. Hound sharks (Family Triakidae)—Proposal for inclusion in Appendix II.

Birds

6. Loggerhead shrike (*Lanius ludovicianus*), lark sparrow (*Chondestes grammacus*), and black-throated sparrow (*Amphispiza bilineata*)—Proposal for inclusion in Appendix I; curve-billed thrasher (*Toxostoma curvirostre*), lark bunting (*Calamospiza melanocorys*), white-crowned sparrow (*Zonotrichia leucophrys*), Northern cardinal (*Cardinalis cardinalis*), pyrrhuloxia (*Cardinalis sinuatus*), blue grosbeak (*Guiraca caerulea*), lazuli bunting (*Passerina amoena*), indigo bunting (*Passerina*), dickcissel (*Spiza americana*), orchard oriole (*Icterus spurious*), pine siskin (*Carduelis pinus*), lesser goldfinch (*Carduelis psaltria*), and American goldfinch (*Carduelis tristis*)—Proposal for inclusion in Appendix II.

7. Yellow-crested cockatoo (*Cacatua sulphurea*)—Proposal for transfer from Appendix II to Appendix I.

Mammals

8. Saiga antelope (*Saiga tatarica*)—Proposal for transfer from Appendix II to Appendix I.

Request for Information and Comments

We invite any information and comments concerning any of the possible COP13 species proposals, resolutions, decisions, and agenda items discussed above. You must submit your information and comments to us no later than March 12, 2004, to ensure that we consider them.

Announcement of Public Meeting

We announce that we will hold a public meeting to discuss with you species proposals, as well as proposed resolutions, proposed decisions, and agenda items that the United States is considering submitting for consideration at COP13. The public meeting will be held on February 5, 2004, from 1:30 p.m. to 4 p.m. in the Rachel Carson Room of the Department of the Interior at 18th and C Streets, NW., Washington, DC. You can obtain directions to the building by contacting the Division of Management Authority (*see* **FOR FURTHER INFORMATION CONTACT**, above). The Rachel Carson Room is accessible to the handicapped. Persons planning to attend the meeting who require interpretation for the hearing impaired should notify the Division of Management Authority as soon as possible.

Observers

Article XI, paragraph 7 of CITES states the following:

''Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object:

(a) international agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and

(b) national non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located.

Once admitted, these observers shall have the right to participate but not to vote.''

Persons wishing to be observers representing international non-governmental organizations (which must have offices in more than one country) at COP13 may request approval directly from the CITES Secretariat. Persons wishing to be observers representing U.S. national non-governmental organizations at COP13 must receive prior approval from our Division of Management Authority. Once we grant our approval, a U.S. national non-governmental organization is eligible to register with the Secretariat and must do so at least one month prior to the opening of COP13 to participate in COP13 as an observer. Individuals who are not affiliated with an organization may not register as observers. An international non-governmental organization with at least one office in the United States may register as a U.S. non-governmental organization if it prefers.

A request submitted to us for approval as an observer should include evidence of technical qualifications in protection, conservation, or management of wild fauna and/or flora, on the part of both the organization and the individual representative(s). The request should also include copies of the organization's charter and/or bylaws, and a list of representatives it intends to send to COP13. An organization that we have previously approved as an observer at a meeting of the Conference of the Parties within the past 5 years must submit a request, but does not need to provide as much detailed information concerning its qualifications as an organization seeking approval for the first time. Organizations seeking approval for the first time should detail their experience in the protection, conservation, or management of wild fauna and/or flora, as well as their purposes for wishing to participate in COP13 as an observer. These requests should be sent to the Division of Management Authority (*see* **ADDRESSES**, above).

Once we approve an organization as an observer, we will send the organization instructions for registration with the CITES Secretariat in Switzerland, including a meeting registration form and relevant travel and hotel information. Any organization requesting approval for observer status at COP13 will be added to our CITES Mailing List if it is not already included, and will receive notice of all future **Federal Register** notices and other information pertaining to COP13. A list of organizations approved for observer status at COP13 will be available upon request from the Division of Management Authority just prior to the start of COP13.

Future Actions

We expect the CITES Secretariat to provide us with a provisional agenda for COP13 within the next several months. Once we receive the provisional agenda, we will publish it in a **Federal Register** notice. We will also provide it through our Web site at *http://international.fws.gov.*

The United States must and will submit any species proposals, proposed resolutions, proposed decisions, and agenda items for consideration at COP13 to the CITES Secretariat 150 days prior to the start of the meeting (*i.e.*, by May 5, 2004). We will consider all available information and comments, including those presented at the public meeting (see **DATES** above) or received in writing during the comment period, in deciding which species proposals, proposed resolutions, proposed decisions, and agenda items warrant submission by the United States for consideration by the Parties. Approximately 4 months prior to COP13, we will post on our Web site an announcement of the species proposals, proposed resolutions, proposed decisions, and agenda items submitted by the United States to the CITES Secretariat for consideration at COP13.

Through an additional notice and Web site posting in advance of COP13, we will inform you about preliminary negotiating positions on resolutions, decisions, and amendments to the Appendices proposed by other Parties for consideration at COP13. We will also publish an announcement of a public meeting tentatively to be held approximately 2 months prior to COP13, to receive public input on our positions regarding COP13 issues.

Author: The primary authors of this notice are Mark Albert, Division of Management Authority; and Karen Anderson, Division of Scientific Authority; under the authority of the

U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 31, 2003.

Steve Williams,

Director.

[FR Doc. 04–537 Filed 1–9–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–049–1040–JH]

Call for Nominations for Gila Box Advisory Committee

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Call for nominations for Gila Box Riparian National Conservation Area (RNCA) Advisory Committee.

SUMMARY: The BLM is publishing this notice under section 9(a)(2) of the Federal Advisory Committee Act. The purpose of this notice is to solicit public nominations to fill seven positions on the Gila Box Riparian National Conservation Area Advisory Committee. The Advisory Committee was created through title 2, section 201, of the Arizona Desert Wilderness Act of 1990 to provide informed advice to the Safford Field Manager on management of public lands in the Gila Box Riparian National Conservation Area in southeastern Arizona.

Any individual or organization may nominate one or more persons to serve on the Advisory Committee. Persons wishing to nominate themselves or other individuals for appointment should provide an application that includes the name, address, phone number, profession, biographical data, and category of expertise for each qualified nominee, along with at least one letter of recommendation that addresses the nominee's qualifications. Nominations should be submitted to the Gila Box Manager at the address below.

DATES: All nominations should be received by the BLM Safford Field Office no later than 30 days after the publication of this notice.

FOR FURTHER INFORMATION CONTACT: Bonnie Winslow, Gila Box Manager, Safford Field Office, 711 14th Ave., Safford, AZ 85546, (928) 348–4570 or *Bonnie_Winslow@blm.gov*. More information about the Gila Box is available at *http://www.az.blm.gov/sfo/gila_box/gila.html*.

SUPPLEMENTARY INFORMATION: To ensure membership of the Advisory Committee is balanced in terms of categories of interest represented and functions performed, nominees must be qualified to provide advice in specific areas related to the primary purposes for which the Gila Box Riparian National Conservation Area was created. These categories of expertise include wildlife conservation, riparian ecology, hydrology, outdoor recreation, watershed management, environmental education, cultural resources, or other related disciplines.

Three positions on the Committee are representatives for the State of Arizona, Graham County, and Greenlee County. Nominations for these representatives are submitted to the BLM from the Governor of Arizona and the Boards of Supervisors for Graham and Greenlee Counties respectively. Those wishing to be nominated for any of those positions should contact the appropriate office to inform it of their interest. Nominations for the remaining four positions should be submitted directly to the BLM Safford Field Office.

Committee members are selected by the Secretary of the Interior to serve staggered terms of one to three years, with terms beginning on the date of the appointment. The Advisory Committee will meet 2–4 times each year. Members serve without salary, but are reimbursed for travel and per diem expenses at current rates for government employees.

Dated: December 8, 2003.

Frank Rowley,

Acting Field Manager.

[FR Doc. 04–7 Filed 1–9–04; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–910–04–1040–PH–24–1A]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of Utah Resource Advisory Council (RAC) meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Utah Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Utah Resource Advisory Council will meet February 24, 2004, at Western Park, 302 East 200 South, Vernal, UT, beginning at 8 a.m. and concluding at 4 p.m. A public comment period will begin at 1 p.m. and conclude at 2 p.m. Written comments may be sent to the Bureau of Land Management address listed below.

FOR FURTHER INFORMATION CONTACT: Contact Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, Utah, 84111; phone (801) 539–4195.

SUPPLEMENTARY INFORMATION: Discussion points and focus will be Vernal's Resource Management Plan process, alternatives and cooperating agency input. Other agenda topics will include an overview of Utah issues and a report from the OHV subgroup.

All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: January 5, 2004.

Gene Terland,

Assoc. State Director.

[FR Doc. 04–543 Filed 1–9–04; 8:45 am]

BILLING CODE 4310–$$–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–493]

In the Matter of Certain Zero-Mercury-Added Alkaline Batteries, Parts Thereof, and Products Containing Same; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation With Respect to Two Respondents on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') of the presiding administrative law judge (''ALJ'') granting the joint motion of complainants Energizer Holdings, Inc. and Eveready Battery Co., Inc., and respondents FDK Corporation and FDK Energy Co., Inc. to terminate the above-captioned investigation with respect to the two respondents on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3041. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection

during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 27, 2003, based on a complaint filed by Energizer Holdings, Inc. and Eveready Battery Co., Inc., both of St. Louis, MO, 68 FR 32771 (2003). The complaint as amended alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain zero-mercury-added alkaline batteries, parts thereof, and products containing same by reason of infringement of claims 1–12 of U.S. Patent No. 5,464,709. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The Commission named as respondents 26 companies located in the United States, China, Indonesia, and Japan. *Id.*

The ALJ issued the subject ID (Order No. 41) on December 1, 2003. The ID reconsiders an ID issued by the ALJ on November 6, 2003. That ID terminated the investigation as two respondents, FDK Corporation and FDK Energy Co., Inc, pursuant to a settlement agreement. Complainants and the two respondents had jointly moved for termination pursuant to a settlement agreement which incorporated a consent order.

Complainants filed a motion for reconsideration of the ID of November 6, 2003, asking the ALJ to reconsider his ID and terminate the investigation on the basis of a consent order. On November 21, 2003, the Commission investigative attorney filed a response supporting the motion for reconsideration. On December 1, 2003, the ALJ issued the subject ID, reconsidering the earlier ID and terminating the investigation as to the FDK respondents on the basis of a consent order.

No party petitioned for review of the ID pursuant to 19 CFR 210.43(a), and the Commission found no basis for ordering a review on its own initiative pursuant to 19 CFR 210.44. The ID thus became the determination of the Commission pursuant to 19 CFR 210.42(h)(3).

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

Issued: January 6, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 04–542 Filed 1–9–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 001–2004]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice (DOJ) proposes to establish a new Department-wide system of records entitled ''Emergency Contact Systems for the Department of Justice, DOJ/009.'' The Department maintains contact information on employees and other individuals having business with the Department who have provided contact information. This information is maintained in central databases, including databases maintained by the Justice Command Center and the DOJ Operators, as well as by individual components and offices throughout the Department. Information that was previously contained in ''JUSTICE/JMD–013, Employee Locator File,'' is now covered by this Department-wide systems notice. Therefore, the Department hereby removes, on the effective date of this notice, Justice Management Division, ''Employee Locator File, JMD–013'', (52 FR 47182, 47270, Dec. 11, 1987).

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by February 11, 2004. The public, OMB, and the Congress are invited to submit any comments to Mary E. Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: January 5, 2004.

Paul R. Corts,

Assistant Attorney General for Administration.

Department of Justice–009

SYSTEM NAME:

Emergency Contact Systems for the Department of Justice.

SYSTEM LOCATIONS:

U.S. Department of Justice, 950 Pennsylvania Ave., NW., Washington, DC 20530, and other Department of Justice components and offices throughout the world.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, former employees, and other individuals having business with the Department who have provided contact information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Home phone numbers, cellular phone numbers, pager numbers, numbers where individuals can be reached while on travel or otherwise away from the office, home addresses, electronic mail addresses, names and phone numbers of family members or other contacts, and other contact information provided by individuals covered by this system of records to the Department.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101.

PURPOSE OF THE SYSTEM:

To maintain contact information on employees and other individuals in case of emergencies involving an employee or the Department, or when necessary for official purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Pursuant to subsection (b)(3) of the Privacy Act, information may be disclosed from this system as follows:

A. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, an individual who is the subject of the record.

B. To the General Services Administration and National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

C. Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the

appropriate federal, state, local, foreign, or tribal, law enforcement authority or other appropriate agency charged with the responsibility of investigating or prosecuting such a violation or enforcing or implementing such law.

D. In an appropriate proceeding before a court, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding, or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator holds the records to be relevant to the proceeding.

E. To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlement, plea bargaining, or in informal discovery proceedings.

F. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

G. To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

H. To the White House (the President, Vice President, their staffs, and other entities of the Executive Office of the President (EOP)), and, during Presidential transitions, to the President Elect and Vice-President Elect and their designated transition team staff, for coordination of activities that relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President, President Elect, Vice-President, or Vice-President Elect.

I. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in electronic form and on paper.

RETRIEVABILITY:

Information is retrieved by name of individual.

SAFEGUARDS:

Information in these systems is safeguarded in accordance with applicable rules and policies, including the Department's automated systems security and access policies. In general, records and technical equipment are maintained in buildings with restricted access. The required use of password protection identification features and other system protection methods also restrict access. Access is limited to those who have an official need for access to perform their official duties.

RETENTION AND DISPOSAL:

Records about individuals who are not current Department employees are retained until no longer needed, pending approval by the National Archives and Records Administration (SF 115); other records are retained and disposed of in accordance with General Records Schedule 1, item 6.

SYSTEM MANAGER AND ADDRESS:

Deputy Assistant Attorney General, Policy, Management and Planning, MAIN Justice Building, 950 Pennsylvania Ave., NW., Washington, DC 20530

NOTIFICATION PROCEDURES:

Address inquiries to System Manager named above.

RECORD ACCESS PROCEDURES:

Requests for access must be in writing and should be addressed to the System Manager named above. The envelope and letter should be clearly marked ''Privacy Act Access Request.'' The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and dated and either notarized or submitted under penalty of perjury.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request according to the Records Access procedures and to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in these systems include employees and other individuals covered by this system, and the Federal Government.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 04–583 Filed 1–9–04; 8:45 am]

BILLING CODE 4410–FB–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: National Archives and Records Administration.

ACTION: Notice of guidance.

SUMMARY: The National Archives and Records Administration (NARA) publishes policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons.

DATES: Comments must be submitted on or before 60 days from the date of publication. NARA will review all comments and will determine what modifications, if any, to this policy guidance are necessary.

ADDRESSES: Comments must be sent to Regulation Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to 301–837–0319. Electronic comments may be submitted through Regulations.gov. You may also comment via email to *comments@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Diane Dimkoff at telephone number 301–837–1659. Arrangements to receive the policy in an alternative format may be made by contacting the named individual.

SUPPLEMENTARY INFORMATION: NARA's mission statement is to ensure, for the citizen and the public servant, for the President and for the Congress and the Courts, ready access to essential evidence. The National Historical Publications and Records Commission (NHPRC) supports a wide range of activities to preserve, publish, and encourage the use of documentary sources, created in every medium ranging from quill pen to computer, relating to the history of the United States. Each year, the Commission receives an appropriation from Congress to support its grant program. Its administrative staff at the National Archives Building in Washington, DC, implements its policies and

recommendations, advises the Commission on proposals, and provides advice and assistance to potential applicants and grantees.

Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* (Title VI) and regulations implementing Title VI, recipients of federal financial assistance from NARA (''recipients'') have a responsibility to ensure meaningful access by persons with limited English proficiency (LEP) to their programs and activities. See, *e.g.*, 28 CFR 401–415. Executive Order 13166, reprinted at 65 FR 50121 (August 16, 2000), directs each Federal agency that extends assistance subject to the requirements of Title VI to publish, after review and approval by the Department of Justice (DOJ), guidance for its recipients clarifying that obligation. The Executive Order also directs that all such guidance be consistent with the compliance standards and framework set forth by DOJ.

On March 14, 2002, the Office of Management and Budget (OMB) issued a Report To Congress titled ''Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with Limited English Proficiency.'' Among other things, the Report recommended the adoption of uniform guidance across all federal agencies, with flexibility to permit tailoring to each agency's specific recipients. Consistent with this OMB recommendation, DOJ published LEP Guidance for DOJ recipients which was drafted and organized to also function as a model for similar guidance by other Federal grant agencies. See 67 FR 41455 (June 18, 2002). This NARA guidance is based upon and incorporates the legal analysis and compliance standards of the model June 18, 2002, DOJ LEP Guidance for Recipients, but it has been tailored to NARA recipients, which include historical societies and archives, universities, colleges, and libraries.

It has been determined that the guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553. It has also been determined that this guidance is not subject to the requirements of Executive Order 12866. The text of the complete proposed guidance document appears below.

Dated: January 6, 2004.

John W. Carlin,

Archivist of the United States.

I. Introduction

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or ''LEP.''

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance. Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities.

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against national origin discrimination. The purpose of this policy guidance is to clarify the responsibilities of recipients of federal financial assistance from the National Archives and Records Administration (NARA), and assist them in fulfilling their responsibilities to limited English proficient (LEP) persons pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations. The policy guidance reiterates the longstanding position that, in order to avoid discrimination against LEP persons on the grounds of national origin, recipients must take reasonable steps to ensure that such persons have meaningful access to the programs, services, and information those recipients provide. *See, e.g.*, 28 CFR 401–415.

This policy guidance is modeled on and incorporates the legal analysis and compliance standards and framework set out in Section I through Section VIII of Department of Justice (DOJ) Policy Guidance titled ''Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,'' published at 67 FR 41455, 41457–41465 (June 18, 2002) (DOJ Recipient LEP Guidance). To the extent additional clarification is desired on the obligation under Title VI to ensure meaningful access by LEP persons and how recipients can satisfy that obligation, a recipient should consult the more detailed discussion of the applicable compliance standards and relevant factors set out in DOJ Recipient LEP Guidance. The June 18, 2002 DOJ Guidance may be viewed and downloaded at *http://www.lep.gov.*

In addition, NARA recipients also receiving federal financial assistance from other federal agencies, such as the Department of Education or the Institute of Museum and Library Services, should review those agencies' guidance documents at *http://www.lep.gov* for a more focused explanation of how they can comply with their Title VI and regulatory obligations in the context of similar federally assisted programs or activities.

Agency regulations promulgated pursuant to Section 602 of Title VI universally forbid recipients from ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.'' See, *e.g.*, 28 CFR 42.104(b)(2) (DOJ), 29 CFR 15.3(b)(2) (Department of Agriculture), 34 CFR 100.3(b)(2) (Department of Education), 45 CFR 80.3(b)(2) (Department of Health and Human Services), and 45 CFR 1110.3(b)(2) (National Endowment for the Arts and Humanities). NARA regulations implementing Title VI will be consistent with this long-standing federal policy prohibiting the use of criteria or methods of administration which have the effect of discriminating on the basis of race, color, or national origin.

Many commentators have noted that some have interpreted the case of *Alexander* v. *Sandoval,* 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. NARA and the DOJ have taken the position that this is not the case, and will continue to do so. Accordingly, we will strive to ensure that federally assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

II. Purpose and Application

This policy guidance provides a legal framework to assist recipients in developing appropriate and reasonable language assistance measures designed to address the needs of LEP individuals. As noted above, Title VI and its implementing regulations prohibit both intentional discrimination and policies and practices that appear neutral but have a discriminatory effect. Thus, a recipient entity's policies or practices regarding the provision of benefits and services to LEP persons need not be intentional to be discriminatory, but may constitute a violation of Title VI if they have an adverse effect on the ability of national origin minorities to meaningfully access programs and services. Recipient entities have considerable flexibility in determining how to comply with their legal obligation in the LEP setting and are not required to use the suggested methods and options that follow. However, recipient entities must establish and implement policies and procedures for providing language assistance sufficient to fulfill their Title VI responsibilities and provide LEP persons with meaningful access to services.

III. Policy Guidance

1. Who Is Covered?

All entities that receive Federal financial assistance from NARA, either directly or indirectly, through a grant, cooperative agreement, contract or subcontract, are covered by this policy guidance. Title VI applies to all Federal financial assistance, which includes but is not limited to awards and loans of Federal funds, awards or donations of Federal property, details of Federal personnel, or any agreement, arrangement or other contract that has as one of its purposes the provision of assistance.

NARA recipients include, but are not limited to: State, county, and local historical societies and archives; universities; colleges; and libraries.

Title VI prohibits discrimination in any program or activity that receives Federal financial assistance. In most cases, when a recipient receives Federal financial assistance for a particular program or activity, all operations of the recipient are covered by Title VI, not just the part of the program that uses the Federal assistance. Thus, all parts of the recipient's operations would be covered by Title VI, even if the Federal assistance were used only by one part.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to federal non-discrimination requirements, including those applicable to the provision of federally assisted services to persons with limited English proficiency.

2. Basic Requirement: All Recipients Must Take Reasonable Steps To Provide Meaningful Access to LEP Persons

Title VI and Title VI regulations require that recipients take reasonable steps to ensure meaningful access to the information, programs, and services they provide. Recipients of federal assistance have considerable flexibility in determining precisely how to fulfill this obligation.

It is also important to emphasize that libraries, archives, and historical societies are generally in the business of maintaining, sharing, and disseminating vast amounts of information and items, most of which are created or generated by third parties. In large measure, the common service provided by these recipients is access to information, whether maintained on-site or elsewhere, not the generation of the sources information itself. This distinction is critical in properly applying Title VI to libraries, historical societies, and similar programs. For example, in the context of library services, recipients initially should focus on their procedures or services that directly impact access in three areas. First, applications for library or membership cards, instructions on card usage, and dissemination of information on where and how source material is maintained and indexed, should be available in appropriate languages other than English. Second, recipients should, consistent with the four factor analysis, determine what reasonable steps could be taken to enhance the value of their collections or services to LEP persons, including, for example, accessing language-appropriate books through inter-library loans, direct acquisitions, and/or on-line materials. Third, to the extent a recipient provides services beyond access to books, art, or cultural collections to include the generation of information about those collections, research aids, or community educational outreach such as reading or discovery programs, these additional or enhanced services should be separately evaluated under the four-factor analysis. A similar distinction can be employed with respect to a historical society's exhibits versus procedures for meaningful access to those exhibits.

What constitute reasonable steps to ensure meaningful access in the context of federally-assisted programs and activities will be contingent upon a balancing of four factors: (1) The number and proportion of eligible LEP constituents; (2) the frequency of LEP individuals' contact with the program; (3) the nature and importance of the program; and (4) the resources available, including costs. Each of these factors is summarized below. In addition, recipients should consult Section V of the June 18, 2002 DOJ LEP Guidance for Recipients, 67 FR 41459–41460 or *http://www.lep.gov,* for additional detail on the nature, scope, and application of these factors.

(1) Number or Proportion of LEP Individuals

The appropriateness of any action will depend on the size and proportion of the LEP population that the recipient serves and the prevalence of particular languages. Programs that serve a few or even one LEP person are still subject to the Title VI obligation to take reasonable steps to provide meaningful opportunities for access. The first factor in determining the reasonableness of a recipient's efforts in the number or proportion of people who will be effectively excluded form meaningful access to the benefits or services if efforts are not made to remove language barriers. The steps that are reasonable for a recipient who serves one LEP person a year may be different than those expected from a recipient that serves several LEP persons each day.

(2) Frequency of Contact With the Program

Frequency of contact between the program or activity and LEP individuals is another factor to be weighed. If LEP individuals must access the recipient's program or activity on a daily basis, a recipient has greater duties than if such contact is unpredictable and infrequent. For instance, a NHPRC-supported project to arrange and describe a collection consisting primarily of documents originally created in the Spanish language could provide finding aids that are linguistically accessible for LEP Spanish-speakers. Recipients should take into account local or regional conditions when determining frequency of contact with the program, and should have the flexibility to tailor their services to those needs.

(3) Nature and Importance of the Program

The importance of the recipient's program to beneficiaries will affect the determination of what reasonable steps are required. More affirmative steps must be taken in programs where the denial or delay of access may have serious, or even life or death implications than in programs that are

not crucial to one's day-to-day existence, economic livelihood, safety, or education. For example, the obligations, of a federally assisted school or hospital differ from those of a federally assisted library or historical society. This factor implies that the obligation to provide translation services will be highest in programs providing education, job training, medical/health services, social welfare services, and similar services. As a general matter, it is less likely that libraries, archives, and historical societies receiving assistance from NARA will provide services having a similar immediate and direct impact on a person's life or livelihood. Thus, in large measure, it is the first factor (number or proportion of LEP individuals) that will have the greatest impact in determining the initial need for language assistance services.

In assessing the effect on individuals of failure to provide language services, recipients must consider the importance of the benefit to individuals both immediately and in the long-term. Another aspect of this factor is the nature of the program itself. Some content (such as pictures) may be extremely accessible regardless of language. In these instances, little translation might be required.

(4) Resources Available

NARA is aware that its recipients may experience difficulties with resource allocation. Many of the organizations' overall budgets, and awards involved are quite small. The resources available to a recipient of federal assistance may have an impact on the nature of the steps that recipient must take to ensure meaningful access. For example, a small recipient with limited resources may not have to take the same steps as a larger recipient to provide LEP assistance in programs that have a limited number of eligible LEP individuals, where contact is infrequent, where the total cost of providing language services is relatively high, and/or where the program is not providing an important service or benefit from, for instance, a health, education, economic, or safety perspective. Translation and interpretation costs are appropriately included as program costs in award budget requests.

This four-factor analysis necessarily implicates the ''mix'' of LEP services required. The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. Even those award recipients who serve very few LEP persons on an infrequent basis should use a balancing analysis to determine whether the importance of the services(s) provided and minimal costs make language assistance measures reasonable even in the case of limited and infrequent interactions with LEP persons. Recipients have substantial flexibility in determining the appropriate mix.

IV. Strategies for Ensuring Meaningful Access

Many NARA recipients, such as libraries, have a long history of interacting with people with varying language backgrounds and capabilities within the communities where they are located. NARA's goal is to continue to encourage these efforts and share practices so that other libraries, archives, and historical societies can benefit from these experiences.

The following are examples of language assistance strategies that are potentially useful for all recipients. These strategies incorporate a variety of options and methods for providing meaningful access to LEP beneficiaries and provide examples of how recipients should take each of the four factors discussed above into account when developing an LEP strategy. Not every option is necessary or appropriate for every recipient with respect to all of its programs and activities. Indeed, a language assistance plan need not be intricate; it may be as simple as being prepared to use a commercially available ''language line'' to obtain immediate interpreting services and/or having bilingual staff members available who are fluent in the most common non-English languages spoken in the area. Recipients should exercise the flexibility afforded under this Guidance to select those language assistance measures which have the greatest potential to address, at appropriate levels and in reasonable manners, the specific language needs of the LEP populations they serve.

Finally, the examples below are not intended to suggest that if services to LEP populations aren't legally required under Title VI and Title VI regulations, they should not be undertaken. Part of the way in which libraries and historical societies build communities is by cutting across barriers like language. A small investment in outreach to a linguistically diverse community may well result in a rich cultural exchange that benefits not only the LEP population, but also the recipient and the community as a whole.

Examples

—Identification of the languages that are likely to be encountered in, and the number of LEP persons that are likely to be affected by, the program. This information may be gathered through review of census and constituent data as well as data from school systems and community agencies and organizations;
—Posting signs in public areas in several languages, informing the public of its right to free interpreter services and inviting members of the public to identify themselves as persons needing language assistance;
—Use of ''I speak'' cards for public-contact personnel so that the public can easily identify staff language abilities;
—Employment of staff, bilingual in appropriate languages, in public contact positions;
—Contracts with interpreting services that can provide competent interpreters in a wide variety of languages in a timely manner;
—Formal arrangements with community groups for competent and timely interpreter services by community volunteers;
—An arrangement with a telephone language interpreter line for on-demand service;
—Translations of application forms, instructional, informational and other key documents into appropriate non-English languages and provide oral interpreter assistance with documents for those persons whose language does not exist in written form;
—Procedures for effective telephone communication between staff and LEP persons, including instructions for English-speaking employees to obtain assistance from bilingual staff or interpreters when initiating or receiving calls to or from LEP persons;
—Notice to and training of all staff, particularly public contact staff, with respect to the recipient's Title VI obligation to provide language assistance to LEP persons, and on the language assistance policies and the procedures to be followed in securing such assistance in a timely manner;
—Insertion of notices, in appropriate languages, about access to free interpreters and other language assistance, in brochures, pamphlets, manuals, and other materials disseminated to the public and to staff; and
—Notice to and consultation with community organizations that represent LEP language groups, regarding problems and solutions, including standards and procedures for using their members as interpreters.

In identifying language assistance measures, recipients should avoid relying on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities. However, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, or friend) in place of or as a supplement to the free language services expressly offered by the recipient. But where a

balancing of the four factors indicate that recipient-provided language assistance is warranted, the recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

The use of family and friends as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided language assistance is not necessary. An example of this might be a bookstore or cafeteria associated with a library or archive. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for technical accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or other informal ad hoc interpreters may be appropriate.

As noted throughout this guidance, NARA award recipients have a great deal of flexibility in addressing the needs of their constituents with limited English skills. That flexibility does not diminish, and should not be used to minimize, the obligation that those needs be addressed. NARA recipients should apply the four factors outlined above to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons. By balancing the number or proportion of people with limited English skills served, the frequency of their contact with the program, the importance and nature of the program, and the resources available, NARA awardees' Title VI obligations in many cases will be satisfied by making available oral language assistance or commissioning translations on an as-requested and as-needed basis. There are many circumstances where, after an application and balancing of the four factors noted above, Title VI would not require translation. For example, Title VI does not require a library to translate its collections, but it does require the implementation of appropriate language assistance measures to permit an otherwise eligible LEP person to apply for a library card and potentially to access appropriate-language materials through inter-library loans or other reasonable methods. NARA views this policy guidance as providing sufficient flexibility to allow NARA to continue to fund language-dependent programs in both English and other languages without requiring translation that would be inconsistent with the nature of the program. Recipients should consult Section VI of the June 18, 2002 DOJ LEP Guidance for Recipients, 67 FR at 41461–41464 or *http://www.lep.gov,* for additional clarification on the standards applicable to assessing interpreter and translator competence, and for determining when translations of documents vital to accessing program benefits should be undertaken.

The key to ensuring meaningful access for people with limited English skills is effective communication. A recipient can ensure effective communication by developing and implementing a comprehensive language assistance program that includes policies and procedures for identifying and assessing the language needs of its LEP constituents. Such a program should also provide for a range of oral language assistance options, notice to LEP persons of the right to language assistance, periodic training of staff, monitoring of the program and, in certain circumstances, the translation of written materials.

Each recipient should, based on its own volume and frequency of contact with LEP clients and its own available resources, adopt a procedure for the resolution of complaints regarding the provision of language assistance and for notifying the public of their right to and how to file a complaint under Title VI. State recipients, who will frequently serve large numbers of LEP individuals, may consider appointing a senior level employee to coordinate the language assistance program and to ensure that there is regular monitoring of the program.

V. Compliance and Enforcement

Executive Order 13166 requires that each federal department or agency extending federal financial assistance subject to Title VI issue separate guidance implementing uniform Title VI compliance standards with respect to LEP persons. Where recipients of federal financial assistance from NARA also receive assistance from one or more other federal departments or agencies, there is no obligation to conduct and document separate but identical analyses and language assistance plans for NARA. NARA, in discharging its compliance and enforcement obligations under Title VI, looks to analyses performed and plans developed in response to similar detailed LEP guidance issued by other federal agencies. Recipients may rely upon guidance issued by those agencies.

The Title VI enforcement structure focuses on voluntary compliance. NARA will investigate (or contact its State recipient of funds to investigate, if appropriate) whenever it receives a complaint, report or other information that alleges or indicates possible noncompliance with Title VI. If the investigation results in a finding of compliance, NARA will inform the recipient in writing of this determination, including the basis for the determination. If the investigation results in a finding of noncompliance, NARA must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance, and must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, NARA will secure compliance through (a) the suspension of termination of Federal assistance after the recipient has been given an opportunity for an administrative hearing, (b) referral to the DOJ for injunctive relief or other enforcement proceedings, or (c) any other means authorized by federal, state, or local law.

NARA will seek voluntary compliance in resolving cases and does not seek the termination of funds until it has engaged in voluntary compliance efforts and has determined that compliance cannot be secured voluntarily. NARA will engage in voluntary compliance efforts and will provide technical assistance to recipients at all stages of its investigation. During these efforts to secure voluntary compliance, NARA will propose reasonable timetables for achieving compliance and will consult with and assist recipients in exploring cost-effective ways of coming into compliance.

In determining a recipient's compliance with Title VI, NARA's primary concern is to ensure that the recipient's policies and procedures overcome barriers resulting from language differences that would deny LEP persons a meaningful opportunity to participate in and access programs, services, and benefits. A recipient's appropriate use of the methods and options discussed in this policy guidance will be reviewed by NARA as evidence of a recipient's willingness to comply voluntarily with its Title VI obligations. If implementation of one or more of these options would be so financially burdensome as to defeat the legitimate objectives of a recipient/covered entity's program, or if there are equally effective alternatives for ensuring that LEP persons have

meaningful access to programs and services (such as timely effective oral interpretation of vital documents), NARA will not find the recipient/covered entity in noncompliance.

[FR Doc. 04–545 Filed 1–9–04; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8838–MLA–2, ASLBP No. 04–819–04–MLA]

United States Army, Jefferson Proving Ground Site; Notice of Reconstitution

Pursuant to the authority contained in 10 CFR 2.722 and 2.1209, Administrative Judge Paul B. Abramson is hereby appointed as a Special Assistant to aid Presiding Officer Administrative Judge Alan S. Rosenthal in the above-captioned 10 CFR Part 2, Subpart L proceeding.

All correspondence, documents, and other material shall be filed with the Special Assistant in accordance with 10 CFR 2.1203. The address of the Special Assistant is: Administrative Judge Paul B. Abramson, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Issued at Rockville, Maryland, this 5th day of January 2004.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 04–549 Filed 1–9–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [69 FR 387, January 5, 2004]

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

ANNOUNCEMENT OF ADDITIONAL MEETING: Additional Meeting.

A Closed Meeting will be held on Thursday, January 8, 2004 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matter may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), and (10) and 17 CFR 200.402(a)(5), (7), and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Goldschmid, as duty officer, voted to consider the items listed for the closed meeting in a closed session and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting to be held on Tuesday, January 6, 2004 will be: Formal order of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: January 8, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–676 Filed 1–8–04; 12:11 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 12, 2004:

Closed Meetings will be held on Tuesday, January 13, 2004 at 2 p.m. and Thursday, January 15, 2004 at 2 p.m., and an Open Meeting will be held on Wednesday, January 14, 2004 at 10 a.m. in Room 1C30, the William O. Douglas Room.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (3), (5), (6), (7), (9B), and (10) and 17 CFR 200.402(a) (3), (5), (6), (7), (9ii), and (10), permit consideration of the scheduled matters at the Closed Meetings.

Commissioner Goldschmid, as duty officer, voted to consider the items listed for the closed meetings in closed sessions and that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Tuesday, January 13, 2004 will be:

Formal orders of investigation;

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions; and

Adjudicatory matter.

The subject matter of the Open Meeting scheduled for Wednesday, January 14, 2004 will be:

1. The Commission will consider whether to propose new rule 204A–1 under the Investment Advisers Act of 1940 (''Advisers Act''). The proposed rule would require investment advisers to adopt codes of ethics that would set forth standards of conduct for advisory personnel, safeguard material nonpublic information about client transactions, and address conflicts that arise from personal trading by advisory personnel. The Commission will also consider whether to propose related amendments to Advisers Act rule 204–2, Advisers Act Form ADV, and rule 17j–1 under the Investment Company Act of 1940.

For further information, please contact Robert Tuleya at (202) 942–0719.

2. The Commission will consider whether to propose amendments to rules 0–1, 10f–3, 12b–1, 15a–4, 17a–7, 17a–8, 17d–1, 17e–1, 17g–1, 18f–3, and 23c–3, to require investment companies that rely on certain exemptive rules to adopt certain governance practices. The Commission also will consider whether to propose an amendment to rule 31a–2, the investment company recordkeeping rule, to require that investment companies retain copies of written materials that the directors consider when approving investment advisory contracts.

For further information, please contact Catherine E. Marshall at (202) 942–0719.

3. The Commission will consider whether to propose new rules 15c2–2 and 15c2–3 under the Securities Exchange Act of 1934, and amendments to the confirmation requirements of rule 10b–10 under that Act, to require improved disclosure to investors about costs and conflicts of interest arising from the distribution of open-end investment company shares, unit investment trust interests and municipal fund securities. The proposed new rules and rule amendments would require brokers, dealers and municipal securities dealers to provide investors with specific information about distribution-related costs and conflicts prior to purchase transactions involving those securities, and as part of transaction confirmations. The amendments would also expand confirmation disclosure of call

provisions in debt securities and preferred stock.

The Commission will also consider whether to propose amendments to Form N–1A with respect to the disclosure of sales loads and revenue sharing payments.

For further information, please contact Joshua Kans at (202) 942–0073 concerning rules 15c2–2, 15c2–3 and 10b–10, and Tara Royal at (202) 942–7973 concerning Form N–1A.

The subject matter of the Closed Meeting scheduled for Thursday, January 15, 2004 will be: Report of an investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: January 7, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–677 Filed 1–8–04; 12:11 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49020; File No. SR–NASD–2003–143]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to a Proposed Rule Change and Amendments Nos. 1, 2, and 3 Thereto to Establish a New ''Auto-Ex'' Order in Nasdaq's SuperMontage System

January 5, 2004.

I. Introduction

On September 24, 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''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish an ''Auto-Ex'' order in Nasdaq's National Market Execution System (''NNMS'' or ''SuperMontage''). Nasdaq filed Amendment Nos. 1 and 2 to the proposed rule change on October 3, 2003,[3] and October 21, 2003,[4] respectively. The proposed rule change, as amended, was published for comment in the **Federal Register** on October 28, 2003.[5] The Commission received two comment letters on the proposal.[6] In addition, Nasdaq submitted a response to comments.[7] Nasdaq also submitted Amendment No 3. to the proposed rule change on December 17, 2003.[8] This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

Nasdaq proposes to establish an Auto-Ex order for use in SuperMontage. Auto-Ex orders may be either priced limit orders or market orders, and all market participants would be permitted to enter Auto-Ex orders. Auto-Ex orders would execute solely against the Quotes/Orders of SuperMontage participants that participate in the system's automatic execution functionality and do not charge a separate quote-access fee to participants accessing their Quotes/Orders through SuperMontage. Auto-Ex orders would access all available liquidity at multiple price levels, but under no circumstances would the order trade-through the Quote/Order of an Order-Delivery electronic communications network (''ECN'') or an automatic execution participant that charged an access fee to access liquidity at another price level. Thus, an Auto-Ex order would automatically be designated ''Immediate or Cancel,'' and the order (or any unexecuted portion thereof) would be cancelled whenever the best price available through SuperMontage solely reflects the Quote/Order of a market participant that is not eligible to receive the Auto-Ex order.

Nasdaq intends to implement the Auto-Ex order as soon as possible following Commission approval, and will inform market participants of the exact implementation date via a Head Trader alert on *http://www.nasdaqtrader.com*.

III. Summary of Comments and Nasdaq's Response

As noted above, the Commission received two comment letters on the proposed rule change.[9] Both commenters, Inet and Bloomberg, opposed the Commission's approval of the proposed rule change.

Inet and Bloomberg stated that the proposed rule change discriminates against ECNs by creating an order type that would bypass ECNs in favor of automatic execution participants. Both commenters questioned the primary rationale offered by Nasdaq in the Notice that the proposal would benefit market participants that seek speed and certainty of executions. For example, Inet noted that the Auto-Ex order would also bypass automatic execution participants that charged quote access fees, and questioned whether the true motivation of the proposal was to enhance speed of execution for market participants or provide for the systemic discrimination against ECNs in SuperMontage.[10] Inet suggested that Nasdaq should establish criteria to differentiate between Order-Delivery ECNs that have consistently rapid order response times and those that have comparative slow order response times (on a regular or intermittent basis) by creating criteria under the proposal that would establish an acceptable ECN response time. Bloomberg also expressed doubts about Nasdaq's rationale because, in a race condition, a participant entering an order into SuperMontage may not have its order filled against an automatic execution participant if that participant's trading interest (bid or offer) was satisfied a split-second before.

In addition, both commenters stated that implementation of an Auto-Ex order would undercut the principles of price/time priority in SuperMontage. Further, Inet stated that Nasdaq's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, dated October 2, 2003 (''Amendment No. 1'').

[4] *See* letter to Katherine A. England, Assistant Director, Division, Commission, from John M. Yetter, Associate General Counsel, Nasdaq, dated October 21, 2003 (''Amendment No. 2'').

[5] *See* Securities Exchange Act Release No. 48675 (October 21, 2003), 68 FR 61528 (''Notice'').

[6] *See* letters to Jonathan G. Katz, Secretary, Commission, from Kim Bang, Bloomberg Tradebook LLC (''Bloomberg''), dated November 20, 2003 (''Bloomberg Letter''), and Alex Goor, President, Inet ATS, Inc. (''Inet''), dated November 18, 2003 (''Inet Letter'').

[7] *See* letter to Jonathan G. Katz, Secretary, Commission, from Edward S. Knight, Executive Vice President, Nasdaq, dated December 8, 2003 (''Nasdaq Letter'').

[8] *See* letter to Katherine A. England, Assistant Director, Division, Commission, from John M. Yetter, Associate General Counsel, Nasdaq, dated December 16, 2003 (''Amendment No. 3''). In Amendment No. 3, Nasdaq amended the proposed rule text to reflect the immediate effectiveness of SR–NASD–2003–150. *See* Securities Exchange Act Release No. 48798 (November 17, 2003) (Notice of Filing and Immediate Effectiveness of SR–NASD–2003–150). The Commission notes that this is a technical, non-substantive amendment and not subject to notice and comment.

[9] *See supra* note 6.

[10] *See also* Bloomberg Letter. Bloomberg and Inet also noted that Nasdaq acknowledged that the average ECN response time is one second or less. *See supra* note 6.

comparison of the proposed Auto-Ex order type with the ''Fill-or-Return'' order on the Archipelago Exchange (''ArcaEx''), a trading facility of Pacific Exchange Equities, Inc. (''PCXE''), was inapposite. Inet asserted that unlike Nasdaq's proposed order type, the ArcaEx Fill-or-Return order distinguishes between providing executions on ArcaEx and routing to other market centers, not between ArcaEx market participants. According to Inet, Fill-or-Return orders execute in price/time priority against all contra-side orders available in ArcaEx, while the Auto-Ex order would ignore ECN orders represented in SuperMontage. Lastly, Bloomberg indicated that Nasdaq's assertion of the applicability of the Commission's rationale in the SuperSOES approval order was factually inaccurate and that the proposed rule change would marginalize ECNs and is anti-competitive.

In its response letter, Nasdaq asserted that the proposed Auto-Ex order was not unfairly discriminatory or anticompetitive. Nasdaq believed that the proposal would provide Nasdaq market participants with greater flexibility in determining the terms and conditions under which orders routed to SuperMontage would interact with orders in SuperMontage. Specifically, Nasdaq stated that a market participant could opt to use an Auto-Ex order to: (1) Receive rapid executions, (2) avoid ECN access fees and Nasdaq's $0.001 per share routing fee to ECNs, and (3) avoid the duplicate routing of orders to ECNs through direct connections and SuperMontage.

Nasdaq also emphasized that the Auto-Ex order was just one option available to market participants. According to Nasdaq, market participants that seek to achieve greater certainty that their orders will be executed in full, or that prefer to access all available liquidity though a single order, will not opt to use the Auto-Ex order. Moreover, when an ECN Quote/Order is the predominant source of liquidity at the inside in a particular stock, market participants would simply not use the Auto-Ex order. Moreover, Nasdaq noted that ECNs are provided further protection because Auto-Ex orders cannot trade-through the Quote/Order of a market participant that is not eligible to receive such an order.

Nasdaq also responded to Inet's contention that its comparison of the Auto-Ex order to ArcaEx's Fill-or-Return order was inapposite. Nasdaq stated ArcaEx participants must accept automatic execution and do not have the option of a status comparable to Order-Delivery ECNs. Nasdaq asserted that ArcaEx's market structure effectively excludes ECNs from direct participation, puts ECNs last in line for ArcaEx liquidity, and allows market participants to use the Fill-or-Return order to avoid accessing ECN liquidity under any circumstances. Nasdaq also noted that ECNs—Bloomberg, Island, and Instinet—have similar order types. Thus, according to Nasdaq, its market participants should have the same flexibility.

In response to Bloomberg's comment that Nasdaq's comparison of the Auto-Ex Order to SuperSOES was inaccurate, Nasdaq stated that SuperSOES order processing was virtually identical to Auto-Ex orders, because SuperSOES orders accessed liquidity available from automatic execution participants and were cancelled upon interacting with the quote of an order delivery participant. Nasdaq did note that SuperMontage differs from SuperSOES/SelectNet in that order delivery and automatic execution participants can be accessed by a single point of entry. However, Nasdaq reasoned that the SuperMontage unified point of entry for order delivery and automatic execution provided market participants with more options than were available during the operation of SuperSOES/SelectNet for accessing Order-Delivery ECNs, and in light of the enhanced accessibility of ECNs in SuperMontage, Nasdaq should not be foreclosed from providing a functionality that existed through SuperSOES/SelectNet.

Finally, Nasdaq responded to Inet's suggestion that it develop criteria for ECN response times. Nasdaq did not believe it was technically feasible to impose a response time standard that would ensure that executions of ECN-delivered orders would always be as fast as automatic executions. Nasdaq noted that the processing time for automatic executions is between .006 and .01 seconds. According to Nasdaq, although the average response time and average processing time for Order-Delivery ECNs is less than one second, particular orders may be much slower and the averages are invariably higher during the market open and market close. For example, Nasdaq stated that the average round-trip processing time for all order-delivery orders during the market close exceeded one second on the majority of trading days. Further, Nasdaq indicated that automatic execution participants, unlike ECNs, cannot simply back away from their Quotes/Orders because of trades preformed elsewhere or because it chooses not to do business with a contra-party. Thus, Nasdaq contended that the Auto-Ex order would simply provide market participants with a voluntary tool to use when they wish to ensure a rapid execution, rather than running the risk of a delay in a fast-moving market.

IV. Discussion

After careful consideration of the proposed rule change, the comment letters, and Nasdaq's response, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association [11] and, in particular, the requirements of Section 15A of the Act [12] and the rules and regulations thereunder. Specifically, the Commission believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[13] which, among other things, requires that NASD's rules be 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.

The Commission notes that Inet and Bloomberg believed that the proposed Auto-Ex order unfairly discriminates against Order-Delivery ECNs or is anti-competitive. The Commission acknowledges that the Auto-Ex order will treat Order-Delivery ECNs and automatic execution participants that charge a fee differently than automatic execution participants that do not charge a fee. However, the Commission believes that the proposal accommodates the various needs and interests of market participants in SuperMontage by taking into account the needs and business models of ECNs, while providing Nasdaq market participants with an optional order type that may enhance the ability of market participants to control costs associated with executing an order, such as avoiding the Nasdaq ECN order routing fee and allowing such participants to route orders directly to ECNs.

The Commission notes Order-Delivery ECNs would continue to be able to participate in SuperMontage. The Auto-Ex order would only execute at the Nasdaq best bid or offer and would not

[11] In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78*o*–3.

[13] 15 U.S.C. 78*o*–3(b)(6).

trade-through the price of a market participant that does not accept automatic execution or charges a quote access fee. Thus, ECNs that provide depth and liquidity at or near the inside market would continue to receive executions. In addition, the use of Auto-Ex orders would be voluntary and there may be many instances where this order type would not be appropriate. For example, as stated by Nasdaq, use of an Auto-Ex order may be inappropriate where an ECN's Quote/Order is the predominant source of liquidity at the inside market for a particular stock or when a market participant seeks to access all available liquidity though SuperMontage.[14] In the latter example, a market participant may elect to use a regular non-directed order, rather than the Auto-Ex order. Therefore, the Commission believes that the Auto-Ex order is reasonably designed to accommodate the participation of ECNs and other market participants in SuperMontage, to give market participants greater flexibility in determining how their orders will be executed, and to provide greater opportunities to control execution and routing costs.

Inet and Bloomberg commented that the Auto-Ex order ''undercuts'' the principle of price/time priority in SuperMontage. However, the Commission notes that SuperMontage has never been a trading environment characterized by strict price/time priority. For example, SuperMontage has order execution algorithms based on price/size/time and price/time taking into account ECN fees, which may be used on an order-by-order basis, as well as Preferenced Orders, which execute solely against the Quote/Order of a recipient identified by the participant entering the order at the best bid or offer regardless of the recipient's time priority within the price level, and Directed Orders, which can be directed to a particular market participant at any price. The Commission notes that the Auto-Ex order, while not identical, has functional similarities to these current Nasdaq features, including the order execution algorithm based on price/time priority that takes access fees into account and Preferenced Orders.

Inet also commented that the Auto-Ex order was not like the ArcaEx Fill-or-Return order. The Commission recognizes that distinctions may be drawn between the Auto-Ex order and the ArcaEx Fill-or-Return order. Nonetheless, the Commission believes that the Auto-Ex order provides functionality and flexibility for market participants that is similar to the ArcaEx Fill-or-Return order. In particular, the Auto-Ex order, like the Fill-or-Return order, permits a market participant to determine whether its order will be routed away to an alternate market. Thus, while the Auto-Ex order is not identical to the Fill-or-Return order, both orders give the market participant some ability to control where its order is routed.

The Commission also believes that the proposed Auto-Ex order may provide greater speed and certainty of execution. The Commission recognizes that an Order-Delivery ECN may determine to reject an order to avoid dual liability or because a fee dispute exists with a contra-party. If an order is rejected and returned to SuperMontage, market conditions, especially during a fast market, may change and the order may receive an inferior execution. Thus, the Commission believes that an Auto-Ex order may help to assure the quality of execution in certain market conditions. The Commission also notes that market participants that have access fee disputes with ECNs could use the Auto-Ex order to avoid ECNs that will reject their orders. In such an instance, the Commission believes that the use of an Auto-Ex order may benefit the Order-Delivery ECN and the market participant with which the fee dispute exists as the respective interest of the parties could potentially interact with contra-parties with which no fee dispute exists.

Notwithstanding the foregoing, the Commission emphasizes that broker-dealers must evaluate whether the use of the Auto-Ex order type is consistent with their best execution obligations. As the Commission has previously stated, the customer's instructions and expectations should determine the order handling procedures that a broker-dealer employs and whether the execution of an order is the best under the circumstances. Without specific instructions from a customer, however, a broker-dealer should periodically assess the quality of competing markets to ensure that its order flow is directed to markets providing the most advantageous terms for the customer's order.[15] Currently, market participants have the choice, in part, of using Nasdaq's facility to access liquidity or private linkages outside of SuperMontage to access liquidity. As a result, broker-dealers must be able to identify the best available terms among multiple competing marketplaces and be able to access those marketplaces.[16] An inability to reach quotations and execute among market centers can compromise a broker-dealer's ability to satisfy its duty of best execution. For example, it could be inconsistent with a broker-dealer's duty of best-execution to use Auto-Ex orders if such use regularly leads to a failure to obtain the best available price for customers' orders. Thus, while the Commission has permitted Nasdaq to develop a market structure that gives its market participants operational flexibility, the Commission emphasizes that market participants must utilize SuperMontage functions in a manner that is consistent with their best execution obligations.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposal is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change and Amendment Nos. 1, 2, and 3 thereto (File No. SR–NASD–2003–143) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–524 Filed 1–9–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49018; File No. SR–PCX–2003–49]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Eliminating the Requirement that Market Makers With No Public Accounts and Who Do Not Solicit Public Accounts, Maintain Certain Information Barriers

January 5, 2004.

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 September 16, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its subsidiary, PCX Equities,

[14] *See* Nasdaq Letter, *supra* note 7.

[15] *See Market 2000: An Examination of Current Equity Market Developments,* Division, Commission, (January 1994), Study V at 4.

[16] *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (Order approving SR–NASD–99–53).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Inc. (''PCXE''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. On December 16, 2003, the Exchange amended the proposal.[3] 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

The Exchange, through PCXE, proposes to eliminate the Information Barrier requirement set forth in PCXE Rule 7.26 in the limited circumstances where a Market Maker, which also functions as a General Authorized Trader,[4] engages solely in proprietary trading and does not, under any circumstance, maintain customer accounts or solicit or accept orders from or on behalf of public customers. The text of the proposed rule change is available at the PCX 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, PCX 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. PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Information Barrier requirements set forth in PCXE Rule 7.26 provide critical safeguards to prevent the use or communication of material non-public information by market making firms (and affiliated broker-dealers) to inappropriately benefit other business activities in which they may engage, such as investment banking or options market making. Such information could relate to, for example, the Market Maker's customer and directed order flow or other information obtained by the Market Maker in the course of its business. Such barriers help to ensure that market making firms do not illegally take advantage of or communicate such information to benefit their other business activities, to the detriment of investors, customers, issuers and the integrity of the market.

For business reasons, certain registered Market Makers, or broker-dealers with which such Market Makers are affiliated, engage solely in proprietary trading. Accordingly, such firms do not maintain public customer accounts or solicit or accept orders or funds (and hence, would not accept directed order flow) from or on behalf of public customers, including broker-dealers and other securities firms. Under such circumstances, because the market making firm does not engage in any other business activities that may benefit from information obtained by the Market Maker in the course of the firm's market making activities, the Exchange believes that the concerns noted above which form the basis for the Information Barrier requirements set forth in Rule 7.26 do not apply. [5] Nevertheless, Rule 7.26 would require such a firm to develop and implement Information Barriers.

Under such circumstances, the Exchange believes that an Information Barrier requirement is not necessary and would impose an undue burden on the market making firm. Accordingly, this rule filing proposes to eliminate this requirement in the limited circumstances where a market making firm and its affiliated broker-dealer do not maintain public customer accounts, nor solicit or accept public customer orders, including from broker-dealers and other securities firms (and does not accept directed order flow or utilize any order type which presupposes the participation of public customers), and engage solely in proprietary trading. The Exchange believes that this limited modification is consistent with the purposes of the rule. However, if the market making firm or its affiliated broker-dealer subsequently decides to maintain public customer accounts or solicit public customer accounts (and directed order flow or order types which presuppose the participation of public customers), then the requirements of Rule 7.26 would apply. Further, this limited modification would not alter or adjust any other obligation imposed on Market Markers, including those set forth in PCXE Rules 7.21 (Obligations of Market Maker Authorized Traders) [6] and 7.23 (General Obligations of Market Makers).

2. Statutory Basis

The Exchange believes that the proposal furthers the objectives of Section 6(b)(5) of the Act [7] in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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–PCX–2003–49. This file number should be included on the subject line if e-mail is used. To help the

[3] *See* December 15, 2003 letter from Steven B. Matlin, Senior Counsel, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, and attachment (''Amendment No.1''). Amendment No. 1 replaces and supersedes the original proposed rule change in its entirety.

[4] *See* PCXE Rule 1.1(o) (definition of ''General Authorized Trader'').

[5] The proposed rule change is designed to accommodate the needs of these market makers. The current rule did not foresee the business conditions that currently exist which necessitate this change.

[6] *See* PCXE Rule 1.1(v) (definition of ''Market Maker Authorized Trader'').

[7] 15 U.S.C. 78(b)(5).

Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–49 and should be submitted by February 2, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–523 Filed 1–9–04; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1549).

TIME AND DATE: 9 a.m. (e.s.t.), January 14, 2004; TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on November 5, 2003.

New Business

F—Other

F1. Tennessee Valley Authority Strategic Plan

C—Energy

C1. Contract with BOC Gases for industrial gases and cylinders, tube trailers, and bulk storage management.

C2. Contract with Brand Scaffold Services, Inc., for purchase, rental, and erection/teardown of scaffolding.

C3. Supplement to contract with Thermal Engineering International for the upgrade of moisture separators at Browns Ferry Nuclear Plant.

C4. Contract with Scott Specialty Gases, Inc., for protocol gases.

C5. Contracts with Electric Motor Repair & Sales Company; Hibbs ElectroMechanical, Inc.; Jay Electric Company, Inc.; REMCO; and Southwest Electric Company for electric motor repair services.

C6. Contract with Conforma Clad, Inc., for the supply of coated replacement induced draft fan blades for Kingston Fossil Plant.

C7. Delegation of authority to the Executive Vice President, Fossil Power Group, to enter into contracts with Arch Coal Sales Company, Nally and Hamilton Enterprises Inc., and Progress Fuels Corporation for Appalachian Basin coal for John Sevier and Bull Run Fossil Plants.

E—Real Property Transactions

E1. Modification of certain deed restrictions affecting approximately 21 acres of former TVA land on Tellico Reservoir in Monroe County, Tennessee, Tract No. XTELR–6 S.1X, to allow for construction of a public school.

E2. Sale of a noncommercial, nonexclusive permanent easement to A. Robert Johnson for construction and maintenance of private water-use facilities, affecting approximately 0.4 acre of land on Tellico Reservoir in Loudon County, Tennessee, Tract No. XTELR–245RE.

E3. Sale of a noncommercial, nonexclusive permanent easement to Geneva and Raymond Anderson for construction and maintenance of private water-use facilities, affecting approximately 0.04 acre of land on Tellico Reservoir in Monroe County, Tennessee, Tract No. XTELR–246RE.

E4. Grant of a permanent easement to Scottsboro Water, Sewer, and Gas Board for construction of a building to house a potable water tank, affecting approximately 0.03 acre of land on Guntersville Reservoir in Jackson County, Alabama, Tract No. XTGR–175E.

E5. Grant of a permanent easement to the State of Tennessee for a highway improvement project, affecting approximately 0.13 acre of land on Normandy Reservoir in Bedford County, Tennessee, Tract No. XTNRMRD–4H.

E6. Sale at public auction of four separate tracts of land adjacent to the Niles Ferry Industrial Park, consisting of approximately 4.8 acres on Tellico Reservoir in Monroe County, Tennessee, Tract Nos. XTELR–240, –241, –242, and –243.

E7. Sale of a permanent easement to BECS, General Partnership, for a road and utilities access, affecting approximately 0.97 acre of land on Cherokee Reservoir in Grainger County, Tennessee, Tract No. XCK–585E.

F—Other (con't.)

F2. Approval to file condemnation cases to acquire easements and rights-of-way for TVA power transmission line projects affecting the Basin-Toccoa Transmission Line in Fannin County, Georgia; Gallatin Steam Plant-Rockwood No. 2 Tap to North Lebanon Transmission Line in Wilson County, Tennessee, and the Waynesboro-Clifton City Transmission Line in Wayne County, Tennessee.

Information Items

1. Approval of term coal contracts to Arch Coal Sales Company for Powder River Basin coal and Uinta Basin coal to supply various TVA fossil plants.

2. Approval of a term coal contract to Oxbow Mining LLC for Uinta Basin coal to supply various TVA fossil plants.

3. Approval of delegation of authority to the Executive Vice President, Fossil Power Group, to renegotiate coal Contract No. CO0058 with Bowie Resources Limited for supply of coal to various TVA fossil plants.

4. Amendments to the Provisions of the TVA Savings and Deferral Retirement Plan.

5. Approval of Fiscal Year 2004 Winning Performance Team Incentive Plan Scorecards.

6. Approval of the renewal of the Regional Resource Stewardship Council charter for an additional two years.

7. Approval of a supplement to the contract with Electric Power Research Institute, Inc., to extend TVA's membership through December 2004.

8. Approval of a contract with GE Fleet Services for maintenance of TVA's light fleet vehicles.

9. Approval of a public auction sale of the Johnson City Customer Service Center site, consisting of approximately 11 acres in Washington County, Tennessee, Tract No. XJCPSC–4.

10. Approval of a 1-year extension of ferrosilicon industry pricing arrangements.

11. Approval of revised Business Practice 8, Inventions.

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: January 7, 2004.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 04–628 Filed 1–8–04; 10:50 am]

BILLING CODE 8120–88–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Aerospace Equipment (ISAC–1)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of a partially opened meeting.

SUMMARY: The Industry Sector Advisory Committee on Aerospace Equipment (ISAC–1) will hold a meeting on January 21, 2004, from 8:45 a.m. to 2:30 p.m. The meeting will be closed to the public from 8:45 a.m. to 2 p.m. and opened to the public from 2 p.m. to 2:30 p.m.

DATES: The meeting is scheduled for January 21, 2004, unless otherwise notified.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, Room 6057, 14th Street (between Pennsylvania and Constitution Avenue), NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Vicki Harrison, DFO for ISAC–1 at (202) 482–4792, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the following agenda items will be considered.

- Update on Commerce Department Study on the Aerospace Industry.
- Briefing on Office of Space Commercialization status.

Christopher A. Padilla,

Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 04–550 Filed 1–9–04; 8:45 am]

BILLING CODE 3190–W3–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program for Guam International Airport, Guam

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by A.B. Won Pat Guam International Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act, as amended (Public Law 96–193) (hereinafter referred to as ''the Act''), and 14 CFR part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96–52 (1980). On May 19, 2003, the FAA determined that the noise exposure maps submitted by A.B. Won Pat Guam International Airport Authority under part 150 were in compliance with applicable requirements. On November 14, 2003, the FAA approved the Noise Compatibility Program for Guam International Airport.

EFFECTIVE DATE: The effective date of the FAA's approval of the Noise Compatibility Program for Guam International Airport is November 14, 2003.

FOR FURTHER INFORMATION CONTACT: Gordon Wong, Western-Pacific Region, Honolulu Airports District Office, Federal Aviation Administration, Box 50244, Honolulu, Hawaii 96850–0001, Telephone: (808) 541–1232, Street Address: 300 Ala Moana Boulevard, Honolulu, Hawaii 96813. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Guam International Airport, effective November 14, 2003. Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979, as amended (herein after referred to as the ''Act'') [recodified as 49 USC 47504], an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982, as amended. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Honolulu, Hawaii.

A.B. Won Pat Guam International Airport Authority submitted to the FAA on March 17, 2003, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from May 19, 2000, through March 17, 2003. The Guam International Airport noise exposure maps were

determined by FAA to be in compliance with applicable requirements on May 19, 2003. Notice of this determination was published in the **Federal Register** on June 4, 2003.

The Guam International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from (March 17, 2003, to beyond the year 2008). It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in 49 USC 47504 (formerly section 104(b) of the Act). The FAA began its review of the program on May 19, 2003 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained twenty-eight (28) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program was approved, by the Assistant Administrator for Airports, effective November 14, 2003.

Outright approval was granted for twelve (12) of the twenty-eight (28) specific program measures. Fourteen (14) measures were disapproved for the purposes of part 150, and two (2) measures required no action. The approved measured included such items as: Amending the land use plans in-line with A.B. Won Pat Guam International Airport Authority noise compatibility guidelines; Zone lands near the airport for compatible uses consistent with the Airport Master Plan; Local government adopt and enforce ordinances and controls to regulate building construction methods and material for the purpose of attenuating aircraft noise in habitable buildings in and around the Airport Noise Zone; Establish a Public Information Program; Require the disclosure of aircraft noise levels by property owners and their agents; Establish a professional staff responsible for noise compatibility and abatement measures; Establish a community Noise Advisory Committee that meet regularly to address noise concerns; Install Noise Monitoring Equipment; Install Flight Track Systems that correlates data with FAA ARTS radar data; Acquire developed non-compatible property with the 65 DNL contour; Offer howeowners a Property Purchase Guarantee to assure that their property would be acquired at fair market value and returned use with appropriate sound insulation measures, releases, and restrictions if the owner had made a ''bona fide effort'' to sell the property within the 65 DNL contour based on the 2003 NEM; Acoustical treatment of residential, schools and other public buildings within the 65 DNL contour.

The following measures were disapproved pending submission of additional information: Establishment of new flight tracks or modifying existing flight tracks to concentrate aircraft overflights over areas with relatively few noise sensitive land uses; Establishing procedures that would require aircraft to follow a Standard Instrument Departure (SID) in all weather conditions, including Visual Flight Rules (VFR) conditions. SID's normally include departure headings and altitudes to be followed; Voluntary procedure that arriving aircraft delay lowering flaps and landing gear until closer to the airport; Air Traffic restrict the use of visual approaches during VFR conditions; Use of sophisticated on-board equipment that integrates signals from a variety of ground based and satellite systems to provide a visual course reference (vertical and horizontal information) for pilots to navigate along predetermined flight track; Displace Runway 6L; Construct acounstical barriers; such as noise walls, earth berms, or vegetative barriers to help attenuate noise caused by Airport operations; Construct high-speed exist taxiways at strategic locations along the runway to decrease the need for reverse thrust to slow arriving aircraft, and/or eliminate the need to add power to exit a runway via perpendicular taxiways; Implement a differential airport user fees based on aircraft noise levels and/or time of day of operation; Establish an agreement whereby the airport users voluntarily establish goals and a timetable/schedule for increasing the percentage of quieter aircraft in the airport fleet mix; Restrict aicraft engine run-ups to certain hours, location of engine run-up, minimizing or prohibiting nightime run-ups, restricting engine power settings to specific levels, and/or reducing the length of run-up times at various levels; Acquisition of fee-simple privately owned, private land to prevent non-compatible land use; Require the dedication of avigation easements as a condition of building permits in affected areas; Acquisition of fee-simple privately owned, private non-compatible land use; Require the dedication of avigation easements as a condition of building permits in affected areas; Acquisition of fee-simple privately owned, private land to prevent non-compatible land use. The following measure was disapproved: Modify the building code to require specified interior noise reduction for new construction in the Airport Noise Zones; Dedication of avigation easements as a condition of building permits in affected areas.

The following two measures required no action: Use of Close-in Noise Abatement Department Procedures where departing aircraft climb under takeoff power to an altitude of at least 800 feet Above Ground Level (AGL). Use of Distant Noise Abatement Departure Procedure where departing aircraft climb to at least 800 feet AGL, the pitch of the aircraft is then decreased and the aircraft accelerates to a speed adequate to maintain flight with zero flaps (nominally 210 knots). Flaps are then retracted and thrust reduced to a level not less than necessary to maintain required climb. Upon reaching 3,000 feet AGL (or the coastline is cleared), the aircraft resumes normal climb.

These determinations are set forth in detail in the Record of Approval signed by the Associate Administrator for Airports on November 14, 2003. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the A.B. Won Pat Guam International Airport Authority. The Record of Approval also will be available on-line at *http://www.faa.gov/arp/environmental/14cfr150/index14.cfrm.*

Issued in Hawthorne, California on December 19, 2003.

Mia Paredes Ratcliff,

Acting Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. 04–495 Filed 1–9–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

User Input to the Aviation Weather Technology Transfer (AWTT) Board

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: The FAA will hold an informal public meeting to seek aviation weather user input. Details: January 21, 2004; Air Line Pilots Association, 535 Herndon Parkway, Herndon, Virginia

22170; 9 a.m. to 5 p.m. in Conference Room XX. The objective of this meeting is to provide an opportunity for interested aviation weather users to provide input on FAA's plans for implementing new weather products.

DATES: The meeting will be held at the Air Line Pilots Association (ALPA), 535 Herndon Parkway, Herndon, Virginia 22170. Times: 9 a.m. to 5 p.m. on January 21, 2004.

FOR FURTHER INFORMATION CONTACT: Debi Bacon, Aerospace Weather Policy Division, ARS–100, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone number (202) 385–7705; Fax; (202) 385–7701; e-mail: *debi.bacon@faa.gov*.

SUPPLEMENTARY INFORMATION:

History

In 1999, the FAA established an Aviation Weather Technology Transfer (AWTT) Board to manage the orderly transfer of weather capabilities and products from research and development (R&D) into operations. The Director of the Aerospace Weather Policy and Standards Staff, ARS–20, chairs the AWTT Board. The board is composed of stakeholders in Air Traffic Services, ATS; Regulation and Certification, AVR; and Research and Acquisitions, ARA in the Federal Aviation Administration and the Office of Climate, Water and Weather Services, OS and the Office of Science and Technology, OST in the National Weather Service.

The AWTT Board meets semi-annually or as needed, to determine the readiness of weather R&D products for experimental use, full operational use for meteorologists or full operational use for end users. The board's determination is based upon criteria in the following areas: user's needs; benefits; costs; risks; technical readiness; operational readiness and budget requirements.

FAA has the sole responsibility and authority to make decisions intended to provide a safe, secure, and efficient U.S. national airspace system. However, it behooves FAA to not make decisions in a vacuum. Rather, FAA is seeking inputs from the user community before decisions are finalized. The purpose of this meeting is to obtain industry feedback.

Industry users will be invited to participate in quarterly, one-day meetings to provide input for development of concepts of use (ConUse) for individual aviation weather products near specific AWTT board decision points. The decision points are for transition from the test stage (D2) to the experimental stage (D3) and/or from the experimental stage (D3) to the operational stage (D4). Industry meetings will precede the two AWTT board meetings approximately one month prior to each board meeting and in each of the other two quarters of the year. These industry review sessions will be announced in the **Federal Register** and open to all interested parties.

This meeting is the industry session intended to provide input for a roadmap for aviation weather. It is also intended to receive feedback on weather R&D products that will be presented for consideration at the May and November 2004 AWTT Board meetings. The products to be considered include the Current Icing Potential (CIP) Severity product for D3; the National Convective Weather Forecast (NCWF) 2 hour product (D3); the Forecast Icing Potential (FIP)—Alaska product (D3); the FIP supercooled Large Droplets (SLD) product (D4); the FIP Severity product (D3); the Graphical Turbulence Guidance (GTG) Flight Level 100–200 (D3) and the Oceanic Cloud Top Height product (CTOP) (D3).

Meeting Procedures

(a) The meeting will be informal in nature and will be conducted by representatives of the FAA Headquarters.

(b) The meeting will be open to all persons on a space-available basis. Every effort was made to provide a meeting site with sufficient seating capacity for the expected participation. There will be neither admission fee nor other charge to attend and participate. Attendees must present themselves to the security guard at the Air Line Pilots Association (ALPA), 525 Herndon Parkway, Herndon, VA, obtain a visitor pass and adhere to security instructions for ALPA.

(c) FAA personnel present will conduct an overview briefing on the user input process to the AWTT and changes made to the process. Any person will be allowed to ask questions during the presentation and FAA personnel will clarify any part of the process that is not clear.

(d) FAA aviation weather research program personnel will conduct an overview briefing on the short- and mid-term outlook for scientific research for aviation weather products. Any person will be allowed to ask questions during the presentation and FAA personnel will clarify any part of the process that is not clear.

(e) FAA personnel will lead a session intended to refine an aviation weather roadmap, and a second session intended to refine ConUses for specific weather products due for AWTT board decisions during 2004. Any person present may give feedback on the aviation weather roadmap or the specific products due for board decisions. Feedback on the proposed products will be captured through discussion between FAA personnel and any persons attending the meeting.

(f) FAA will not take any action items from this meeting nor make any commitments to accept specific user suggestions. The meeting will not be formally recorded. However, informal tape recordings may be made of the presentations to ensure that each respondent's comments are noted accurately.

(g) An official verbatim transcript or minutes of the informal meeting will not be made. However, a list of the attendees and a digest of discussions during the meeting will be produced. Any person attending may receive a copy of the written information upon request to the information contact, above.

(h) Every reasonable effort will be made to hear each person's feedback consistent with a reasonable closing time for the meeting. Written feedback may also be submitted to FAA personnel for up to seven (7) days after the close of the meeting.

Agenda

(a) Opening Remarks and Discussion of Meeting Procedures
(b) Review of AWTT user input process, proposed changes, calendar of events
(c) Research Update
(d) Roadmap Work Session
(e) ConUse Work Session
(f) Closing Comments

* * * * *

Issued in Washington, DC on January 7, 2004.

Richard J. Heuwinkel,

Acting Staff Director, Office of Aerospace Weather Policy and Standards.

[FR Doc. 04–491 Filed 1–09–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172: Future Air-Ground Communications in the Very High Frequency (VHF) Aeronautical Data Band (118–137 MHz)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 172 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 172: Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz).

DATES: The meeting will be held January 20–22, 2004 for 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, SW., Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 172 meeting. The agenda will include:

- January 20:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review of Agenda, Review Summary of Previous Meeting).
  - Convene Working Group-3 (WG–3).
  - Report on PMC Action approving VHF Digital Link, Mode 3 MOPS, DO–271B.
  - On channel RF Susceptibility.
  - Review data from manufacturers.
  - Review ''3T'' SARPS–Compatibility Issues.
  - Discuss MOPS Requirements and Work program.
- January 21–22:
  - Reconvene WG–3 as necessary to continue with the resolution of FRAC comments to draft Change 1 to DO–271A VDL Mode 3 MOPS.
  - Convene WG–2, time permitting, to entertain white papers and actions regarding the development of Version B of the DO–224A, Signal-in-Space Minimum Aviation Communications Including Compatibility with Digital Voice.
  - Reconvene Plenary.
  - Review relevant activities.
  - International Civil Aviation Organization (ICAO) Aeronautical Mobile Communications Panel work.
  - NEXCOM activities.
  - EUROCAE WG–47 status and issues.
  - Others as appropriate.
  - Closing Plenary Session (Other Business, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 18, 2003.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 04–496 Filed 1–9–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 195: Flight Information Services Communications (FISC)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 195 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 195: Flight Information Services Communication (FISC).

DATES: The meeting will be held January 13–15, 2004, starting at 8:30 a.m.

ADDRESSES: The meeting will be held at Airlines Pilot Association (ALPA) Office on 1625 Massachusetts Ave., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. Appendix 2), notice is hereby given for a Special Committee 195 meeting. The agenda will include:

- January 13:
  - Opening Plenary Session (Welcome and Introductory Remarks, Approval of Agenda, Approval of Minutes, Review of Action Items).
  - Review of ATA final review and comment (FRAC) comments on draft DO–267A.
  - Review Responses to Avionics Harmonization Working Group (AVHWG) Member Comments on draft DO–267A.
  - AVHWG Coordination.
- January 14:
  - Approval of Flight Information Services (FIS) Product Registry.
  - Guidance for Type Design Approval of Future FIS Products.
  - Consideration of the Requirement Level for Color in DO–267A.
  - Approve Final Draft DO–267A.
- January 15:
  - Closing Plenary Session (Review Action Items, Discussion of Future Workplan, Other Business, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 12, 2003.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 04–497 Filed 1–9–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 159: Global Positioning System (GPS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 159 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Global Positioning System.

DATES: The meeting will be held January 12–16 2004, from 9 a.m. to 4:30 p.m. (unless stated otherwise.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street NW., Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434 Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 meeting. *Note: Specific working group sessions will be held January 12–15.* The plenary agenda will include:

- January 16:
  - Opening Plenary Session (Welcome and Introductory Remarks, Approve Minutes of Previous Meeting).
  - Review Working Group Progress

and Identify Issues for Resolution.
- Global Positioning System (GPS)/ 3rd Civil Frequency (WG–1).
- GPS/Wide Area Augmentation System (WAAS) (WG–2).
- GPS/GLONASS (WG–2A).
- GPS/Inertial (WG–2C).
- GPS/Precision Landing Guidance (WG–4).
- GPS/Airport Surface Surveillance (WG–5).
- Review of EUROCAE activities.
- Closing Plenary Session (Assignment/Review of Future Work, Other Business, Date and Place of Next Meeting).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 12, 2003.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 04–498 Filed 1–9–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: San Diego County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in San Diego County, California.

FOR FURTHER INFORMATION CONTACT: Cesar Perez, South Region Team Leader, Federal Highway Administration, 650 Capitol Mall Suite 4–100, Sacramento, California 95814, Telephone: (916) 498–5065.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation will prepare an environmental impact statement (EIS) on a proposal to improve Interstate 5 (I–5) in San Diego County, California. The proposed improvement would involve the addition of high occupancy vehicle (HOV) lanes/Managed Lanes and general purpose lanes to existing I–5 from the City of San Diego to the City of Oceanside for a distance of approximately 28 miles.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Also, included in this proposal are the addition of auxiliary lanes, direct access ramps (DARs), and interchange improvements where needed. Alternatives under consideration include (1) taking no action; (2) adding two HOV lanes in each direction plus one general purpose lane in each direction. Incorporated into and studied with the build alternative will be design variations at the six lagoons along the corridor. Alternatives associated with those areas will include (1) retaining walls within existing fill slopes; (2) widening on existing fill slopes; (3) removing existing fill in lagoons and bridging the lagoons; (4) elevated HOV lanes on an independent structure.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public scoping meetings will be held in each city along the north coast I–5 corridor between January and February 2003. Public notice will be provided indicating the time and place of the scoping meetings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 5, 2004.

Cesar E. Perez,

South Region Team Leader.

[FR Doc. 04–541 Filed 1–9–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–7744, Notice 4]

General Motors Corporation; Denial of Appeal of Decision on Inconsequential Noncompliance

General Motors Corporation (GM), of Warren, Michigan, has appealed a decision by the National Highway Traffic Safety Administration (NHTSA) that denied its application for a determination that the noncompliance of certain GM vehicles with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, Reflective Devices, and Associated Equipment,'' be deemed inconsequential to motor vehicle safety. GM had applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety.'' Notice of receipt of the original petition was published in the **Federal Register** on August 14, 2000, (65 FR 49632). On July 23, 2001, NHTSA published a notice in the **Federal Register** denying GM's petition (66 FR 38340), stating that the petitioner had not met its burden of persuasion that the noncompliance is inconsequential to motor vehicle safety.

GM appealed, and notice of the appeal was published in the **Federal Register** on April 2, 2002 (67 FR 15669). Opportunity was afforded for public comment until May 2, 2002. The only comment received was from Advocates for Highway and Auto Safety (Advocates). Advocates restated its previous position recommending that the agency deny the application.

GM manufactured 201,472 Buick Century and Buick Regal models between October 1998 and June 1999; some of whose headlamps did not meet the minimum photometric requirements for test points above the horizontal (intended for overhead sign illumination). GM tested ten pairs of headlamps and submitted photometric data with its original petition. The agency has reviewed this data from 2000 again and notes substantial evidence of noncompliance in this data. For the right side lamps, there was a total of 6 noncompliant test points (all upward). For the left side lamps, there was a total of 28 noncompliant test points (25 upward test points and 3 downward test points). While Standard 108 allows ¼ degree of re-aim for each test point to account for equipment variation, the data show that the left side lamps originally failed an additional 21 test points (12 upward and 9 downward) before passing through the use of re-aim.

GM unsuccessfully argued in its original petition that the test points at issue were intended to measure illumination of overhead signs and did not represent areas of the beam pattern that illuminate the road surface. GM also contended that a general ''rule of thumb'' implied that a 25% difference in light intensity is not significant to motor vehicle safety. The 25% rule of thumb cited by GM in its original petition has been applied to the observation of signal lamps, and not reflected light from lower beam headlamps.

In the notice denying GM's first application, the agency stated that the photometric minima above the horizon were added to headlighting performance requirements in the 1993 final rule for the purpose of ensuring that headlamps would sufficiently illuminate overhead signs. Because States were choosing to use retroreflectorized overhead signs rather than the more expensive self-illuminated ones, there was an increasing need for illumination of overhead signs. Without any test point minima specified, some manufacturers were designing headlamps that provided very little light above the horizontal. These photometric minima were established through a rulemaking proceeding. As part of that rulemaking, research by the Federal Highway Administration (FHWA) linking required sign detection distances needed to initiate proper motorist reactions to the overhead signs was considered. Based on this research, the FHWA had proposed photometric minima approximately double those that were established. In the final rule published January 12, 1993 [58 FR 3856], the agency indicated that the rulemaking addresses a safety issue, a conclusion also supported by the Society of Automotive Engineers (SAE) Beam Pattern Task Force. Specifically, SAE J1383 ''Performance Requirements for Motor Vehicles Headlamps'' was modified in June of 1990 to include the same photometric minima (the SAE document lists minima for inclusive test zones instead of just test points) adopted by this agency in the 1993 final rule.

In its appeal, GM stated the following to support its petition:

GM recently obtained and tested twenty-one pairs of headlamps from used 1999 Regal and Century vehicles built between August 1998 and March 1999. The 42 headlamps all exceed the minimum photometric requirements of FMVSS 108. This was true for the sign illumination test points as well as all other test points. The weathering of the lenses over the past two to three years accounts for this change in performance.

Because overhead sign illumination is affected by the output of both headlamps, GM asked two independent lighting research experts to analyze overhead sign illumination based on the test results of [a separate] ten pairs of [new, unused] headlamps. Their report shows that the combined sum of the illumination from any combination of two of those headlamps exceeds twice the minimum illumination from each headlamp required by FMVSS 108. The system light output, therefore, exceeds the implicit functional requirement of the standard.

GM concluded that the new data indicate that customers driving these vehicles are and have been experiencing no less than the amount of overhead sign illumination that FMVSS 108 requires. On this basis, GM argued the noncompliance is inconsequential and thus, GM requested NHTSA to reverse its earlier decision.

Advocates restated its previous opposition to granting the application. In its view, the issue is not whether the lamps eventually came into compliance, but whether they were compliant at the time of manufacture and sale. It asserts that GM's rationale is mooted by GM's own admission that the lamps were noncompliant at the time of manufacture. Advocates concludes that adoption of such a stance by the agency would render compliance with a standard contingent upon fortuitous, later in-service conditions.

After considering the arguments presented by GM, the comment of Advocates, and other relevant facts in this proceeding, we have decided to deny GM's appeal.

First, we believe that GM's argument about changed performance of the headlamps due to two or three years of weathering of the lenses is not relevant to whether the noncompliance is inconsequential to motor vehicle safety. Just as the issue of whether a vehicle complies, or does not comply, with a safety standard is determined based on the performance of the vehicle when it is new, the issue of whether a noncompliance is inconsequential to motor vehicle safety is determined based on the performance of the vehicle when it is new. However, we will consider the current performance of these headlamps in the context of whether it is appropriate to require GM to replace all of the noncompliant lamps.

Second, we do not accept GM's argument about combining values for the sign light test points on a set of lamps. GM did not present any evidence that sign light at a right side test point complements the light from a left side test point in the real world. The consultants cited by GM do not address this issue. Their report assumes that the lateral offset of the two lamps from each other is relatively small in relation to the distances at which traffic signs are typically viewed. Consequently, the report assumes that a given traffic sign will be located at only slightly different horizontal angles in relation to the left and right headlamp. However, GM did not present any data to justify this assumption in a real world testing environment, or to demonstrate that light from the right hand lamp is complementary to the intensities for sign light test points of a left hand lamp. Furthermore, the agency previously rejected the argument that other lamps can compensate for noncompliant lamps, in a denial of an inconsequentiality petition filed by Nissan in 1997.

In that denial [62 FR 63416], NHTSA rejected Nissan's argument that a bright Center High Mounted Stop Lamp (CHMSL) can compensate for a noncompliant stop lamp. The agency found that the Nissan noncompliance could lead drivers following the subject vehicles to mistake the dim stop lamps as tail lamps, increasing the risk of a crash.

In consideration of the foregoing, NHTSA has decided that the applicant has not met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety. Accordingly, GM's appeal is hereby denied.

Authority: (49 U.S.C. 30118(d) and 30120(h); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: January 5, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–500 Filed 1–9–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 4)]

Railroad Cost Recovery Procedures-Productivity Adjustment

AGENCY: Surface Transportation Board.

ACTION: Proposed adoption of a Railroad Cost Recovery Procedures productivity adjustment.

SUMMARY: The Surface Transportation Board proposes to adopt 1.022 (2.2%) as the measure of average change in railroad productivity for the 1998–2002 (5-year) period. The current value of 1.9% was developed for the 1997 to 2001 period.

DATES: Comments are due 15 day after the date of this decision.

EFFECTIVE DATE: The proposed productivity adjustment is effective 30 days after the date of service.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 290 (Sub-No. 4) to: Office of the Secretary, Case Control Branch, 1925 K Street, NW., Washington, DC 20423–0001. Parties should submit all pleading and attachments on a 3.5-inch diskette in WordPerfect 6.0 or 6.1 compatible format.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1533. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site *http://www.stb.dot.gov.* To purchase a copy of the full decision, write to, call, or pick up in person from the Board's contractor, ASAP Document Solutions, Suite 405, 1925 K Street, NW., Washington, DC 20006, phone (202) 293–7878. [Assistance for the hearing impaired is available through FIRS: 1–800–877–8339.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: January 6, 2004.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

[FR Doc. 04–547 Filed 1–9–04; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket Nos. AB–855 (Sub–No. 1X), and AB–847 (Sub–No. 2X)]

A & R Line, Inc.—Abandonment Exemption—in Cass and Pulaski Counties, IN; Toledo, Peoria & Western Railway Corporation—Discontinuance of Service, Exemption—in Cass and Pulaski Counties, IN

AGENCY: Surface Transportation Board.

ACTION: Notice to the Parties.

SUMMARY: The Surface Transportation Board's Section of Environmental Analysis is correcting the environmental assessment (EA) served on September 29, 2003. The correct length of the line sought to be abandoned and discontinued is 21 miles. All other information in the EA remains unchanged.

FOR FURTHER INFORMATION CONTACT: Kenneth Blodgett, (202) 565–1554. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: On September 29, 2003, the section of Environmental Analysis (SEA) served an environmental assessment (EA), which described the length of the line sought to be abandoned and discontinued as 15.9 miles. On December 23, 2003, Counsel for A&R Line, Inc., and the Toledo, Peoria & Western Railway Corporation (carriers) filed a ''Motion to Amend the Pleadings and Decisions and Hold Offer of Financial Assistance Process in Abeyance.'' [1] Included in the motion was a request for the Board to amend the pleadings and decisions to reflect the correct length of the line as 21 miles. According to the carriers, the pleadings contained incorrect information pertaining to the total mileage involved in this proceeding, and this misstatement of the mileage occurred because there are currently two milepost designations, Milepost 5.1W and Milepost 0.0, for the same location. Therefore, the EA should have stated that the line runs from Milepost 0.0, near Kenneth, to Milepost 21.0W, near Winamac, for a total distance of 21 miles. SEA considered the impact that the abandonment and discontinuance would have on the area between Kenneth and Winamac, which covered the full 21 miles of the line. Therefore, all other information in the EA remains unchanged.

Please correct your copies accordingly.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 6, 2004.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 04–548 Filed 1–9–04; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board is currently considering the motion.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–43 (Sub–No. 175X)]

Illinois Central Railroad Company—Abandonment Exemption—in Mobile County, AL

Illinois Central Railroad Company (IC) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1.03-mile line of railroad between milepost 3.67 and milepost 4.7 in Prichard, Mobile County, AL. The line traverses United States Postal Service Zip Code 36610.

IC has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 11, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

1152.29 must be filed by January 22, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 2, 2004, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to IC's representative: Michael J. Barron, Jr., Illinois Central Railroad Company, c/o CN, 455 North Cityfront Plaza Drive Chicago, IL 60611.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

IC has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by January 16, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), IC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by IC's filing of a notice of consummation by January 12, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 6, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–546 Filed 1–9–04; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 247X)]

Norfolk Southern Railway Company—Abandonment Exemption-in Mecklenburg County, NC

On December 23, 2003, Norfolk Southern Railway Company (NSR) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903–05 to abandon a segment at the end of its line of railroad known as the old R-Line. The 1.95-mile segment extends from Milepost old R–3.00 to Milepost old R–4.95, in Charlotte, Mecklenburg County, NC. The line traverses United States Postal Service ZIP Codes 28210 and 28217 and includes no stations.

In addition to an exemption from 49 U.S.C. 10903, petitioner seeks exemption from 49 U.S.C. 10904 [offer of financial assistance (OFA) procedures] and 49 U.S.C. 10905 [public use conditions]. In support, NSR states that the right-of-way has been conveyed to the City of Charlotte (City) for public purposes. As part of the transaction, NSR proposes to reclassify the track as industrial lead track, retain an easement over the reclassified track and enter into an operating agreement with the City, which will permit NSR to continue to provide rail service over the reclassified track. These requests will be addressed in the final decision.

The line does not contain Federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by April 9, 2004.

Any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption, unless the Board grants the requested exemption from the OFA process. Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Unless the Board grants the requested exemption from the public use provisions, any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than February 2, 2004. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–290 (Sub-No. 247X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) James R. Paschall, Norfolk Southern Corporation, Three Commerce Place, Norfolk, VA 23510. Replies to the petition are due on or before February 2, 2004.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 6, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–564 Filed 1–9–04; 8:45 am]

BILLING CODE 4915–00–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, February 2, 2004.

FOR FURTHER INFORMATION CONTACT: Virginia Patterson 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, February 2, 2004 from 8 a.m. Pacific Time to 11 a.m. 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 Virginia Patterson, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. The agenda will include the following: Various IRS issues.

Dated: January 6, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–584 Filed 1–9–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Research and Development Office; Government Owned Invention Available for Licensing

AGENCY: Research and Development Office, VA.

ACTION: Notice of government owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Robert W. Potts, Department of Veterans Affairs, Director Technology Transfer Program, Research and Development Office, 810 Vermont Avenue NW., Washington, DC 20420; fax: 202–254–0473; email at *bob.potts@hq.med.va.gov.* Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is: International Patent Application No. PCT/US03/23257 ''Method of Detecting and Preventing Alzheimer's Disease, Particularly at Prodromal and Early Stages.''

Dated: December 31, 2003.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

[FR Doc. 04–481 Filed 1–9–04; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 69, No. 7

Monday, January 12, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16408; Airspace Docket No. 03–ACE–76]

Modification of Class E Airspace; Plattsmouth, NE

Correction

In rule document 04–241 beginning on page 495 in the issue of Tuesday, January 6, 2004, make the following correction:

§ 71.1 [Corrected]

On page 496, in the third column in § 71.1, the heading **ACE NE 45 Plattsmouth, NE** should read **ACE NE E5 Plattsmouth, NE**.

[FR Doc. C4–241 Filed 1–9–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
January 12, 2004

Part II

Environmental Protection Agency

40 CFR Part 60

Amendments to Standards of Performance for New Stationary Sources; Monitoring Requirements; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[OAR–2003–0009, FRL–7604–9]

Amendments to Standards of Performance for New Stationary Sources; Monitoring Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates Performance Specification 11 (PS–11): Specifications and Test Procedures for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources, and Procedure 2: Quality Assurance (QA) Requirements for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources. The PS–11 and QA Procedure 2 will apply to sources that are required under an applicable regulation to use particulate matter continuous emission monitoring systems (PM CEMS) to monitor PM continuously. The PS–11 and Procedure 2 will help to ensure that PM CEMS are installed and operated properly and produce good quality monitoring data on an ongoing basis.

EFFECTIVE DATE: January 12, 2004.

ADDRESSES: Docket Nos. OAR–2003–0009 and A–2001–10 contain supporting information used in developing the final rule. The docket is located at the Air and Radiation Docket and Information Center in the EPA Docket Center, (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20460, telephone (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel G. Bivins, Emission Measurement Center (D205–02), Emissions, Monitoring, and Analysis Division, U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5244, electronic mail address *bivins.dan@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated Entities. The final rule applies to any facility that is required to install and operate a PM CEMS under any provision of title 40 of the Code of Federal Regulations (CFR). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established an official public docket for this action including both Docket ID No. OAR–2003–0009 and Docket ID No. A–2001–10. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to the final rule. Although a part of the official public docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B–102, 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 Air Docket is (202) 566–1742.

Electronic Access. Electronic versions of the documents filed under Docket No. OAR–2003–0009 are available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, select ''search'' and key in the appropriate docket identification number.

The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this document.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's document also will be available on the WWW. Following the Administrator's signature, a copy of this action will be posted at *http://www.epa.gov/ttn/oarpg* on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by March 12, 2004. Under section 307(d)(7)(B) of the CAA, only an objection to the final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

I. Introduction
II. Summary of Major Changes Since Proposal
A. Changes to PS–11
B. Changes to Quality Assurance (QA) Procedure 2
III. Summary of Responses to Major Comments
A. General
B. Performance and Applicability of PM CEMS
C. Instrument Selection
D. Isokinetic Sampling
E. Condensible PM
F. Instrument Location
G. Shakedown and Correlation Test Planning Period (CTPP)
H. Correlation Testing
I. Response Range
J. Reference Method Testing
K. Statistical Methods
L. Statistical Criteria
M. Routine Performance Checks
N. Auditing Requirements
O. Extrapolation of Correlation
P. Requirements for Other Types of Monitors
IV. Summary of Impacts
A. What are the impacts of PS–11 and QA Procedure 2?
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Introduction

The PS–11, Specifications and Test Procedures for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources, and

Procedure 2, Quality Assurance Requirements for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources, were first published in the **Federal Register** on April 19, 1996 (61 FR 17358) as part of the proposed Hazardous Waste Combustion MACT standard. The PS–11 and Procedure 2 were published again on December 30, 1997 (62 FR 67788) for public comment on revisions made to these procedures. Since then, we have continued to learn about the capabilities and performance of PM CEMS through performing and witnessing field evaluations and through discussions with our European counterparts.

Additional experience with the procedures of PS–11 and Procedure 2 led us to propose these further revisions, which were published on December 12, 2001 (66 FR 64176). Today's final rule builds upon that proposal and reflects the changes we have made to PS–11 and Procedure 2 in response to the additional comments we received on the December 2001 proposal.

II. Summary of Major Changes Since Proposal

A. Changes to PS–11

1. Instrument Selection

Several changes were made to the requirements of PS–11 regarding the selection of instruments. Sections 4.2 and 6.1(1) of the proposed PS–11 required owners and operators of affected sources using extractive PM CEMS to heat the extracted samples of the exhaust gas to the same temperature specified by the reference method. In the final PS–11, we are changing this requirement to a recommendation. In Section 4.3, we also changed from a requirement to a recommendation that owners and operators use a measurement technology that is free from interferences. In that same section, we deleted the phrase regarding duct flue gas conditions.

We are no longer requiring in Section 6.1(3) that extractive PM CEMS used on sources with varying volumetric flow rates maintain isokinetic sampling. We still recommend isokinetic sampling in such installations. Furthermore, we changed Section 6.1(3) to allow owners and operators of extractive PM CEMS in applications with varying flow rates to use data from similar facilities to demonstrate that isokinetic sampling is unnecessary. In the proposed PS–11, data from similar facilities could not be used; only site-specific data could be used for such demonstrations.

Several changes were made to Section 8.1 of PS–11 regarding instrument selection. In the proposed PS–11, Section 8.1 stated that owners or operators must select a PM CEMS that is most appropriate for the source, considering the source operating conditions. We have revised the rule to state that owners or operators should select an appropriate PM CEMS for the source. This change also is reflected in Sections 2.4(1) and 6.0 of the final rule. We changed from a requirement to a recommendation in Section 8.1(1)(ii) that extractive PM CEMS sample at the reference method filter temperature. We also changed from a requirement to a recommendation in Section 8.1(5) that owners or operators consult with instrument vendors to obtain basic recommendations on instrument capabilities and installation.

2. Instrument Location

With respect to stratification, Section 2.4(2) of the proposed PS–11 recommended performing a PM profile test if PM stratification was likely to be a problem. In addition, owners or operators would have been required to relocate the PM CEMS or eliminate stratification if the stratification varies by more than 10 percent. In the final PS–11, we have eliminated the reference to profile testing and the requirement for either relocating the CEMS or resolving the stratification issue. We also have deleted the requirement from Section 8.2(2) that owners or operators relocate the CEMS if failure to meet the correlation criteria is due to a location problem that cannot be corrected.

3. Pretest Preparations

In Section 8.4 of the proposed PS–11, owners and operators of PM CEMS would have been required to conduct a shakedown period and a correlation test planning period (CTPP) prior to correlation testing. Although we continue to recommend that you conduct shakedowns and CTPPs, the final PS–11 does not require them. Instead of a formal shakedown period, the final rule recommends that owners and operators familiarize themselves with the operation of the CEMS prior to correlation testing. The elimination of shakedown periods also is reflected in Section 2.4(5) of the final rule, and the requirement regarding interruption of shakedown periods, specified in Section 8.4(1)(ii) of the proposed rule, has been deleted.

Section 8.4(1)(i) of the proposed PS–11 required owners or operators to conduct daily drift checks during the shakedown period. In the final rule, daily drift checks are recommended rather than required during the pretest preparation period when owners and operators familiarize themselves with the operation of the CEMS.

With the elimination of CTPPs as a required pretest activity, we have deleted certain requirements that applied specifically to the CTPP. For example, we deleted the requirement to produce permanent records of 15-minute average PM CEMS responses that would have been required in Section 8.4(2) of the proposed PS–11, as well as the requirements in Sections 8.4(2)(ii) and (iii) of the proposed rule that data recorders record PM CEMS responses during the full range of routine process operating conditions and that owners or operators establish the relationship between operating conditions and PM CEMS response. We also have deleted the requirement in Section 8.4(3) of the proposed PS–11 that owners or operators set the response range of the PM CEMS so that the highest observed response is within 50 to 60 percent of the maximum output. Instead, the final PS–11 requires owners and operators to set the response range to whatever range is appropriate to ensure that the instrument will record the full range of responses likely during the correlation test. We also have revised Section 2.2(2) of the final rule to reflect this change.

The proposed PS–11 required owners or operators to perform a 7-day drift check at the end of the CTPP. Although we have eliminated the requirement for CTPPs, the final PS–11 still requires owners or operators to successfully complete a 7-day drift test prior to correlation testing. We have also revised Section 8.5(1), which explains the purpose of the 7-day drift test.

4. Correlation Testing

Sections 2.2(2), 2.4(7), and 6.3 of the proposed PS–11 required correlation testing over the range of emissions established during the CTPP. Because PS–11 no longer requires CTPPs, we revised these sections to require correlation testing over the full range of normal process and control device operating conditions. We also deleted the requirement in Section 8.6 to conduct correlation testing while the source is operating as it did during the CTPP.

Sections 2.4(7) and 8.6(1)(i) of the proposed PS–11 would have required paired sampling trains during all correlation tests. Although we highly recommend paired sampling trains, PS–11 no longer requires correlation tests to be performed using paired trains. We also have deleted from Sections 2.4(7) and 8.6(1)(ii) the requirement that data pairs meet certain criteria for precision and bias, because those criteria would

apply specifically to paired data, and we are no longer requiring paired trains. We plan to address data precision and bias in guidance materials at a later date.

Sections 8.2(4) and 8.4(4) of the proposed PS–11 suggested using a bypass as a means of increasing PM emissions during correlation testing. In the final PS–11, we have eliminated any reference to bypassing control devices for this purpose. However, we have included PM spiking as an option for increasing PM emissions during correlation tests. We also have revised Section 8.6(5) to clarify how owners or operators should obtain zero point data during correlation tests.

Finally, we have changed the requirements in Section 8.6(3) regarding the selection of test runs for developing the correlation. In the proposed PS–11, owners or operators could reject the results of test runs only if the basis for rejecting the data was specified in the reference method, PS–11, QA Procedure 2, or in the facility's QA plan. In the final PS–11, up to five test runs can be rejected without an explanation for the rejection, provided that the results of at least 15 valid test runs are used to develop the correlation. If more than five test runs are rejected, the basis for rejecting those additional runs (*i.e.*, those in addition to the first five rejected runs) must be reported.

5. Extrapolation of Correlation

Section 8.8(1) of the proposed PS–11 addressed the limits for extrapolating the correlation equation before additional correlation testing would be required. The maximum allowable extrapolation under the proposed rule would have been 125 percent of the highest PM CEMS response used to develop the correlation curve. If that 125 percent limit was exceeded for three consecutive hours, three additional correlation tests runs would have been required. We have changed the time period that triggers this additional correlation testing. In the final PS–11, additional correlation testing is required only after the 125 percent value has been exceeded for 24 consecutive hours, or a period of cumulative hours that exceeds 5 percent of the total valid operating hours for the previous 30 days, whichever occurs first. In addition, we have clarified in Section 8.8(1) of the final PS–11 that additional testing is required only when the 125 percent limit is exceeded while the source and control device are operating under normal conditions. In any case, Section 8.8(3) of the final PS–11 requires owners and operators to report the reason why the 125 extrapolation limit was exceeded.

We have revised PS–11 to include a special provision for low emitting-sources that emit no more than 50 percent of the emission limit. For such cases, Section 8.8(4) of the final PS–11 allows extrapolation up to the response value that corresponds to 50 percent of the emission limit or 125 percent of the highest PM CEMS response used to develop the correlation curve, whichever is greater. Finally, in the event additional correlation testing is required, we have revised Section 8.8(2)(i) of the final PS–11 to extend the deadline for completing the testing and developing a new correlation equation from 30 to 60 days.

6. Statistical Methods and Criteria

In Section 12.3 of the final PS–11, we have clarified that, if paired testing is performed, paired reference method data should not be averaged, but should be treated individually in developing the correlation. In such cases, at least 15 sets of reference method and PM CEMS response data are still required, although for each PM CEMS response there will be two reference method data points, one for each of the two paired sampling trains.

We also have reorganized and made several other changes to Section 12.3. In the proposed PS–11, three types of correlation models were addressed: linear, polynomial, and logarithmic. The final rule specifies procedures for evaluating five types of correlation models; in addition to the linear, polynomial, and logarithmic models, we have added procedures for evaluating exponential and power correlation models. We also have made changes regarding the calculations needed for evaluating correlation equations. In the proposed PS–11, equations were presented for calculating confidence and tolerance intervals. For example, Equation 11–11 of the proposed rule defined the confidence interval in terms of the quantity $\hat{y} \pm CI$, where $\hat{y}$ is the predicted PM concentration, and CI is the confidence interval half range. However, the confidence interval performance criterion was presented in terms of the confidence interval half range as a percentage of the emission limit and not in terms of the confidence interval itself. Consequently, we have eliminated the requirement to calculate confidence intervals. For the same reason, we eliminated the requirement to calculate tolerance intervals. In the final rule, owners or operators of affected PM CEMS must calculate the confidence interval half range and tolerance interval half range, but are not required to calculate the confidence and tolerance intervals.

We also have changed the PM CEMS response values at which the confidence and tolerance interval half ranges are calculated. In the proposed PS–11, owners or operators would have been required to calculate the confidence and tolerance interval half ranges at the median PM CEMS response (x) values. The preamble to the proposed rule mistakenly indicated that the confidence and tolerance interval half ranges are smallest at the median x value. However, that statement is correct only for exponential and power correlations. In the final PS–11, the x value for calculating confidence and tolerance interval half ranges depends on the type of correlation. For linear correlations, the confidence and tolerance interval half ranges must be calculated at the mean x value. The confidence and tolerance interval half ranges for polynomial correlations must be calculated at the x value that corresponds to the minimum value of the variable delta (Δ), which is defined by Equation 11–25 of the final PS–11. For logarithmic correlations, the confidence and tolerance interval percentages must be calculated at the mean of the log-transformed x values. For exponential and power correlations, the confidence and tolerance interval percentages must be calculated at the median x and log-transformed x values, respectively. These x values represent the points at which the confidence and tolerance intervals are smallest or narrowest. We also have reflected these changes in Section 2.3 of the final PS–11, which specifies general correlation data handling requirements, and in Section 13.2, which specifies the performance criteria for confidence and tolerance intervals. In addition, we have added a new section 12.4 to the final PS–11 to specify procedures for selecting the best correlation model.

We deleted the example correlation calculations presented in Section 18.0 of the proposed PS–11. We will provide example calculations for all five correlation models in the next revision to Current Knowledge of Particulate Matter (PM) Continuous Emission Monitoring, EPA–454/R–00–039 (PM CEMS Knowledge Document), which will be revised periodically to incorporate additional guidance, example calculations, and other information that will help in understanding and complying with PS–11 and QA Procedure 2.

Finally, we have included in Section 13.2 a provision for low-emitting sources to meet a lower correlation coefficient. In the final rule, a low-emitting source must meet a minimum correlation coefficient of 0.75 rather

than the 0.85 value required for sources that are not low-emitting.

7. Other Changes

Section 2.4(4) of the proposed PS–11 addressed recordkeeping requirements for PM CEMS maintenance and performance data. We have deleted this section in the final PS–11 because recordkeeping requirements are already addressed, in detail, in the general provisions to parts 60, 61, and 63, and in most, if not all, applicable rules.

B. Changes to Quality Assurance (QA) Procedure 2

1. Precision and Bias

Sections 10.1(3) and (4) of the proposed QA Procedure 2 specified precision and bias requirements for paired reference method sampling trains. Because the final PS–11 does not require paired sampling trains, we have removed the precision and bias criteria from QA Procedure 2. For the same reason, we also have deleted Section 12.0(5), which addressed relative standard deviation, the parameter for assessing paired data precision.

2. Quality Control (QC) Program

Section 9 of QA Procedure 2 addresses QC measures. We have added Section 9.0(8) to the final rule to require owners and operators to include in their QC programs written procedures for checking extractive duct systems for material accumulation when extractive PM CEMS are used.

3. System Checks and Audits

We made several changes to Section 10.3 of QA Procedure 2 regarding periodic audits. To ensure consistency in the organization of the section, we renumbered some of the paragraphs. We changed the required frequency of relative response audits (RRAs) from once every four quarters to the frequency specified in the applicable rule. In addition, we clarified that an RRA can be substituted for an absolute accuracy audit (ACA) during any quarter. Likewise, we clarified that a response correlation audit (RCA) can be substituted for an ACA or an RRA to satisfy the required auditing frequency. In Section 10.3(2)(iii) of the final QA Procedure 2, we deleted the requirement that owners and operators obtain audit samples from instrument manufacturers or vendors.

We made two changes to the acceptance criteria for RCAs. In Section 10.3(5)(ii) of the proposed QA Procedure 2, we required all 12 of the PM CEMS responses to fall within the range of PM CEMS responses used to develop the initial correlation. In the final QA Procedure 2, we relaxed this requirement somewhat. We still require all 12 PM CEMS responses to be no greater than the highest response used to develop the correlation curve. However, in Section 10.4(5) of the final rule, we allow three of the PM CEMS responses to fall below the range of responses used to develop the initial correlation curve. We made a similar change to the acceptance criterion for RRAs. In Section 10.4(6) of the final rule, the three PM CEMS responses for the RRA must be no greater than the highest PM CEMS response used to develop the initial correlation, but one of the three points may fall below that range of responses used to develop the initial correlation.

Finally, we changed Equation 2–4 of Section 12.0(4), which is used to determine sample volume audit accuracy. In the proposed QA Procedure 2, we changed the denominator of Equation 2–4 from the sample gas volume measured by the independent calibrated reference device to the full scale value.

III. Summary of Responses to Major Comments

A. General

Comment: One commenter stated that EPA's fundamental approach for PM CEMS is too complex and costly. The commenter noted that the requirements for PM CEMS place too much emphasis on reporting emissions in units directly comparable to the emission standard. According to the commenter, this approach results in a ''research-and-development effort.'' He noted that EPA's objective should be to establish a process whereby the owner or operator develops an understanding of how PM CEMS operate and the relationship among instrument response, process and control device operating parameters, and emissions. At that point, the owner/operator can use that information to reduce PM emissions. As proposed, PS–11 and QA Procedure 2 require such an understanding (by means of the shakedown and correlation test planning period) as a precursor to establishing a stringent statistical correlation between PM CEMS response and emissions. The commenter believes that the approach should be to use PM CEMS as a relative indicator of emissions rather than to attempt to achieve a precise correlation between PM emissions and PM CEMS response over the entire range of source operations.

Response: The purpose of PM CEMS is to quantify PM emissions as accurately and precisely as possible to ensure compliance with the applicable PM emission limits. To meet this objective, we must incorporate into PS–11 and QA Procedure 2 procedures for ensuring that PM CEMS are installed, operated, and maintained properly. Although this necessitates complexity, we have taken steps to minimize the complexity of PS–11. In the final PS–11, we have simplified or eliminated several of the requirements specified in the proposed rule regarding instrument selection and location, correlation test preparation, and correlation test procedures. We also have reorganized and simplified the statistical procedures for developing the correlation equation, as well as incorporating additional flexibility into the types of correlation models that can be developed. We have published guidance on the selection and use of PM CEMS in the PM CEMS Knowledge Document, which may be revised periodically to incorporate additional guidance, example calculations, and other information that will help in understanding and complying with PS–11 and QA Procedure 2.

With respect to cost, we believe that the cost of installing and operating a PM CEMS is relative to the application, and some applications will be more costly than others. However, we account for the costs of any required monitoring systems, such as PM CEMS, when we evaluate the compliance costs for a specific rulemaking that requires those monitoring systems.

Finally, we would like to point out that PS–11 and QA Procedure 2 do not specify the compliance scenario. Although this rulemaking is intended to apply to the monitoring of PM emission limits for compliance purposes, we recognize the advantages of using PM CEMS as an indicator of compliance for sources subject to 40 CFR 64 (Compliance Assurance Monitoring Rule) and other applications. Neither PS–11 nor QA Procedure 2 prohibit the use of PM CEMS as indicators of control device operation or emission levels. Furthermore, an owner or operator would not necessarily have to comply with PS–11 or QA Procedure 2 in a case where a PM CEMS is used as an indicator of control device performance or emissions.

Comment: One commenter stated that the requirements of PS–11 and QA Procedure 2 focus primarily on establishing enforcement opportunities by holding owners and operators responsible for factors that are beyond their control. To support this contention, the commenter referenced Section 8.1 of PS–11, which requires owners/operators to select a PM CEMS

''* * * that is most appropriate for your source.'' The commenter believes that, for a specific source, the most appropriate instrument may not be known until after one or more instruments have been selected and placed into operation. The commenter also cited Section 2.3 of PS–11, which addresses situations in which multiple correlations may be required. The commenter noted that, in both of these examples, the enforcement action would not depend on whether the control device is operating properly or emissions are exceeded. Instead, the enforcement action focuses on the type of instrument selected and the variability of emissions (which would require multiple correlations).

Response: We agree that some enforcement actions associated with PS–11 may not necessarily depend on control device operation or emission levels. However, in this respect, PS–11 is similar to other performance specifications, such as PS–1, which specify the requirements that monitoring systems must meet. Individually, some of those requirements may not be directly related to the operation of a control device or emission levels, but, as a whole, the requirements help to ensure the proper operation of the monitoring system and the quality of the data generated by the monitoring system.

With respect to the requirement of the proposed Section 8.1 of PS–11 cited by the commenter, we have revised that section to state that owners and operators ''* * * should select a PM CEMS that is appropriate. * * * '' We believe this revised language allows for more flexibility in instrument selection. Although there may still be some trial and error involved in selecting an instrument, there are several PM CEMS technologies available, and some instruments clearly are more appropriate than others for certain applications.

The requirement of Section 2.3 of the proposed rule regarding multiple correlations is meant to address sources with different operating modes that result from variations in operating parameters such as process load, charge rates, or feed materials. In such cases, there may be significant differences in PM emissions characteristics for the different source operating modes to the extent that a single correlation cannot satisfy all of the criteria specified in PS–11. We also would like to point out that PS–11 allows for, but does not require, multiple correlations. In the event that multiple correlations are needed, Section 2.3 simply requires that sufficient data be collected. By allowing multiple correlations under such a scenario, PS–11 provides the owner or operator flexibility in complying with the rule. Therefore, we disagree with the comment that Section 2.3 simply focuses on establishing enforcement opportunities.

Comment: One commenter observed that several requirements in PS–11 and QA Procedure 2 require adherence to manufacturer's recommendations. He stated that those recommendations may conflict with regulatory requirements or good engineering practice. He believes that following manufacturer's recommendations cannot be a requirement unless EPA reviews and approves those recommendations. He noted that, regardless of how well EPA may understand the procedures currently recommended by existing manufacturers, new manufacturers can enter the market at any time, and they are not subject to regulation by EPA.

Response: We agree with the commenter and have eliminated those specific requirements that owners and operators follow the recommendations of the instrument manufacturer or vendor. We believe that it is prudent to consider those recommendations, but owners or operators of affected sources must determine what is most appropriate for their specific installation.

B. Performance and Applicability of PM CEMS

Comment: Four commenters commented that EPA has not demonstrated that PM CEMS can meet PS–11 and QA Procedure 2 on a consistent basis. They noted that sources, such as cement kilns, with low to moderate condensible PM will have particular difficulty complying with the rule. In addition, they commented that the basis for EPA's conclusion on the suitability of PM CEMS is largely from demonstrations and tests performed on hazardous waste combustors, which are characterized by wet control systems and exhaust temperatures below the temperature range within which most condensible matter nucleates. Consequently, those tests are not representative of cement kilns or other sources for which condensible PM is a significant concern. They also noted that condensible PM emissions for the cement industry are dependent on raw materials and are highly variable, making it less likely that correlation relationships will remain stable for cement kilns. The commenters suggested that EPA continue specifying opacity monitors as the technology for demonstrating compliance with PM emission limits.

Response: Based on the results of the field studies, PS–11 and QA Procedure 2 have been modified to account for performance issues discovered during the field studies. For example, regarding the issue of condensible PM, the proposed rule eliminated the requirement for correlation testing using only EPA Method 5I. Instead, PS–11 now specifies that the correlation test be conducted using the same reference method required by the applicable rule, thereby minimizing the effects condensible PM could have on PM concentrations when one method is used to demonstrate compliance and a different method is use to develop the PM CEMS correlation. To further address concerns with characterizing exhaust streams that contain condensible PM, we also have included in PS–11 the recommendation that the PM CEMS be maintained at the reference method filter temperature. We made this recommendation because PM CEMS that measure samples at conditions that are different than the sampling conditions specified in the reference method may not correlate well with reference method data. Maintaining the measurement conditions of the PM CEMS at the reference method filter temperature eliminates one of the factors that can adversely impact the correlation between PM CEMS responses and reference method measurements.

Although we did rely on field demonstrations on hazardous waste combustors to develop the requirements of PS–11, we believe that the PM CEMS field demonstrations completed to date encompass a range of operating conditions and emission characteristics that extend beyond those typical of the hazardous waste combustion industry. We also have provided guidance on the selection and applicability of PM CEMS. We do not rule out the possibility that PM CEMS may not be appropriate for certain source operating conditions or emission characteristics. However, the purpose of PS–11 and QA Procedure 2 is not to define the applicability of PM CEMS, but to establish basic requirements that will help to ensure that PM CEMS produce high-quality data on a consistent basis. The applicability of PM CEMS to specific sources and source categories must be established under the applicable rule, and it may be necessary to incorporate industry-specific criteria in rules that require the use of PM CEMS for compliance monitoring.

Regarding the use of opacity monitors for demonstrating compliance with PM emission limits, we believe that opacity monitors are reliable indicators of

compliance with opacity limits and we will continue to require continuous opacity monitoring systems for certain rules that establish opacity limits. However, for rules that establish PM emission limits, we believe that PM CEMS are the appropriate technology for compliance monitoring.

Comment: One commenter remarked that using PM CEMS has not been demonstrated to be a technically sound compliance method and suggested additional field testing be performed before PM CEMS are required in a rulemaking. Another commenter stated that PM CEMS should not be used as a compliance tool until there is a better understanding of their operation and limitations. A third commenter stated that EPA's evaluations do not support EPA's conclusions regarding the reliability of PM CEMS. The commenter noted that the performance of PM CEMS is mixed, at best, and instrument operation and calibration is a difficult and time-consuming task. The same commenter stated that PM CEMS are not appropriate compliance monitors because, unlike other CEMS, PM CEMS do not provide a direct measurement of the target pollutant (*i.e.*, PM). The commenter also remarked that the fact that PM CEMS require a shakedown period is further indication that PM CEMS are not acceptable for compliance demonstrations. The commenter noted that shakedowns and CTPPs are not required for other types of CEMS, such as continuous nitrogen oxide (NO_X) and sulfur dioxide (SO_2) monitors.

Response: We acknowledge that problems have been encountered in our field studies of PM CEMS. However, we have used the results of those field studies to modify PS–11 and QA Procedure 2 to account for the performance issues observed during the studies. For example, we have made changes that apply to sources characterized by condensible PM and incorporated procedures for developing other types of correlation models not previously addressed in PS–11. We agree with the comment that developing the correlation can be complex and time-consuming. With regard to the acceptability of PM CEMS for compliance determinations, the purpose of PS–11 is not to specify how compliance with an applicable emission limit is to be determined; the purpose of PS–11 is to specify procedures for obtaining the best correlation for using a PM CEMS to characterize PM emissions, and to ensure that PM CEMS are installed and operated properly. The applicability of PM CEMS for determining compliance with an emission limit, as well as the procedures for determining compliance using PM CEMS, must be specified by the applicable rule.

We disagree with the commenter that the proposed requirements for a shakedown and CTPP are an indication that PM CEMS are unreliable or inappropriate as a compliance monitor. We proposed requiring a shakedown and CTTP because PM CEMS are a relatively new technology for many industries, and many operators are unfamiliar with their operation. In such cases, a shakedown and CTPP allows time for the operator and other personnel to become familiar with the operation of the instrument and to facilitate the correlation test. Although we still recommend that facilities conduct a shakedown and/or CTPP, we have eliminated these periods as requirements in PS–11.

Comment: Two commenters stated that PM CEMS technology is not ready for use by hazardous waste combustors to demonstrate compliance with PM emission standards. One of the commenters stated that PM CEMS installed on hazardous waste combustors will result in additional automatic waste feed cutoffs that are unrelated to the stability of the combustion process. The other commenter pointed out the difficulties with the PM CEMS that were tested at the EPA-sponsored field study in Battleboro, North Carolina; he believes that PM CEMS used to monitor emissions from commercial incinerators would have even more difficulty because of the greater variability in feedstocks when compared to the coal-fired boiler that was tested at Battleboro.

Response: We disagree with the commenters that PM CEMS technology are unsuitable for use as compliance monitors for the hazardous waste combustor industry. The DuPont Field Study demonstrated the effective use of several PM CEMS instruments on a hazardous waste combustor. A more recent study at the Department of Energy facility in Oak Ridge, Tennessee, provides another successful demonstration of a PM CEMS on a hazardous waste incinerator.

We acknowledge that there were some difficulties with the PM CEMS that were tested during the Battleboro Field Study. However, those difficulties were primarily the result of the sampling location rather than variations in emission characteristics or the reliability of the PM CEMS instruments tested.

Comment: One commenter commented that PM CEMS should not be required for facilities with low PM levels. He noted that the objective of protecting human health and the environment can be better achieved by controlling key operating parameters; installing and maintaining a PM CEMS on a well-designed and well-operated incinerator would be costly and difficult without actually reducing emissions. The commenter suggested allowing facilities to test at worst-case conditions and not requiring PM CEMS if the source operates consistently at some fraction of the emission standard (*e.g.*, 40 percent).

Response: The purpose of PS–11 and QA Procedure 2 is not to define the applicability of PM CEMS, but to establish basic requirements that will help to ensure that PM CEMS produce high-quality data on a consistent basis. The applicability of PM CEMS to specific sources and source categories must be established under the applicable rule. Therefore, we do not believe it is appropriate to specify in PS–11 the types of sources to which PS–11 should apply. However, we agree with the commenter that some provisions should be included in PS–11 for low-emitting sources because less accuracy and precision are needed in such applications. To this end, we have incorporated into the final rule a provision for allowing a greater extrapolation of the correlation curve and a lower correlation coefficient for sources that emit no more than 50 percent of the emission limit.

Comment: One commenter concluded that PM CEMS are not suitable for determining compliance, but instead should be used as an indicator of compliance. To support this conclusion, he pointed to the results of Battleboro Field Study. He noted that, after having met the criteria for the initial correlation, all three instruments that were tested failed to meet the RCA criteria specified in QA Procedure 2. When a second RCA was performed, all three instruments again failed to meet the QA Procedure 2 criteria. The commenter also stated that the Battleboro results demonstrated that different PM CEMS calibrated at the same time using the same reference method gave different results. The responses for the two light-scattering instruments tracked each other well and gave similar results. However, when the results for the beta gauge instrument were compared to the light-scattering instrument results, more scatter was seen, indicating differences in how the two types of instruments respond to varying particle size and/or sampling location. One instrument could show a source to be in compliance, while another PM CEMS sampling the same exhaust stream could show the same

source to be out of compliance. Consequently, the commenter suggested that PM CEMS be used as an indicator of compliance rather than as a compliance monitor. He believes that correlation tests should not be required when a source operates below 40 percent of the emission limit and below the emission limit minus 10 mg/dscm. Instead, correlation tests should be optional, provided emission levels remain below these two levels (*i.e.*, no more than 40 percent of the emission limit and at least 10 mg/dscm below the emission limit). If testing is performed, three runs should be adequate. Furthermore, a straight linear relationship should be used to estimate emissions. The relationship would be defined by the line from zero to the average of the three test runs. Additional correlation test runs should be required only if sustained emission levels exceed the level of the emission limit minus 10 mg/dscm. If additional tests are performed, three runs should be adequate.

Response: We believe that the problems encountered in the Battleboro Field Study regarding the failure of the instruments to meet the RCA criteria were due to the sampling location and the resulting stratification of the exhaust stream. Other field studies have demonstrated that PM CEMS can meet the RCA criteria when the sampling location is not a problem. We believe that the differences in the responses of the light-scattering and beta gauge instruments can be expected, given that light-scattering and beta gauge instruments operate on different physical principles. For a specific application, the correlation equation developed for each instrument takes into account these differences.

Regarding the use of PM CEMS data as indicators, PS–11 and QA Procedure 2 do not prohibit the use of PM CEMS as indicators of control device performance or emission levels to satisfy the requirements of part 64. In such applications, the owner or operator of an affected source can propose the approach for selecting the appropriate indicator range that would trigger corrective action and reporting.

Finally, although we do not agree with the commenter's specific suggestions regarding low-emitting sources, we have incorporated into the final rule provisions for low-emitting sources. Specifically, the final PS–11 allows for a lower correlation coefficient criterion and a larger allowable extrapolation range for PM CEMS responses for sources that emit relatively low levels of PM.

C. Instrument Selection

Comment: Four commenters stated that Sections 4.2 and 6.1(1) of PS–11 require that PM CEMS installed downstream of a wet air pollution control device be equipped with heated sample extraction lines. However, the commenters noted that EPA has not demonstrated that instruments so equipped can meet the requirements of PS–11 and QA Procedure 2.

Response: Although we continue to believe that heated sample extraction lines are recommended in such installations, we have decided to eliminate this requirement from PS–11. We have no reason to believe that heated sample lines would prevent PM CEMS from meeting the requirements of PS–11 and QA Procedure 2. However, we also recognize that owners and operators are ultimately responsible for compliance and should have flexibility in determining an appropriate instrument and configuration for their specific application.

Comment: One commenter pointed out that Section 8.1(1) requires selection of a PM CEMS that is appropriate for the PM characteristics and flue gas conditions at the source, but does not specify how owners or operators of the source are to determine which monitor is acceptable for their site-specific conditions. The commenter indicated that there are no EPA-approved tests for determining if PM characteristics are variable. The commenter also knew of no PM CEMS vendors who would acknowledge that their instrument was appropriate for variable PM characteristics or who would guarantee the performance of their instrument in applications with variable PM characteristics. In reference to this same requirement, four other commenters stated EPA has not demonstrated that there are appropriate PM CEMS for sources with routine variations in particle size distribution. As a result, industry must conduct instrument-oriented research to find the appropriate monitor. One commenter also remarked that there might not be an instrument available that ''responds appropriately'' to the flue gas conditions for a specific source.

Response: In response to this concern, we have decided to change the wording of this section of PS–11 from a requirement to a recommendation that owners and operators select a PM CEMS that is appropriate for the source and emission characteristics. As mentioned previously, guidance on instrument selection can be found in the PM CEMS Knowledge Document. We believe that document can be a valuable tool in selecting an appropriate PM CEMS technology for a specific type of source. As we become aware of additional information that will help in selecting the appropriate PM CEMS technology, we plan to update the guidance accordingly.

D. Isokinetic Sampling

Comment: Four commenters stated that, by requiring extractive instruments to sample isokinetically, PS–11 would preclude the use of several instruments that sample superisokinetically. Designing an instrument to sample superisokinetically enables the instrument to handle larger changes in flow rate without having to adjust continuously to maintain isokinetic sampling. The commenters pointed out that the error due to superisokinetic sampling is accounted for during instrument calibration. One of the commenters explained that, when a sample is extracted subisokinetically, the sampling system collects additional large particles, resulting in a response that is biased high. However, when sampling is superisokinetic, the response is biased low because a portion of the larger particles bypass the probe. When sampling at 150 percent isokinetic, as do the instruments manufactured by the commenter's company, the error that results from a 10 percent change in volumetric flow rate amounts to 4 percent. Furthermore, if the particle size distribution in the gas stream is relatively constant, the correlation equation accounts for this error. Another commenter pointed out that the error due to superisokinetic sampling is smaller for gas streams that have smaller sized particles, as is characteristic of most current emission control technologies. The commenter also noted that field studies on hazardous waste combustors have demonstrated that extractive PM CEMS that sample isokinetically continuously try to compensate for flow rate fluctuations and have trouble reaching steady state. Finally, six commenters supported the requirement for isokinetic sampling specified in PS–11. One of the commenters pointed out that the effect of nonisokinetic sampling was evident at a field study conducted by the Electric Power Research Institute; after the sampling system was adjusted to sample isokinetically, the performance of the instrument changed significantly. He noted that the argument for allowing nonisokinetic sampling is based on the assumption that particle size and size distribution remain constant, but he believes that the particle size distribution does not remain constant,

regardless of the air pollution control device used.

Response: We agree with the commenters that, provided that PM size is relatively small and particle size distribution does not change significantly, the correlation would account for any significant errors that might result from sampling above isokinetic conditions. However, we continue to believe that isokinetic sampling is necessary when those particle size conditions are not met. Consequently, we have decided to modify the requirements for isokinetic sampling. In the proposed PS–11, Section 6.1(3) allowed a waiver of the requirement for isokinetic sampling if the owner or operator provided site-specific data that show that isokinetic sampling is unnecessary. We have revised this provision to allow the use of data from other similar installations to demonstrate that isokinetic sampling is not warranted. In the event that data from a similar installation are not available, the owner or operator would have to provide site-specific data that demonstrate why it would not be necessary to sample isokinetically. We plan to address this issue more comprehensively in the PM CEMS Knowledge Document.

Comment: Two commenters agreed with the provision in Section 6.1(3) of PS–11 that waives the isokinetic sampling requirement for extractive PM CEMS if the owner or operator provides site-specific data that show that isokinetic sampling is not necessary. However, four commenters commented that this provision in PS–11 was too vague. Two commenters suggested that isokinetic sampling should not be a requirement if the resulting error is less than a specified amount (*e.g.*, less than 10 or 20 percent). Another commenter stated that PS–11 should allow for an owner or operator to conduct a particle size distribution test, and, if the data indicate that the particle sizes are within certain limits, isokinetic sampling should not be required. Another commenter stated that isokinetic sampling should not be required for instruments with proven sampling systems. One commenter indicated that subisokinetic sampling should be allowed without having to demonstrate that there is no significant bias in the response. Four commenters suggested that the provision for allowing site-specific approval of nonisokinetic extractive instruments be revised to allow consideration for particle size distribution. If the owner or operator could demonstrate that 90 percent of the PM mass is less than 10 micrometers in aerodynamic diameter, nonisokinetic sampling would be allowed.

Response: As stated in our previous response to the issue of isokinetic sampling, we have modified PS–11 to allow owners or operators to use data from a similar installation to demonstrate that isokinetic sampling is unnecessary. We appreciate the commenters' suggestions for how this demonstration of acceptability can be accomplished (*e.g.*, by showing the resulting error is less than some specified amount, or by using particle size distribution data). However, we want to avoid being overly prescriptive in what owners and operators can do to satisfy this requirement. Therefore, we have decided against providing specifics on this demonstration of acceptability for instruments that do not sample isokinetically. However, we plan to provide additional information on this issue in the PM CEMS Knowledge Document.

E. Condensible PM

Comment: One commenter supported the requirement, specified in Section 8.1(i) of PS–11, that extractive PM CEMS must sample at the reference method temperature. The commenter stated that sampling at the reference method temperature eliminates the possibility of creating or destroying PM and eliminates the introduction of bias into the correlation procedure and PM CEMS measurements. However, six commenters stated that this requirement will preclude the use of all extractive light-scattering instruments. They pointed out that these instruments typically sample at 160°C (320°F) to ensure that acid compounds are in the gaseous phase. When the sampling temperature is 120°C (248°F), as required by EPA Method 5, sulfuric acid can be present as a mist. According to the reference method, this mist is collected on the reference method sample filter, which is dried prior to weighing. Light-scattering instruments detect this acid mist as PM, resulting in a response that is biased high when compared to the reference method. One of the commenters suggested allowing the owner, operator, or equipment supplier to set the sampling temperature. Another commenter stated that the correlation will account for interferences, such as those due to the presence of condensible PM or entrained water. Another commenter suggested that, instead of mandating that the sampling temperature be the same as the reference method temperature, PS–11 should note the temperature difference as a potential source of error that must be addressed if there is too much scatter in the PM CEMS response data.

Response: After reviewing the comments we received on condensible PM, we have decided to eliminate the requirement that extractive PM CEMS sample at the reference method filter temperature. Sampling at temperatures other than the reference method filter temperature is acceptable provided that all of the correlation criteria are satisfied. We continue to recommend sampling at the reference method filter temperature because sampling at other temperatures may affect the ability to develop a correlation that satisfies all of the criteria specified in PS–11.

F. Instrument Location

Comment: Several commenters submitted comments on Sections 2.4(2) and 8.2 of PS–11, which concern PM CEMS installation location. One commenter expressed support for these requirements. The commenter specifically supported the requirement for a PM profile test to evaluate PM stratification and suggested that the profile test be incorporated into the shakedown period. However, he indicated that the profile should not include the first and last traverse points, which are closest to the duct walls, because other factors influence the flow rate at those locations, and the probe for the PM CEMS will likely be located near the center of the duct. Another commenter found the requirements of Section 2.4(2) to be too prescriptive. The commenter suggested that we remove from PS–11 the requirements for selecting the location of the instrument based on a stratification test. The commenter believes that instrument location should be addressed in guidance and not in the rule itself. Two commenters pointed out that PM stratification and PM profile tests are not defined in PS–11, and they were unaware of any standard tests for stratification. One of the commenters also stated that EPA Method 5 may not have the accuracy to meet the 10 percent stratification limit. The same commenter cited an example of a PM CEMS installation that achieved a successful correlation without satisfying the stratification requirement; the situation could occur where a source would be forced to relocate the PM CEMS because it failed the stratification test, even though the data indicated acceptable correlation. Another commenter stated that the 10 percent stratification limit is too stringent; the commenter suggested increasing the limit to 20 percent. One commenter questioned how EPA could enforce requirements to relocate a PM CEMS

based on an optional test performed according to unspecified procedures. Four commenters commented that elimination of stratification may not be feasible for some sources.

Response: Based on our observations made during the Battleboro and Wisconsin Electric Power Company Pleasant Prairie Field Studies, we have concluded that stratification can have a significant adverse effect on the correlation of a PM CEMS. We also agree that additional clarification is needed regarding the issue of stratification and that the proper place for that information is in guidance. Consequently, we have decided to eliminate the requirement in Section 2.4(2) of PS–11 that the PM CEMS be relocated or the stratification condition eliminated, if stratification varies by more than 10 percent. We plan to address this issue more comprehensively in the PM CEMS Knowledge Document, including a definition of stratification, procedures for evaluating stratification (*e.g.*, profile testing), and steps that can be taken when stratification is likely to be a problem.

G. Shakedown and Correlation Test Planning Period (CTPP)

Comment: One commenter voiced support for preliminary testing, which is recommended in Section 8.4(4) of PS–11, and suggested that such testing remain a recommendation and not a requirement. Another commenter agreed that preliminary reference method testing should be a recommendation, but pointed out that the specific language in PS–11 is too vague. Three commenters suggested that preliminary testing be incorporated into guidance and not be a requirement of PS–11. Although PS–11 does not require preliminary reference method testing, one commenter believes that Section II (A)(16) of the preamble to the December 2001 proposal implies that preliminary testing is required.

Response: In the proposed PS–11, preliminary testing is a recommendation and not a requirement. We continue to believe that preliminary testing is advisable as a means of ensuring that the objectives of correlation testing are achieved. We agree that additional guidance on preliminary testing would be useful, and we plan to incorporate such guidance in later revisions of the PM CEMS Knowledge Document.

Comment: Sections 8.2(4) and 8.4(4) of PS–11 suggested the use of bypasses as a means of achieving higher PM emissions during the CTPP; however, four commenters noted that the use of a bypass is prohibited in some jurisdictions.

Response: We agree with the commenters that the use of a bypass may not be appropriate or allowed for certain installations. Therefore, we have revised Sections 8.2(4) and 8.4(4) to eliminate the suggestion that sources bypass air pollution control devices as a means of achieving higher emission levels during correlation testing. It was not our intent to require or suggest any actions that would be in violation of existing emission standards and other applicable requirements.

Comment: One commenter agreed with the concept of a shakedown period but stated that it should not be a requirement of PS–11 because, as owners and operators gain experience with PM CEMS, shakedown periods will no longer be necessary.

Response: We agree that operating PM CEMS for a shakedown period should be a recommendation and not a requirement, and we have revised PS–11 accordingly. We believe that shakedown periods are advisable and continue to recommend them, particularly for facilities with little or no experience in operating and maintaining PM CEMS. Owners and operators can benefit greatly by using a shakedown period, but experienced users may not feel the need to do so. In such cases, we believe a shakedown period may not be necessary.

Comment: Three commenters stated that the CTPP should be a recommendation rather than a requirement. One of the commenters believes that CTPPs will no longer be necessary once owners and operators gain experience with PM CEMS. Another commenter supported the requirement for the CTPP and agrees that the time frame for the CTPP should not be specified. The commenter noted that each installation is different and requires an initial period of instrument operating time to characterize potential emissions. The CTPP allows the operator time to become familiar with instrument operation.

Response: As is the case for the shakedown period, we urge owners and operators of PM CEMS to implement a CTPP to help ensure that the correlation tests are performed in a manner that allows development of a correlation over the full range of source operating conditions. However, we also recognize that those with experience with PM CEMS and familiar with their operation under various source operating conditions may not need to implement a CTPP. For this reason, we have decided to delete from PS–11 the requirement for a CTPP. We continue to believe that owners and operators will benefit from a CTPP and recommend that all owners and operators of PM CEMS give serious consideration to conducting a CTPP before correlation testing.

Comment: Eight commenters objected to the requirement in Section 8.4(2) of PS–11 that PM CEMS data recorded during the CTPP be kept as a permanent record. Some of these commenters pointed out that keeping the data as a permanent record is unnecessary because the data cannot be used for compliance purposes. One of the commenters indicated that this requirement is contrary to EPA's initiatives on reduced paperwork and burden. Another of the commenters believes that PS–11 should only require keeping the PM CEMS response range recorded during the CTPP as a permanent record. Six of the commenters believe that PS–11 should explicitly state that CTPP data cannot be used for compliance purposes. As proposed, they believe the recordkeeping requirements specified in PS–11 for the CTPP make owners and operators vulnerable to enforcement action. Three of the commenters questioned the need to record the CTPP data in 15-minute averages. One commenter stated that this requirement could create circumstances in which it would be difficult to recreate the same conditions at a later date if the data only were in 15-minute averages. The commenter also noted that problems could arise for extractive instruments with different cycle times. In the case of a beta gauge instrument with a 15-minute cycle time, a 15-minute ''average'' would consist of a single measurement. He suggested that facilities be allowed to keep the data in the form that best suits their needs. One commenter supported the requirement for 15-minute data averages during the CTPP. The commenter believes that calculating 15-minute averages of PM CEMS data is no more difficult than determining 15-minute averages for gas or flow monitors. These monitoring systems can average the data over whatever period is required.

Response: Because PS–11 no longer requires a CTPP, requirements concerning CTPP data recordkeeping also have been deleted from PS–11. As a result, we believe that the comments concerning the requirements for making a permanent record of CTPP data and recording data as 15-minute averages are no longer relevant. This change does not necessarily preclude the use of CTPP data for compliance purposes if a facility decides to conduct a CTPP. We do not expect this issue to be a problem

because CTPP data would be generated prior to the initial compliance determination and before the quality of the data has been determined. However, the purpose of PS–11 is to specify performance criteria and not to define what is and what is not credible evidence. Therefore, we disagree that PS–11 should state that CTPP data cannot be used for compliance purposes.

Comment: One commenter suggested that PS–11 allow PM spiking as a means of increasing the response during the CTPP. He noted that spiking can provide a controlled increase to instrument response without disrupting the process. Spiking also allows owners and operators to correlate PM CEMS at concentrations that approximate the emission limit. He pointed out that the methods suggested in Section 8.6(4)(i) of PS–11 for increasing PM emissions led to difficulties during EPA-sponsored demonstration tests, and there are no such problems when PM spiking is used.

Response: We concur with the commenter that PM spiking can be an acceptable option for increasing PM concentrations. Although we are no longer requiring a CTPP, owners or operators of PM CEMS will still have the option of conducting a CTPP. For such cases, we have indicated in Section 8.6(4) of PS–11 that PM spiking can be used to simulate increased PM concentrations during the CTPP. In addition, we have revised PS–11 to indicate that PM spiking is an acceptable manner for varying PM concentrations during correlation testing.

H. Correlation Testing

Comment: Five commenters expressed support for the increased flexibility in the proposed three levels of PM emissions during the correlation test specified in Section 8.6(4)(iii) and (5) of PS–11. However, four of the commenters believe this section of the proposed PS–11 implies that there is greater control over PM emissions than there actually is for some sources. Two commenters pointed out that, with light-scattering instruments, the response can change with changes in the waste feed, making it difficult to reproduce the same response during correlation testing. The commenters suggested rewording Section 8.6(5) of PS–11 to allow performing correlation testing at whatever range of PM concentrations the PM CEMS recorded during the CTPP.

Response: Because we are no longer requiring a CTPP, this comment is largely moot. However, we have revised Section 8.6(5) of PS–11 to state that, in the event that the three distinct levels of PM concentrations cannot be achieved, owners or operators of affected PM CEMS must perform correlation testing over the maximum range of PM concentrations that is practical for that specific installation. We believe that this change addresses the commenters' concerns on this issue.

Comment: One commenter suggested that PS–11 allow for PM spiking as a means of increasing the response during the correlation testing. He noted that spiking can provide a controlled increase to instrument response without disrupting the process.

Response: We concur with the commenter that PM spiking can be an acceptable option for increasing PM concentrations during the correlation test, and we have revised Section 8.6(4)(i) of PS–11 to reflect that change.

I. Response Range

Comment: Five commenters objected to the requirement of Section 8.4(3) of PS–11, which requires owners and operators to set the instrument response range ''* * * such that its output is within 50 to 60 percent of its maximum output (*e.g.*, 12 to 13.6 mA on a 4 to 20 mA output) when your source is operating at the conditions that were previously observed to produce the highest PM CEMS output.'' The commenters pointed out that the resolution capabilities of current technology make this requirement unnecessary. In addition, allowing the instrument to operate below this 50 to 60 percent range at some installations allows more room for spikes and provides better measurement of low PM concentrations. The commenters believe that setting the response range at 50 to 60 percent of its maximum output should be a recommendation rather than a requirement in PS–11. One of the commenters pointed out that there are no such requirements for other types of CEMS. Another of the commenters suggested using preliminary testing and extrapolation to set the maximum instrument response at 1.1 to 1.2 times the emission limit to ensure that the emission limit lies within the response range of the instrument.

Response: After considering the comments on this issue, we have decided to eliminate the requirement to set the response range at a specified percentage of the maximum PM CEMS output. Instead, PS–11 now requires that owners or operators set the response range at whatever level is necessary to ensure that the instrument measures the full range of responses that correspond to the range of source operating conditions that owners or operators will implement during correlation testing.

J. Reference Method Testing

Comment: Ten commenters supported the change to allow facilities to use test methods other than EPA Method 5I for the correlation test. However, four commenters believe that sources subject to 40 CFR 63, subparts LLL and EEE, should be able to use EPA Method 17 for correlation testing instead of EPA Method 5, as required by subparts LLL and EEE. The commenters pointed out that EPA Method 5, which is the reference method specified in subparts LLL and EEE, creates a disincentive for light-scattering instruments because of the problems associated with measuring condensible PM. The same commenters also stated that using EPA Method 17 reduces QA problems associated with onsite sample analysis. One commenter suggested that EPA Method 5I be recommended for low emission levels.

Response: We maintain that it is essential that correlation testing be performed using the same reference method that is required by the applicable regulation, as specified in Section 8.6(1) of PS–11, to help ensure that the correlation is based on emission concentration measurements that are consistent with the emission standard units and sampling method. However, we have eliminated the requirement that extractive PM CEMS sample at the reference method filter temperature. In doing so, we believe we have addressed the concern raised by the commenters about using EPA Method 5. Section 12.4(4) of the final PS–11 also allows owners or operators of affected PM CEMS to petition us for alternative regression models or other solutions in the event that correlation test results cannot be modeled to satisfy the performance criteria for correlation coefficient, tolerance interval half range, or confidence interval half range specified in Section 13.2 of PS–11.

We agree with the commenter that Method 5I may be a more appropriate test method for sources with low emission levels. Although PS–11 does not require the use of Method 5I, the method is available to any owner or operator that chooses to use it.

Comment: Ten commenters agreed with the requirement for paired reference method trains. However, two of the commenters believe that other techniques to improve correlation testing also should be allowed, subject to approval by the Administrator. One of the commenters suggested that PS–11 allow an approach similar to that used in Europe for light-scattering

instruments, whereby reference method test runs are shorter in duration with higher flow rates. The commenter explained that this approach generates more data points in a shorter time frame, resulting in less scatter and improved correlations.

Response: We believe that it is essential that correlation testing be performed using the same reference method that is required by the applicable regulation, as specified in Section 8.6(1) of PS–11, to help ensure that the correlation is based on emission concentration measurements that are consistent with the emission standard units and sampling method. However, in the event that an acceptable correlation cannot be achieved using the reference method specified in the applicable regulation, Section 12.4(4) of PS–11 allows owners or operators of affected PM CEMS to petition us to allow alternative regression models or other solutions. We also recognize that paired reference method sampling trains may not be necessary for obtaining representative PM data for certain sources. Consequently, we have revised PS–11 to indicate that paired sampling trains are highly recommended, but not required.

We disagree with the implication that collecting more data points necessarily results in less scatter in the data and improved correlations. If the data are not collected in a manner that is consistent with the reference method measurements, the additional data may result in a correlation that is less representative of actual emissions. Therefore, we do not concur with the suggestion to allow correlation tests to be conducted with shorter test runs at higher flow rates.

Comment: One commenter stated that the criteria for rejecting data based on the calculation of the RSD may be too restrictive. Another commenter expressed concern that applying the RSD criteria to paired data might result in valid data being rejected. If the source of error cannot be identified, either the data should be retained or the analysis should be performed both with and without the suspect data. He pointed out that, in the event that valid data are rejected, the correlation equation cannot properly characterize emissions. He also requested an explanation for the basis for the RSD criteria so that the criteria could be applied to test data for other pollutants.

Response: We agree that data should not be rejected solely on the basis of a statistical criterion. The sources of error should be investigated in all cases. Outlying or extreme data points may be the result of transcription errors, data-coding errors, measurement system problems, and so forth. In the absence of such errors, outlying data may simply be an indication that the variability in the data is larger than expected, and we recommend keeping the data. Based on these and other comments on the proposed rule, we have decided to revise the requirements of PS–11 with respect to reference method precision. In the final PS–11, owners and operators would still be required to complete a minimum of 15 valid test runs, but can discard the results of up to five test runs. It is not necessary to provide an explanation for why the five discarded runs are rejected. We continue to believe that the RSD, as defined in the proposed rule, should be considered when deciding which test runs are to be included in the final data set. If the RSD for any data pair is excessive, we recommend that the data be investigated to determine the reason for the lack of precision. We are no longer requiring that the data be screened based on the RSD. However, we plan to provide additional information on calculating the RSD in guidance.

Comment: Four commenters stated that paired data should be used as two discrete data points and not averaged into a single value per test run.

Response: We agree that, when determining the regression relation, the individual data points should be used rather than the average of the data pairs, and we have revised Section 12.3 of PS–11 to state that paired data, when collected, should not be averaged. Although one obtains the same regression coefficients (*e.g.*, slope and intercept) using either approach, a few results are different: (1) The degrees of freedom will increase when using all of the data points as discrete values; (2) the standard error of the slope and of the intercept will be different, which in turn will affect the width of the confidence intervals for the predicted mean PM concentration (y value) for a given response (x value); and (3) the square of the correlation coefficient (r^2 value), a measure of how well the line fits the data, will change. Combined, these results could have an effect on the statistical significance of the regression relation in either direction. Using the average of the data points will reduce the scatter of the data, potentially increasing the r^2 value, but will decrease the degrees of freedom and therefore increase the standard error of the intercept and slope estimates. On the other hand, using all the data points could yield more precise estimates of the slope and intercept at the cost of a smaller r^2 value.

Comment: Five commenters supported the criteria to determine whether the reference method data are biased. Another commenter believes that the slope criteria for identifying biased data may be too restrictive. The same commenter suggests using other statistical parameters, such as the t-test for evaluating the bias.

Response: As is the case for paired data precision, we have decided that reference method data bias can be addressed more appropriately in guidance due to the complexity of the procedures for evaluating data bias and the need for multiple examples. Consequently, we have eliminated from Sections 8.6(1) and 7 of PS–11 and from Sections 2.1(3) and 10.1 of QA Procedure 2 the requirement for checking data for bias.

With respect to the comment about using other statistical parameters to check for bias, we have concluded that a more appropriate statistic for determining bias is the 95 percent confidence interval for the slope. The confidence interval is a more widely accepted statistic for comparing the slopes of two regression lines. We plan to provide in the next revision to the PM CEMS Knowledge Document example calculations for checking the reference method data slope for bias.

Comment: One commenter pointed out that the criteria for determining data bias consider only the slope of the correlation line. However, both the slope and the intercept must be considered when determining if the data are biased.

Response: We agree with the commenter that the intercept must also be considered in the determination of data bias. The slope, or correlation coefficient, if different from 1, may exhibit a systematic difference between the two paired sampling trains. However, a statistically significant intercept (*i.e.*, different from 0) would indicate an offset, or bias, that will not affect the slope. Although we have eliminated the requirements for checking reference method data for bias, we plan to include in guidance materials a procedure for checking the intercept for bias, using the 95 percent confidence interval for the intercept of the line. If the interval contains zero, it can be said with 95 percent confidence that the intercept is not statistically different from zero. An intercept significantly different from 0 would be an indication of a systematic offset between the two paired sampling trains, in addition to the systematic difference as defined by the slope of the regression line. We intend to provide example calculations for checking the reference

method data slope for bias in the next revision to the PM CEMS Knowledge Document.

K. Statistical Methods

Comment: One commenter stated that the term confidence interval applies to the bounds within which one would predict the correlation line to fall. For this reason, the entire line should be considered and not simply the value of the confidence interval at a single point, as specified in Equations 11–10 and 11–33 of PS–11. The commenter believes the multiplier $\pm (2F_{2, n-2, 0.05})$ should be used instead of the multiplier $\pm t_{0.05}$ in the confidence interval equations. For 15 pairs of data, using the $\pm (2F_{2, n-2, 0.05})$ multiplier results in a difference of 29 percent at the 0.05 significance level. The commenter further noted that it is unclear whether PM CEMS would satisfy the acceptability criteria of PS–11 when the correct equation is used.

Response: We agree that the definition of confidence interval in Section 3.4 of the PS–11 is inconsistent with Equations 11–10 and 11–33 of the proposed PS–11. These equations represent confidence intervals for the predicted true mean concentration (y value) for any given PM CEMS response (x value). The commenter is discussing simultaneous confidence curves for the whole regression over its entire range. In this case, the commenter would be correct to replace the t-statistic with the F-statistic. Requiring the entire line to fall within these confidence bands would be a more stringent requirement than what is required by Equations 11–10 and 11–33 for a given value of x. In the final PS–11, we have replaced the definition of confidence interval with that of confidence interval half range, which is the parameter on which the correlation performance criterion is based. We believe the new definition is consistent with the equations presented in the final PS–11 for calculating this parameters. We also believe the definition clarifies the issue raised by the commenter.

Comment: One commenter commented that the statistical methodology specified in PS–11 should also address residuals. He pointed out that, for the example data sets presented in Section 18 of PS–11, the pattern of data violates the fundamental assumption of homogeneity of the linear model. This violation becomes apparent when considering the residuals. He also noted that there is no such violation for the log-log correlation model. Therefore, the example problem should have concluded that the log-log correlation model is better than the linear model.

Response: We agree that residuals, which are the difference between the observed and predicted concentrations (y values), should be plotted in all regression analyses. However, we believe that residuals are best addressed in guidance materials rather than in PS–11. Therefore, we have decided against incorporating in the final PS–11 requirements for examining residuals. However, we intend to provide example problems and additional information on how to examine residuals in the PM CEMS Knowledge Document when it is next revised.

Comment: One commenter opposes the elimination of the provision that allowed for alternative ''nonlinear'' correlation equations. In view of the wide range of waste types processed by hazardous waste combustors and the variations in how PM CEMS respond to varying particle characteristics, it is important to allow alternative calibration equations that are nonlinear. In such cases, the owner or operator could provide the additional correlation test data to support such a nonlinear correlation equation.

Response: Section 12.4(4) of the final PS–11 allows for owners or operators of affected PM CEMS to petition us for alternative regression models or other solutions in the event that correlation test results cannot be modeled to satisfy the performance criteria for correlation coefficient, tolerance interval half range, or confidence interval half range specified in Section 13.2 of PS–11. We also have addressed additional correlation models (*i.e.*, exponential and power correlations) in the final rule. We believe these provisions satisfy the commenter's concern by allowing for the consideration of nonlinear models that may be more appropriate for a specific installation.

Comment: One commenter suggested that PS–11 should require linear regressions only and eliminate the criterion for a minimum correlation coefficient. He noted that sources with a narrow range of emissions will have particular difficulty in satisfying the correlation criteria. In such cases, the correlation could become invalid if the response range extrapolation limit (*i.e.*, 125 percent of the highest response) is exceeded, even though the source could still be in compliance with the emission limit. The commenter suggested an alternative approach of allowing a single point correlation with the correlation line passing through zero, or a least-squares regression line if a range of data is available. The slope of the line could be adjusted to account for variability or uncertainty in the test method or source operation.

Response: We disagree with the commenter that linear regressions are universally adequate. A straight-line regression does not always provide the best fit to the data, and we disagree that, in cases where the data exhibit a polynomial relationship, an acceptable correlation can be achieved by adjusting the slope of the regression line. In such cases, a second-order polynomial or a log transformation must be investigated. If the fit from such models is only marginally better than a linear model, then the linear model would be adequate, provided the residuals do not exhibit patterns.

L. Statistical Criteria

Comment: Five commenters disagreed with specifying limits on the correlation coefficient, confidence interval, and tolerance interval. The commenters generally preferred the approach used in Europe, which is to determine an allowable variability or uncertainty that is then added to the emission limit. Sources are in compliance if their PM CEMS indicates that emissions are within the sum of the emission limit plus the allowable variability. The commenters noted that, as proposed, PS–11 and QA Procedure 2 will be a disincentive for using PM CEMS because of the complexity of the statistical procedures required.

Response: We agree with the commenter that PM CEMS compliance limits must account for the variability and uncertainty in the data, and we believe that the requirements for the correlation coefficient, confidence interval half range, and tolerance interval half range specified in the final PS–11 account for the variability and uncertainty in the data. The primary difference between the approach described by the commenters and the approach established in PS–11 is that the commenters' approach assumes that the uncertainty in PM CEMS response is one-sided, that PM CEMS invariably overestimate actual PM concentrations. Within the level of uncertainty, a high PM CEMS response that would otherwise indicate an exceedance of the emission limit is considered acceptable, once this uncertainty is subtracted from the instrument response. In our approach, we assume that there is uncertainty in both directions; PM CEMS responses can overestimate or underestimate actual PM concentrations. Just as a high PM CEMS response can be an overestimate of PM concentrations, our approach also accounts for situations in which the PM CEMS response indicates emissions are below the limit when an exceedance actually has occurred. Consequently, we

believe our approach is more appropriate for compliance monitoring. On the other hand, the requirements in PS–11 do not disallow the approach described by the commenters, provided that the applicable rule allows for such an approach.

Comment: Nine commenters commented specifically on the reduction of the correlation coefficient from 0.90 to 0.85. Many of these commenters believe that relaxing the correlation coefficient criterion allows PM CEMS to be less accurate and is an admission that PM CEMS are inappropriate for compliance. One of the commenters stated that the correlation coefficient of 0.85 is evidence that the response of PM CEMS is highly variable and unreliable. Five of the commenters stated that the revised correlation criteria increase imprecision. One of the commenters concluded that the revised criteria ensure that defective technology will not be rejected by PS–11. The same commenter also believes that the tolerance interval criterion allows for too much uncertainty. Several of these commenters suggested that PS–11 should require PM CEMS to meet the International Standards Organization (ISO) correlation coefficient limit of 0.95. Two of the commenters stated that reducing the correlation coefficient forces a facility to operate even further below the emission limit to account for the increased uncertainty in the instrument. One commenter pointed out that the proposed rulemaking does not address the uncertainty inherent in requiring a lower correlation coefficient. One other commenter requested decreasing the correlation coefficient to 0.7, as is the practice in Germany.

Response: We agree with the commenters that the reduction in the required minimum correlation coefficient value allows for more variability in the data, and that was our intent in changing this requirement. However, we do not agree that this change in the correlation coefficient criterion is an indication that PM CEMS are unreliable. We also point out that variability in correlation data can be accounted for in the applicable rule. If appropriate for specific types of sources, a higher minimum correlation coefficient can be specified.

M. Routine Performance Checks

Comment: Three commenters oppose specifying routine checks in PS–11 and QA Procedure 2. They believe that the facility should decide how best to maintain its instruments. One of the commenters suggested that QA procedure 2 should require facilities to prepare a site-specific inspection and maintenance program that would address all of the components of their PM-CEMS. Although another commenter did not object to the routine checks specified in QA Procedure 2, he suggested that owners and operators be given the option of deciding which checks are appropriate for their installation. The same commenter objected to any requirements for daily checks. He noted that weekly or monthly checks may be adequate for certain components of the system. He believes the frequency of these checks should also be left up to the facility to determine. One commenter noted that photometric instruments generally require less frequent checks than do beta gauge instruments.

Response: Although we recognize the importance of allowing flexibility in how facilities maintain their PM CEMS, we believe that it is necessary to check instrument operation on a daily basis to ensure that data quality is maintained. We also would like to point out that daily checks are required for other types of CEMS under QA Procedure 1. Owners and operators who believe that daily checks are not necessary have the option of applying for alternative monitoring under § 63.8(f) of the General Provisions to part 63.

Comment: Four commenters stated that Sections 4.2(1) and (2) of PS–11 imply that there should be routine checks for particle formation in extractive duct systems and for material accumulation in extractive duct systems. However, the procedures for performing these checks are unclear.

Response: We agree with the commenters that procedures for checking extractive duct systems are not addressed in PS–11 or QA Procedure 2. Consequently, we have revised Section 9.0 of QA Procedure 2, which addresses the requirements of quality control (QC) programs for PM CEMS. We have added paragraph 9.0(8) to require owners and operators of affected sources to include in their QC programs written procedures for checking extractive duct systems for material accumulation. Rather than specify in PS–11 or QA Procedure 2 the required procedures for checking extractive ducts, we believe that the owners and operators should determine the most appropriate methods for accomplishing this.

Comment: One commenter stated that several PM CEMS on the market eliminate the need for daily zero and upscale drift checks, and QA Procedure 2 should make some allowance for such instruments. If the facility can show that the instruments remain stable over long periods of time, daily drift checks should not be required. He pointed out that FTIR instruments used for compliance are not required to perform automatic zero and upscale drift checks. Another commenter also stated that daily drift checks are not needed for certain types of instruments. He suggested allowing facilities to establish the appropriate frequency for drift checks during the shakedown period. The same commenter also submitted data from a demonstration project to support his argument.

Response: We believe that it is necessary to check instrument operation on a daily basis to ensure that data quality is maintained. Requiring daily checks also is consistent with QA Procedure 1. Owners and operators who believe that daily checks are not necessary have the option of applying for alternative monitoring under § 63.8(f) of the General Provisions to part 63.

Comment: One commenter suggested that the daily sample volume drift check required in Section 10.2(5) for extractive PM CEMS be expressed as either of the following:

$$\text{SVD} = \frac{(\text{Expected} - \text{Actual})}{\text{Fullscale}}$$

or

$$\text{SVD} = \frac{(\text{Calibration value} - \text{Monitor value})}{\text{Span value}}$$

where

SVD = sample volume drift.

He noted that the purpose of drift checks is to measure stability rather than accuracy. Therefore, the calculation method must depend on a value that does not change with time, rather than depending on the expected value. He stated that the output from a flow monitor used in an extractive instrument can deviate from the expected value over time. If different reference values are used, it is more appropriate to use the monitor's full scale or span value in the denominator of the equation.

Response: We agree with the commenter that using the suggested expression will provide more consistency in the calculation of sample volume drift. Therefore, we have revised Equation 2–4 of the proposed QA Procedure 2 accordingly. The revised equation is as follows:

$$\text{SVD} = \frac{(V_R - V_M)}{\text{FS}}$$

where

V_R = the expected response;
V_M = the actual response; and
FS = the full scale value.

N. Auditing Requirements

Comment: Three commenters commented that the requirement in Section 10.3 of QA Procedure 2 for relative response audits is unnecessary. They believe that, if source operating conditions do not change, the correlation should not change. Two other commenters suggested that relative response audits be required only if the source is operating near the emission limit. Four commenters commented that there is insufficient information for determining the necessary frequency of relative response audits.

Response: In the proposed QA Procedure 2, relative response audits were required every four calendar quarters. We continue to believe that these audits should be performed at least annually as a means of ensuring that correlations remain valid. Based on our field studies, we have concluded that changes in emission characteristics, which may not be apparent to the operator, may result in correlations that are no longer reliable. Relative response audits are a simple means of checking the validity of the correlation. However, we also believe that it is more appropriate to specify the frequency of relative response audits in the applicable rule than in QA Procedure 2. Therefore, we have revised Section 10.3 of QA Procedure 2 to indicate that relative response audits must be conducted at the frequency specified in the applicable rule. The section also has been revised to indicate a recommended frequency of at least once per year.

Comment: Four commenters supported the acceptance criterion specified in Section 10.4(6) of QA Procedure 2 that at least two of three data points must fall within the tolerance interval. However, they pointed out that QA Procedure 2 does not specify the allowable time for completing a successful relative response audit in the event of a failed relative response audit.

Response: The commenters are correct in that QA Procedure 2 does not specify a time frame for completing a relative response audit successfully following a failed audit. However, following a failed relative response audit, PM CEMS are considered to be out of control. Until a successful relative response audit is completed, the data recorded by the PM CEMS are not considered valid and cannot be counted toward data availability. Consequently, the data availability requirements specified in the applicable rule help to ensure that successful relative response audits are completed in a timely manner.

Comment: Six commenters supported the increased flexibility in the audit point ranges for absolute correlation audits, as specified in Section 10.3(2) of QA Procedure 2. However, one of the commenters believes that absolute correlation audits should be required only if the source is operating near the emission limit (within 10 percent of the emission limit for more than 70 percent of the operating data). Four of the commenters concluded that there are insufficient data to determine the necessary frequency for absolute correlation audits.

Response: We believe that it is necessary to characterize instrument drift periodically, and quarterly absolute correlation audits provide the mechanism for accomplishing this objective. Requiring quarterly absolute correlation audits is analogous to the requirement of quarterly gas audits for other types of CEMS. Consequently, we have decided against changing the requirement for quarterly absolute correlation audits.

Comment: Six commenters supported the requirement for sample volume audits. However, four of the commenters had reservations about some of the specifics of the sample volume audit requirements. They believe sample volume audits need only be performed annually, rather than quarterly as specified in Section 10.3 of QA Procedure 2. The same four commenters believe that the 5 percent limitation specified in Section 10.4(4) of QA Procedure 2 is too stringent. They pointed out that the accuracy of EPA Methods 2, 3, and 4 are not within this 5 percent limit. Finally, they stated that PM CEMS should not be considered out of control if the instrument reads higher than actual sample flow rates because, in such cases, the instrument would indicate that emissions were higher than they actually were.

Response: Accurate sample volume measurements are critical for extractive PM CEMS; otherwise, emission concentrations cannot be properly characterized. Therefore, we believe it is appropriate to require sample volume audits every quarter. Regarding the acceptance criterion, the data we obtained during our field studies demonstrate that extractive instruments can meet the 5 percent limit. In the absence of data that indicate otherwise, we believe the 5 percent acceptance criterion is appropriate.

Comment: Six commenters expressed support for the increased flexibility in the requirements for response correlation audits, as specified in Section 10.4(5) of QA Procedure 2. Two of the commenters believe that the procedure should be revised to require that all 12 data points fall below the maximum of the PM CEMS output range established during the correlation test, rather than within that output range. Four of the commenters stated that requiring all 12 data points to fall within the output range established during correlation testing is unnecessarily stringent; they suggested that QA Procedure 2 allow for one of the data points to fall below the output range for the correlation test.

Response: We agree with the commenters that PM CEMS responses that fall below the range of the responses used to develop the correlation curve are less critical than responses that fall above the correlation curve response range. However, we believe that the majority of PM CEMS responses should occur within the range of PM CEMS responses that were used to develop the correlation curve. Consequently, we have revised Section 10.4(5) of QA Procedure 2 to require that all 12 data points fall below the maximum PM CEMS response used to develop the correlation curve, and 9 of the 12 points fall within the range of PM CEMS responses used to develop the correlation curve. This change provides additional flexibility for sources with relatively low PM emissions concentrations.

Comment: Four commenters stated that response correlation audits should be required no more frequently than once every 5 years unless the source fails the relative response audit.

Response: We believe that the required frequency of response correlation audits should depend on source operation and emission characteristics. Consequently, we continue to believe that it is appropriate for the frequency of response correlation audits to be specified in the applicable regulation or operating permit, rather than in QA Procedure 2. Although it may be appropriate for some sources to perform response correlation audits once every 5 years, as the commenters suggested, more frequent audits may be appropriate for other sources. Therefore, we have decided against revising QA Procedure 2 to specify a required frequency for response correlation audits, as suggested by the commenters.

O. Extrapolation of Correlation

Comment: Nine commenters oppose the limits on PM CEMS extrapolation to 3 consecutive hours in excess of 125 percent of the highest response used to develop the correlation curve before additional correlation testing is required, as specified in Section 8.8(1) of the proposed PS–11. Four of the

commenters suggested that additional flexibility be allowed for sources that operate well below the emission limit. Although one of the commenters stated that he generally agreed with this requirement, he had reservations about some of the specific requirements. One commenter suggested that the basis for requiring additional correlation testing should be the proximity of emissions to the emission limit rather than the exceedance of the correlation test response range. He suggested that additional testing be required only for situations in which the source persistently operates close to the emission limit when it had previously operated well below the emission limit. Four commenters found the provisions regarding exceedances of 125 percent of the correlation range to be too vague and suggested revising the section to not require additional testing in cases where the three hourly averages exceeding 125 percent of the highest PM CEMS response occur only infrequently.

Response: We agree with the commenters that the 125 percent limit on extrapolation of the correlation equation should not apply to sources that operate well below the emission limit. We have revised Section 8.8(1) of PS–11 to allow sources that operate below 50 percent of the emission limit to extrapolate up to 50 percent of the emission limit or 125 percent of the highest PM CEMS response used in developing the correlation, whichever results in a higher PM concentration.

Comment: Regarding the requirement in Section 8.8(1) of PS–11 for additional correlation testing, two commenters indicated that, even if the facility begins corrective action immediately, it may take more than 3 hours to correct the problem. Four commenters stated that, when a 3-hour exceedance occurs, it is typically due to an unusual event that is difficult to reproduce. The same four commenters believe that three consecutive hourly averages do not constitute a pattern and that it could be difficult to re-create a high PM event for additional correlation testing. Two of the commenters suggested allowing the facility to make the determination as to whether such an event was routine or unusual.

Response: We agree with the commenters that PS–11 should allow more time before additional correlation testing is required following a PM CEMS response in excess of 125 percent of the highest response used to develop the correlation curve. We have revised Section 8.8(1) of PS–11 to increase the time period that triggers additional correlation testing from 3 consecutive hours to 24 consecutive hours or 5 percent of the valid operating hours for the previous 30-day period, whichever occurs first. We believe that 24 hours is a reasonable length of time for source operators to be alerted of the event, determine the cause, identify the corrective action needed, and complete the corrective action. We included the 5 percent criterion to address recurring problems or events that individually may not last 24 consecutive hours, but nonetheless represent a change in operation or emissions characteristics that must be accounted for by the PM CEMS correlation.

We have also included in Section 8.8(4) of the final rule a requirement that the owner or operator of an affected PM CEMS report the reason for the higher PM responses. In that report, that owner or operator must specify if the higher responses resulted from normal operation or from an atypical event. We believe this provision addresses the comment about the facility making the determination of whether or not the higher PM CEMS responses were due to normal operation.

Comment: Five commenters commented that 30 days is inadequate for setting up and conducting a test following an exceedance that is more than 125 percent of the response range for the correlation test. Two of the commenters believe that PS–11 should allow up to 60 days to conduct additional correlation tests, and one of the commenters believes up to 120 days should be allowed for testing in such cases.

Response: We agree with the commenters that 30 days is inadequate for scheduling and conducting additional correlation tests and developing a revised correlation. We recognize that scheduling an emission test and bringing the testing contractor on site can take several weeks; the test itself may last several days for setup, testing, and breakdown; analyzing samples, compiling the data, and performing emissions calculations typically take several days; and developing the revised correlation also may require several days. Consequently, we have revised QA Procedure 2 to allow 60 days to complete these activities. We believe that 60 days is a reasonable length of time for completing all of the activities needed to develop a revised correlation curve.

P. Requirements for Other Types of Monitors

Comment: One commenter commented that PS–11 requires additional monitoring systems to satisfy the requirement that emissions are recorded in the same units as the emission standard, but does not address performance requirements for those supplemental monitoring systems. He noted that the emission limit in 40 CFR part 63, subpart LLL, is specified in units of pounds per ton of clinker. To report PM emissions in these units requires converting PM emission concentrations and clinker production rates to units of mass per unit time, and, to do so requires monitoring exhaust gas flow rates and production mass flow rates. However, there currently are no performance specifications or QA procedures for either type of monitoring system. The commenter also stated that measurement error and uncertainty in these supplemental monitoring systems will influence the error and uncertainty in the emission data that are reported.

Response: We recognize the need for performance specifications and QA procedures that address continuous parameter monitoring systems (CPMS). We are currently developing these specifications and procedures and expect to propose them in the near future. The performance specifications and QA procedures for CPMS would apply to all sources subject to a part 63 rule that requires continuous parameter monitoring.

IV. Summary of Impacts

A. What Are the Impacts of PS–11 and QA Procedure 2?

The PS–11 and QA Procedure 2 will apply only to PM CEMS that are required under an applicable rule. Rules, such as PS–11 and QA Procedure 2 that establish performance specifications and QA requirements, impose no costs independent from the emission standards that require their use, and such costs are fully reflected in the regulatory impact assessments for those emission standards. Likewise, the other impacts associated with the monitoring requirements specified in PS–11 and QA Procedure 2 are already addressed under the applicable emission standards as they are proposed and promulgated. Consequently, we have concluded that no separate estimate of the impacts is warranted for this rulemaking.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive

Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a ''significant regulatory action'' because none of the listed criteria applies to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

This final rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The recording, recordkeeping, and information collection requirements associated with PS–11 and QA Procedure 2 have already been accounted for under the applicable regulations that require the use of PM CEMS.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act, or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will establish performance specifications and QA requirements and will not impose any costs. Likewise, the other impacts associated with the monitoring requirements specified in PS–11 and QA Procedure 2 are already addressed under the applicable emission standards as they are proposed and promulgated. Consequently, we have concluded that no separate estimate of the impacts is warranted for this rulemaking.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law No. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or the private sector in any 1 year. Rules establishing performance specifications and quality assurance requirements impose no costs independent from national emission standards which require their use, and such costs are fully reflected in the regulatory impact assessment for those emission standards. We have also determined that this final rule does not significantly or uniquely impact small governments. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The requirements of PS–11 and QA Procedure 2 are addressed under the applicable emission standards that require the use of PM CEMS. Thus, the requirements of section 6 of the Executive Order do not apply to this final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The final rule does not

have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The requirements of PS–11 and QA Procedure 2 are addressed under the applicable emission standards that require the use of PM CEMS. Thus, Executive Order 13175 does not apply to the final rule.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives that EPA considered.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. Today's final rule is not subject to Executive Order 13045 because this rule does not establish an environmental standard intended to mitigate health or safety risks. Furthermore, the final rule has been determined not to be ''economically significant'' as defined under Executive Order 12866.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Today's final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

During this rulemaking, we searched for voluntary consensus standards that might be applicable. An International Organization for Standardization (ISO) standard, number 10155, Stationary source emissions—Automated monitoring of mass concentrations of particles—Performance characteristics, test methods and specifications, was applicable. The use of the ISO 10155 was found to be inadequate to fulfill the performance specification needs for our compliance monitoring. The use of ISO 10155 would be impractical because:

(1) The number of test runs for a correlation test, 9, was insufficient for a comprehensive statistical evaluation of the PM CEMS correlation.

(2) The PM concentration ranges required for a correlation test were too vague.

(3) The measurement location for the PM CEMS and RM were vague.

(4) The correlation coefficient limit of greater than 0.95 was too stringent for most of the PM CEMS correlations we evaluated.

Also, ISO 10155 lacks quality assurance and quality control procedures.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the 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 March 12, 2004. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 60

Environmental protection, Air Pollution Control, Continuous emission monitoring; Performance specification; Particulate matter.

Dated: December 23, 2003.

Michael O. Leavitt,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended as follows:

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

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

■ 2. Appendix B of Part 60 is amended by adding Performance Specification 11 to read as follows:

Appendix B of Part 60—Performance Specifications

* * * * *

PERFORMANCE SPECIFICATION 11—Specifications and Test Procedures for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources

1.0 What Are the Purpose and Applicability of Performance Specification 11?

The purpose of Performance Specification 11 (PS–11) is to establish the initial installation and performance procedures that are required for evaluating the acceptability of a particulate matter (PM) continuous emission monitoring system (CEMS); it is not to evaluate the ongoing performance of your PM CEMS over an extended period of time, nor to identify specific calibration techniques and auxiliary procedures to assess CEMS performance. You will find procedures for evaluating the ongoing performance of a PM CEMS in Procedure 2 of Appendix F—Quality Assurance Requirements for Particulate Matter Continuous Emission Monitoring Systems Used at Stationary Sources.

1.1 Under what conditions does PS–11 apply to my PM CEMS? The PS–11 applies to your PM CEMS if you are required by any provision of Title 40 of the Code of Federal Regulations (CFR) to install and operate PM CEMS.

1.2 When must I comply with PS–11? You must comply with PS–11 when directed by the applicable rule that requires you to install and operate a PM CEMS.

1.3 What other monitoring must I perform? To report your PM emissions in units of the emission standard, you may need to monitor additional parameters to correct the PM concentration reported by your PM

CEMS. Your CEMS may include the components listed in paragraphs (1) through (3) of this section:

(1) A diluent monitor (*i.e.*, O_2, CO_2, or other CEMS specified in the applicable regulation), which must meet its own performance specifications (also found in this appendix),

(2) Auxiliary monitoring equipment to allow measurement, determination, or input of the flue gas temperature, pressure, moisture content, and/or dry volume of stack effluent sampled, and

(3) An automatic sampling system. The performance of your PM CEMS and the establishment of its correlation to manual reference method measurements must be determined in units of mass concentration as measured by your PM CEMS (*e.g.*, milligrams per actual cubic meter (mg/acm) or milligrams per dry standard cubic meter (mg/dscm)).

2.0 What Are the Basic Requirements of PS–11?

The PS–11 requires you to perform initial installation and calibration procedures that confirm the acceptability of your CEMS when it is installed and placed into operation. You must develop a site-specific correlation of your PM CEMS response against manual gravimetric reference method measurements (including those made using EPA Methods 5, 5I, or 17).

2.1 What types of PM CEMS technologies are covered? Several different types of PM CEMS technologies (*e.g.*, light scattering, Beta attenuation, etc.) can be designed with in-situ or extractive sample gas handling systems. Each PM CEMS technology and sample gas handling technology has certain site-specific advantages. You should select and install a PM CEMS that is appropriate for the flue gas conditions at your source.

2.2 How is PS–11 different from other performance specifications? The PS–11 is based on a technique of correlating PM CEMS responses relative to emission concentrations determined by the reference method. This technique is called ''the correlation.'' This differs from CEMS used to measure gaseous pollutants that have available calibration gases of known concentration. Because the type and characteristics of PM vary from source to source, a single PM correlation, applicable to all sources, is not possible.

2.3 How are the correlation data handled? You must carefully review your manual reference method data and your PM CEMS responses to include only valid, high-quality data. For the correlation, you must convert the manual reference method data to measurement conditions (*e.g.*, wet or dry basis) that are consistent with your PM CEMS. Then, you must correlate the manual method and PM CEMS data in terms of the output as received from the monitor (*e.g.*, milliamps). At the appropriate PM CEMS response specified in section 13.2 of this performance specification, you must calculate the confidence interval half range and tolerance interval half range as a percentage of the applicable PM concentration emission limit and compare the confidence interval and tolerance interval percentages with the performance criteria. Also, you must calculate the correlation coefficient and compare the correlation coefficient with the applicable performance criterion specified in section 13.2 of this performance specification.

Situations may arise where you will need two or more correlations. If you need multiple correlations, you must collect sufficient data for each correlation, and each correlation must satisfy the performance criteria specified in section 13.2 of this performance specification.

2.4 How do I design my PM CEMS correlation program? When planning your PM CEMS correlation effort, you must address each of the items in paragraphs (1) through (7) of this section to enhance the probability of success. You will find each of these elements further described in this performance specification or in the applicable reference method procedure.

(1) What type of PM CEMS should I select? You should select a PM CEMS that is appropriate for your source with technical consideration for potential factors such as interferences, site-specific configurations, installation location, flue gas conditions, PM concentration range, and other PM characteristics. You can find guidance on which technology is best suited for specific situations in our report ''Current Knowledge of Particulate Matter (PM) Continuous Emission Monitoring'' (PM CEMS Knowledge Document, see section 16.5).

(2) Where should I install my PM CEMS? Your PM CEMS must be installed in a location that is most representative of PM emissions, as determined by the reference method, such that the correlation between PM CEMS response and emissions determined by the reference method will meet these performance specifications. Care must be taken in selecting a location and measurement point to minimize problems due to flow disturbances, cyclonic flow, and varying PM stratification.

(3) How should I record my CEMS data? You need to ensure that your PM CEMS and data logger are set up to collect and record all normal emission levels and excursions. You must ensure that your data logger and PM CEMS have been properly programmed to accept and transfer status signals of valid monitor operation (*e.g.*, flags for internal calibration, suspect data, or maintenance periods).

(4) What CEMS data should I review? You must review drift data daily to document proper operation. You must also ensure that any audit material is appropriate for the typical operating range of your PM CEMS.

(5) How long should I operate my PM CEMS before conducting the initial correlation test? You should allow sufficient time for your PM CEMS to operate for you to become familiar with your PM CEMS.

(i) You should observe PM CEMS response over time during normal and varying process conditions. This will ensure that your PM CEMS has been properly set up to operate at a range that is compatible with the concentrations and characteristics of PM emissions for your source. You should use this information to establish the range of operating conditions necessary to determine the correlations of PM CEMS data to manual reference method measurements over a wide operating range.

(ii) You must determine the types of process changes that will influence, on a definable and repeatable basis, flue gas PM concentrations and the resulting PM CEMS responses. You may find this period useful to make adjustments to your planned approach for operating your PM CEMS at your source. For instance, you may change the measurement range or batch sampling period to something other than those you initially planned to use.

(6) How do I conduct the initial correlation test? When conducting the initial correlation test of your PM CEMS response to PM emissions determined by the reference method, you must pay close attention to accuracy and details. Your PM CEMS must be operating properly. You must perform the manual reference method testing accurately, with attention to eliminating site-specific systemic errors. You must coordinate the timing of the manual reference method testing with the sampling cycle of your PM CEMS. You must complete a minimum of 15 manual reference method tests. You must perform the manual reference method testing over the full range of PM CEMS responses that correspond to normal operating conditions for your source and control device and will result in the

widest range of emission concentrations.

(7) How should I perform the manual reference method testing? You must perform the manual reference method testing in accordance with specific rule requirements, coordinated closely with PM CEMS and process operations. It is highly recommended that you use paired trains for the manual reference method testing. You must perform the manual reference method testing over a suitable PM concentration range that corresponds to the full range of normal process and control device operating conditions. Because the manual reference method testing for this correlation test is not for compliance reporting purposes, you may conduct the reference method test runs for less than the typical minimum test run duration of 1 hour.

(8) What do I do with the manual reference method data and PM CEMS data? You must complete each of the activities in paragraphs (8)(i) through (v) of this section.

(i) Screen the manual reference method data for validity (*e.g.*, isokinetics, leak checks), quality assurance, and quality control (*e.g.*, outlier identification).

(ii) Screen your PM CEMS data for validity (*e.g.*, daily drift check requirements) and quality assurance (*e.g.*, flagged data).

(iii) Convert the manual reference method test data into measurement units (*e.g.*, mg/acm) consistent with the measurement conditions of your PM CEMS.

(iv) Calculate the correlation equation(s) as specified in section 12.3.

(v) Calculate the correlation coefficient, confidence interval half range, and tolerance interval half range for the complete set of PM CEMS and reference method correlation data for comparison with the correlation performance criteria specified in section 13.2.

2.5 What other procedures must I perform? Before conducting the initial correlation test, you must successfully complete a 7-day drift test (See section 8.5).

3.0 What Special Definitions Apply to PS–11?

3.1 ''Appropriate Measurement Range of your PM CEMS'' means a measurement range that is capable of recording readings over the complete range of your source's PM emission concentrations during routine operations. The appropriate range is determined during the pretest preparations as specified in section 8.4.

3.2 ''Appropriate Data Range for PM CEMS Correlation'' means the data range that reflects the full range of your source's PM emission concentrations recorded by your PM CEMS during the correlation test planning period or other normal operations as defined in the applicable regulations.

3.3 ''Batch Sampling'' means that gas is sampled on an intermittent basis and concentrated on a collection medium before intermittent analysis and follow-up reporting. Beta gauge PM CEMS are an example of batch sampling devices.

3.4 ''Confidence Interval Half Range (CI)'' means the statistical term for one-half of the width of the 95 percent confidence interval around the predicated mean PM concentration (y value) calculated at the PM CEMS response value (x value) where the confidence interval is narrowest. Procedures for calculating CI are specified in section 12.3(1)(ii) for linear correlations and in section 12.3(2)(ii) for polynomial correlations. The CI as a percent of the emission limit value (CI%) is calculated at the appropriate PM CEMS response value specified in Section 13.2(2).

3.5 ''Continuous Emission Monitoring System (CEMS)'' means all of the equipment required for determination of PM mass concentration in units of the emission standard. The sample interface, pollutant monitor, diluent monitor, other auxiliary data monitor(s), and data recorder are the major subsystems of your CEMS.

3.6 ''Correlation'' means the primary mathematical relationship for correlating the output from your PM CEMS to a PM concentration, as determined by the PM reference method. The correlation is expressed in the measurement units that are consistent with the measurement conditions (*e.g.*, mg/dscm, mg/acm) of your PM CEMS.

3.7 ''Correlation Coefficient (r)'' means a quantitative measure of the association between your PM CEMS outputs and the reference method measurements. Equations for calculating the r value are provided in section 12.3(1)(iv) for linear correlations and in section 12.3(2)(iv) for polynomial correlations.

3.8 ''Cycle Time'' means the time required to complete one sampling, measurement, and reporting cycle. For a batch sampling PM CEMS, the cycle time would start when sample gas is first extracted from the stack/duct and end when the measurement of that batch sample is complete and a new result for that batch sample is produced on the data recorder.

3.9 ''Data Recorder'' means the portion of your CEMS that provides a permanent record of the monitor output in terms of response and status (flags). The data recorder may also provide automatic data reduction and CEMS control capabilities (see section 6.6).

3.10 ''Diluent Monitor and Other Auxiliary Data Monitor(s) (if applicable)'' means the portion of your CEMS that provides the diluent gas concentration (such as O_2 or CO_2, as specified by the applicable regulations), temperature, pressure, and/or moisture content, and generates an output proportional to the diluent gas concentration or gas property.

3.11 ''Drift Check'' means a check of the difference between your PM CEMS output readings and the established reference value of a reference standard or procedure after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place. The procedures used to determine drift are specific to the operating principles of your specific PM CEMS. A drift check includes both a zero drift check and an upscale drift check.

3.12 ''Exponential Correlation'' means an exponential equation used to define the relationship between your PM CEMS output and the reference method PM concentration, as indicated by Equation 11–37.

3.13 ''Flagged Data'' means data marked by your CEMS indicating that the response value(s) from one or more CEMS subsystems is suspect or invalid or that your PM CEMS is not in source-measurement operating mode.

3.14 ''Linear Correlation'' means a first-order mathematical relationship between your PM CEMS output and the reference method PM concentration that is linear in form, as indicated by Equation 11–3.

3.15 ''Logarithmic Correlation'' means a first-order mathematical relationship between the natural logarithm of your PM CEMS output and the reference method PM concentration that is linear in form, as indicated by Equation 11–34.

3.16 ''Low-Emitting Source'' means a source that operated at no more than 50 percent of the emission limit during the most recent performance test, and, based on the PM CEMS correlation, the daily average emissions for the source, measured in the units of the applicable emission limit, have not exceeded 50 percent of the emission limit for any day since the most recent performance test.

3.17 ''Paired Trains'' means two reference method trains that are used to conduct simultaneous measurements of PM concentrations. Guidance on the use

of paired sampling trains can be found in the PM CEMS Knowledge Document (see section 16.5).

3.18 ''Polynomial Correlation'' means a second-order equation used to define the relationship between your PM CEMS output and reference method PM concentration, as indicated by Equation 11–16.

3.19 ''Power Correlation'' means an equation used to define a power function relationship between your PM CEMS output and the reference method concentration, as indicated by Equation 11–42.

3.20 ''Reference Method'' means the method defined in the applicable regulations, but commonly refers to those methods collectively known as EPA Methods 5, 5I, and 17 (for particulate matter), found in Appendix A of 40 CFR 60. Only the front half and dry filter catch portions of the reference method can be correlated to your PM CEMS output.

3.21 ''Reference Standard'' means a reference material or procedure that produces a known and unchanging response when presented to the pollutant monitor portion of your CEMS. You must use these standards to evaluate the overall operation of your PM CEMS, but not to develop a PM CEMS correlation.

3.22 ''Response Time'' means the time interval between the start of a step change in the system input and the time when the pollutant monitor output reaches 95 percent of the final value (see sections 6.5 and 13.3 for procedures and acceptance criteria).

3.23 ''Sample Interface'' means the portion of your CEMS used for one or more of the following: sample acquisition, sample delivery, sample conditioning, or protection of the monitor from the effects of the stack effluent.

3.24 ''Sample Volume Check'' means a check of the difference between your PM CEMS sample volume reading and the sample volume reference value.

3.25 ''Tolerance Interval half range (TI)'' means one-half of the width of the tolerance interval with upper and lower limits, within which a specified percentage of the future data population is contained with a given level of confidence, as defined by the respective tolerance interval half range equations in section 12.3(1)(iii) for linear correlations and in section 12.3(2)(iii) for polynomial correlations. The TI as a percent of the emission limit value (TI%) is calculated at the appropriate PM CEMS response value specified in Section 13.2(3).

3.26 ''Upscale Check Value'' means the expected response to a reference standard or procedure used to check the upscale response of your PM CEMS.

3.27 ''Upscale Drift (UD) Check'' means a check of the difference between your PM CEMS output reading and the upscale check value.

3.28 ''Zero Check Value'' means the expected response to a reference standard or procedure used to check the response of your PM CEMS to particulate-free or low-particulate concentration conditions.

3.29 ''Zero Drift (ZD) Check'' means a check of the difference between your PM CEMS output reading and the zero check value.

3.30 ''Zero Point Correlation Value'' means a value added to PM CEMS correlation data to represent low or near zero PM concentration data (see section 8.6 for rationale and procedures).

4.0 Are There Any Potential Interferences for My PM CEMS?

Yes, condensible water droplets or condensible acid gas aerosols (*i.e.*, those with condensation temperatures above those specified by the reference method) at the measurement location can be interferences for your PM CEMS if the necessary precautions are not met.

4.1 Where are interferences likely to occur? Interferences may develop if your CEMS is installed downstream of a wet air pollution control system or any other conditions that produce flue gases, which, at your PM CEMS measurement point, normally or occasionally contain entrained water droplets or condensible salts before release to the atmosphere.

4.2 How do I deal with interferences? We recommend that you use a PM CEMS that extracts and heats representative samples of the flue gas for measurement to simulate results produced by the reference method for conditions such as those described in section 4.1. Independent of your PM CEMS measurement technology and extractive technique, you should have a configuration simulating the reference method to ensure that:

(1) No formation of new PM or deposition of PM occurs in sample delivery from the stack or duct; and

(2) No condensate accumulates in the sample flow measurement apparatus.

4.3 What PM CEMS measurement technologies should I use? You should use a PM CEMS measurement technology that is free of interferences from any condensible constituent in the flue gas.

5.0 What Do I Need To Know To Ensure the Safety of Persons Using PS–11?

People using the procedures required under PS–11 may be exposed to hazardous materials, operations, site conditions, and equipment. This performance specification does not purport to address all of the safety issues associated with its use. It is your responsibility to establish appropriate safety and health practices and determine the applicable regulatory limitations before performing these procedures. You must consult your CEMS user's manual and other reference materials recommended by the reference method for specific precautions to be taken.

6.0 What Equipment and Supplies Do I Need?

Different types of PM CEMS use different operating principles. You should select an appropriate PM CEMS based on your site-specific configurations, flue gas conditions, and PM characteristics.

(1) Your PM CEMS must sample the stack effluent continuously or, for batch sampling PM CEMS, intermittently.

(2) You must ensure that the averaging time, the number of measurements in an average, the minimum data availability, and the averaging procedure for your CEMS conform with those specified in the applicable emission regulation.

(3) Your PM CEMS must include, as a minimum, the equipment described in sections 6.1 through 6.7.

6.1 What equipment is needed for my PM CEMS's sample interface? Your PM CEMS's sample interface must be capable of delivering a representative sample of the flue gas to your PM CEMS. This subsystem may be required to heat the sample gas to avoid PM deposition or moisture condensation, provide dilution air, perform other gas conditioning to prepare the sample for analysis, or measure the sample volume or flow rate.

(1) If your PM CEMS is installed downstream of a wet air pollution control system such that the flue gases normally or occasionally contain entrained water droplets, we recommend that you select a sampling system that includes equipment to extract and heat a representative sample of the flue gas for measurement so that the pollutant monitor portion of your CEMS measures only dry PM. Heating should be sufficient to raise the temperature of the extracted flue gas above the water condensation temperature and should be maintained at all times and at all points in the sample line from where the flue gas is extracted, including the pollutant monitor and any sample flow measurement devices.

(2) You must consider the measured conditions of the sample gas stream to ensure that manual reference method test data are converted to units of PM concentration that are appropriate for the correlation calculations. Additionally, you must identify what, if any, additional auxiliary data from other monitoring and handling systems are necessary to convert your PM CEMS response into the units of the PM standard.

(3) If your PM CEMS is an extractive type and your source's flue gas volumetric flow rate varies by more than 10 percent from nominal, your PM CEMS should maintain an isokinetic sampling rate (within 10 percent of true isokinetic). If your extractive-type PM CEMS does not maintain an isokinetic sampling rate, you must use actual site-specific data or data from a similar installation to prove to us, the State, and/or local enforcement agency that isokinetic sampling is not necessary.

6.2 What type of equipment is needed for my PM CEMS? Your PM CEMS must be capable of providing an electronic output that can be correlated to the PM concentration.

(1) Your PM CEMS must be able to perform zero and upscale drift checks. You may perform these checks manually, but performing these checks automatically is preferred.

(2) We recommend that you select a PM CEMS that is capable of performing automatic diagnostic checks and sending instrument status signals (flags) to the data recorder.

(3) If your PM CEMS is an extractive type that measures the sample volume and uses the measured sample volume as part of calculating the output value, your PM CEMS must be able to perform a check of the sample volume to verify the accuracy of the sample volume measuring equipment. The sample volume check must be conducted daily and at the normal sampling rate of your PM CEMS.

6.3 What is the appropriate measurement range for my PM CEMS? Initially, your PM CEMS must be set up to measure over the expected range of your source's PM emission concentrations during routine operations. You may change the measurement range to a more appropriate range prior to correlation testing.

6.4 What if my PM CEMS does automatic range switching? Your PM CEMS may be equipped to perform automatic range switching so that it is operating in a range most sensitive to the detected concentrations. If your PM CEMS does automatic range switching, you must configure the data recorder to handle the recording of data values in multiple ranges during range-switching intervals.

6.5 What averaging time and sample intervals should be used? Your CEMS must sample the stack effluent such that the averaging time, the number of measurements in an average, the minimum sampling time, and the averaging procedure for reporting and determining compliance conform with those specified in the applicable regulation. Your PM CEMS must be designed to meet the specified response time and cycle time established in this performance specification (see section 13.3).

6.6 What type of equipment is needed for my data recorder? Your CEMS data recorder must be able to accept and record electronic signals from all the monitors associated with your PM CEMS.

(1) Your data recorder must record the signals from your PM CEMS that can be correlated to PM mass concentrations. If your PM CEMS uses multiple ranges, your data recorder must identify what range the measurement was made in and provide range-adjusted results.

(2) Your data recorder must accept and record monitor status signals (flagged data).

(3) Your data recorder must accept signals from auxiliary data monitors, as appropriate.

6.7 What other equipment and supplies might I need? You may need other supporting equipment as defined by the applicable reference method(s) (see section 7) or as specified by your CEMS manufacturer.

7.0 What Reagents and Standards Do I Need?

You will need reference standards or procedures to perform the zero drift check, the upscale drift check, and the sample volume check.

7.1 What is the reference standard value for the zero drift check? You must use a zero check value that is no greater than 20 percent of the PM CEMS's response range. You must obtain documentation on the zero check value from your PM CEMS manufacturer.

7.2 What is the reference standard value for the upscale drift check? You must use an upscale check value that produces a response between 50 and 100 percent of the PM CEMS's response range. For a PM CEMS that produces output over a range of 4 mA to 20 mA, the upscale check value must produce a response in the range of 12 mA to 20 mA. You must obtain documentation on the upscale check value from your PM CEMS manufacturer.

7.3 What is the reference standard value for the sample volume check? You must use a reference standard value or procedure that produces a sample volume value equivalent to the normal sampling rate. You must obtain documentation on the sample volume value from your PM CEMS manufacturer.

8.0 What Performance Specification Test Procedure Do I Follow?

You must complete each of the activities in sections 8.1 through 8.8 for your performance specification test.

8.1 How should I select and set up my equipment? You should select a PM CEMS that is appropriate for your source, giving consideration to potential factors such as flue gas conditions, interferences, site-specific configuration, installation location, PM concentration range, and other PM characteristics. Your PM CEMS must meet the equipment specifications in sections 6.1 and 6.2.

(1) You should select a PM CEMS that is appropriate for the flue gas conditions at your source. If your source's flue gas contains entrained water droplets, we recommend that your PM CEMS include a sample delivery and conditioning system that is capable of extracting and heating a representative sample.

(i) Your PM CEMS must maintain the sample at a temperature sufficient to prevent moisture condensation in the sample line before analysis of PM.

(ii) If condensible PM is an issue, we recommend that you operate your PM CEMS to maintain the sample gas temperature at the same temperature as the reference method filter.

(iii) Your PM CEMS must avoid condensation in the sample flow rate measurement lines.

(2) Some PM CEMS do not have a wide measurement range capability. Therefore, you must select a PM CEMS that is capable of measuring the full range of PM concentrations expected from your source from normal levels through the emission limit concentration.

(3) Some PM CEMS are sensitive to particle size changes, water droplets in the gas stream, particle charge, stack gas velocity changes, or other factors. Therefore, you should select a PM CEMS appropriate for the emission characteristics of your source.

(4) We recommend that you consult your PM CEMS vendor to obtain basic recommendations on the instrument capabilities and setup configuration. You are ultimately responsible for setup and operation of your PM CEMS.

8.2 Where do I install my PM CEMS? You must install your PM CEMS

at an accessible location downstream of all pollution control equipment. You must perform your PM CEMS concentration measurements from a location considered representative or be able to provide data that can be corrected to be representative of the total PM emissions as determined by the manual reference method.

(1) You must select a measurement location that minimizes problems due to flow disturbances, cyclonic flow, and varying PM stratification (refer to Method 1 for guidance).

(2) If you plan to achieve higher emissions for correlation test purposes by adjusting the performance of the air pollution control device (per section 8.6(4)(i)), you must locate your PM CEMS and reference method sampling points well downstream of the control device (*e.g.*, downstream of the induced draft fan), in order to minimize PM stratification that may be created in these cases.

8.3 How do I select the reference method measurement location and traverse points? You must follow EPA Method 1 for identifying manual reference method traverse points. Ideally, you should perform your manual reference method measurements at locations that satisfy the measurement site selection criteria specified in EPA Method 1 of at least eight duct diameters downstream and at least two duct diameters upstream of any flow disturbance. Where necessary, you may conduct testing at a location that is two diameters downstream and 0.5 diameters upstream of flow disturbances. If your location does not meet the minimum downstream and upstream requirements, you must obtain approval from us to test at your location.

8.4 What are my pretest preparation steps? You must install your CEMS and prepare the reference method test site according to the specifications in sections 8.2 and 8.3.

(1) After completing the initial field installation, we recommend that you operate your PM CEMS according to the manufacturer's instructions to familiarize yourself with its operation before you begin correlation testing.

(i) During this initial period of operation, we recommend that you conduct daily checks (zero and upscale drift and sample volume, as appropriate), and, when any check exceeds the daily specification (see section 13.1), make adjustments and perform any necessary maintenance to ensure reliable operation.

(2) When you are confident that your PM CEMS is operating properly, we recommend that you operate your CEMS over a correlation test planning period of sufficient duration to identify the full range of operating conditions and PM emissions to be used in your PM CEMS correlation test.

(i) During the correlation test planning period, you should operate the process and air pollution control equipment over the normal range of operating conditions, except when you attempt to produce higher emissions.

(ii) Your data recorder should record PM CEMS response during the full range of routine process operating conditions.

(iii) You should try to establish the relationships between operating conditions and PM CEMS response, especially those conditions that produce the highest PM CEMS response over 15-minute averaging periods, and the lowest PM CEMS response as well. The objective is to be able to reproduce the conditions for purposes of the actual correlation testing discussed in section 8.6.

(3) You must set the response range of your PM CEMS such that the instrument measures the full range of responses that correspond to the range of source operating conditions that you will implement during correlation testing.

(4) We recommend that you perform preliminary reference method testing after the correlation test planning period. During this preliminary testing, you should measure the PM emission concentration corresponding to the highest PM CEMS response observed during the full range of normal operation, when perturbing the control equipment, or as the result of PM spiking.

(5) Before performing correlation testing, you must perform a 7-day zero and upscale drift test (see section 8.5).

(6) You must not change the response range of the monitor once the response range has been set and the drift test successfully completed.

8.5 How do I perform the 7-day drift test? You must check the zero (or low-level value between 0 and 20 percent of the response range of the instrument) and upscale (between 50 and 100 percent of the instrument's response range) drift. You must perform this check at least once daily over 7 consecutive days. Your PM CEMS must quantify and record the zero and upscale measurements and the time of the measurements. If you make automatic or manual adjustments to your PM CEMS zero and upscale settings, you must conduct the drift test immediately before these adjustments, or conduct it in such a way that you can determine the amount of drift. You will find the calculation procedures for drift in section 12.1 and the acceptance criteria for allowable drift in section 13.1.

(1) What is the purpose of 7-day drift tests? The purpose of the 7-day drift test is to demonstrate that your system is capable of operating in a stable manner and maintaining its calibration for at least a 7-day period.

(2) How do I conduct the 7-day drift test? To conduct the 7-day drift test, you must determine the magnitude of the drift once each day, at 24-hour intervals, for 7 consecutive days while your source is operating normally.

(i) You must conduct the 7-day drift test at the two points specified in section 8.5. You may perform the 7-day drift tests automatically or manually by introducing to your PM CEMS suitable reference standards (these need not be certified) or by using other appropriate procedures.

(ii) You must record your PM CEMS zero and upscale response and evaluate them against the zero check value and upscale check value.

(3) When must I conduct the 7-day drift test? You must complete a valid 7-day drift test before attempting the correlation test.

8.6 How do I conduct my PM CEMS correlation test? You must conduct the correlation test according to the procedure given in paragraphs (1) through (5) of this section. If you need multiple correlations, you must conduct sufficient testing and collect at least 15 pairs of reference method and PM CEMS data for calculating each separate correlation.

(1) You must use the reference method for PM (usually EPA Methods 5, 5I, or 17) that is prescribed by the applicable regulations. You may need to perform other reference methods or performance specifications (*e.g.*, Method 3 for oxygen, Method 4 for moisture, etc.) depending on the units in which your PM CEMS reports PM concentration.

(i) We recommend that you use paired reference method trains when collecting manual PM data to identify and screen the reference method data for imprecision and bias. Procedures for checking reference method data for bias and precision can be found in the PM CEMS Knowledge Document (see section 16.5).

(ii) You may use test runs that are shorter than 60 minutes in duration (*e.g.*, 20 or 30 minutes). You may perform your PM CEMS correlation tests during new source performance standards performance tests or other compliance tests subject to the Clean Air Act or other statutes, such as the Resource Conservation and Recovery Act. In these cases, your reference

method results obtained during the PM CEMS correlation test may be used to determine compliance so long as your source and the test conditions and procedures (*e.g.*, reference method sample run durations) are consistent with the applicable regulations and the reference method.

(iii) You must convert the reference method results to units consistent with the conditions of your PM CEMS measurements. For example, if your PM CEMS measures and reports PM emissions in the units of mass per actual volume of stack gas, you must convert your reference method results to those units (*e.g.*, mg/acm). If your PM CEMS extracts and heats the sample gas to eliminate water droplets, then measures and reports PM emissions under those actual conditions, you must convert your reference method results to those same conditions (*e.g.*, mg/acm at 160°C).

(2) During each test run, you must coordinate process operations, reference method sampling, and PM CEMS operations. For example, you must ensure that the process is operating at the targeted conditions, both reference method trains are sampling simultaneously (if paired sampling trains are being used), and your PM CEMS and data logger are operating properly.

(i) You must coordinate the start and stop times of each run between the reference method sampling and PM CEMS operation. For a batch sampling PM CEMS, you must start the reference method at the same time as your PM CEMS sampling.

(ii) You must note the times for port changes (and other periods when the reference method sampling may be suspended) on the data sheets so that you can adjust your PM CEMS data accordingly, if necessary.

(iii) You must properly align the time periods for your PM CEMS and your reference method measurements to account for your PM CEMS response time.

(3) You must conduct a minimum of 15 valid runs each consisting of simultaneous PM CEMS and reference method measurement sets.

(i) You may conduct more than 15 sets of CEMS and reference method measurements. If you choose this option, you may reject certain test results so long as the total number of valid test results you use to determine the correlation is greater than or equal to 15.

(ii) You must report all data, including the rejected data.

(iii) You may reject the results of up to five test runs without explanation.

(iv) If you reject the results of more than five test runs, the basis for rejecting the results of the additional test runs must be explicitly stated in the reference method, this performance specification, Procedure 2 of appendix F, or your quality assurance plan.

(4) Simultaneous PM CEMS and reference method measurements must be performed in a manner to ensure that the range of data that will be used to establish the correlation for your PM CEMS is maximized. You must first attempt to maximize your correlation range by following the procedures described in paragraphs (4)(i) through (iv) of this section. If you cannot obtain the three levels as described in paragraphs (i) through (iv), then you must use the procedure described in section 8.6(5).

(i) You must attempt to obtain the three different levels of PM mass concentration by varying process operating conditions, varying PM control device conditions, or by means of PM spiking.

(ii) The three PM concentration levels you use in the correlation tests must be distributed over the complete operating range experienced by your source.

(iii) At least 20 percent of the minimum 15 measured data points you use should be contained in each of the following levels:

- Level 1: From no PM (zero concentration) emissions to 50 percent of the maximum PM concentration;
- Level 2: 25 to 75 percent of the maximum PM concentration; and
- Level 3: 50 to 100 percent of the maximum PM concentration.

(iv) Although the above levels overlap, you may only apply individual run data to one level.

(5) If you cannot obtain three distinct levels of PM concentration as described, you must perform correlation testing over the maximum range of PM concentrations that is practical for your PM CEMS. To ensure that the range of data used to establish the correlation for your PM CEMS is maximized, you must follow one or more of the steps in paragraphs (5)(i) through (iv) of this section.

(i) Zero point data for *in-situ* instruments should be obtained, to the extent possible, by removing the instrument from the stack and monitoring ambient air on a test bench.

(ii) Zero point data for extractive instruments should be obtained by removing the extractive probe from the stack and drawing in clean ambient air.

(iii) Zero point data also can be obtained by performing manual reference method measurements when the flue gas is free of PM emissions or contains very low PM concentrations (*e.g.*, when your process is not operating, but the fans are operating or your source is combusting only natural gas).

(iv) If none of the steps in paragraphs (5)(i) through (iii) of this section are possible, you must estimate the monitor response when no PM is in the flue gas (*e.g.*, 4 mA = 0 mg/acm).

8.7 What do I do with the initial correlation test data for my PM CEMS? You must calculate and report the results of the correlation testing, including the correlation coefficient, confidence interval, and tolerance interval for the PM CEMS response and reference method correlation data that are use to establish the correlation, as specified in section 12. You must include all data sheets, calculations, charts (records of PM CEMS responses), process data records including PM control equipment operating parameters, and reference media certifications necessary to confirm that your PM CEMS met the requirements of this performance specification. In addition, you must:

(1) Determine the integrated (arithmetic average) PM CEMS output over each reference method test period;

(2) Adjust your PM CEMS outputs and reference method test data to the same clock time (considering response time of your PM CEMS);

(3) Confirm that the reference method results are consistent with your PM CEMS response in terms of, where applicable, moisture, temperature, pressure, and diluent concentrations; and

(4) Determine whether any of the reference method test results do not meet the test method criteria.

8.8 What is the limitation on the range of my PM CEMS correlation? Although the data you collect during the correlation testing should be representative of the full range of normal operating conditions at your source, you must conduct additional correlation testing if either of the conditions specified in paragraphs (1) and (2) of this section occurs.

(1) If your source is a low-emitting source, as defined in section 3.16 of this specification, you must conduct additional correlation testing if either of the events specified in paragraphs (1)(i) or (ii) of this section occurs while your source is operating under normal conditions.

(i) Your source generates 24 consecutive hourly average PM CEMS responses that are greater than 125 percent of the highest PM CEMS response (*e.g.*, mA reading) used for the correlation curve or are greater than the

PM CEMS response that corresponds to 50 percent of the emission limit, whichever is greater, or

(ii) The cumulative hourly average PM CEMS responses generated by your source are greater than 125 percent of the highest PM CEMS response used for the correlation curve or are greater than the PM CEMS response that corresponds to 50 percent of the emission limit, whichever is greater, for more than 5 percent of your PM CEMS operating hours for the previous 30-day period.

(2) If your source is not a low-emitting source, as defined in section 3.16 of this specification, you must conduct additional correlation testing if either of the events specified in paragraph (i) or (ii) of this section occurs while your source is operating under normal conditions.

(i) Your source generates 24 consecutive hourly average PM CEMS responses that are greater than 125 percent of the highest PM CEMS response (*e.g.*, mA reading) used for the correlation curve, or

(ii) The cumulative hourly average PM CEMS responses generated by your source are greater than 125 percent of the highest PM CEMS response used for the correlation curve for more than 5 percent of your PM CEMS operating hours for the previous 30-day period.

(3) If additional correlation testing is required, you must conduct at least three additional test runs under the conditions that caused the higher PM CEMS response.

(i) You must complete the additional testing and use the resulting new data along with the previous data to calculate a revised correlation equation within 60 days after the occurrence of the event that requires additional testing, as specified in paragraphs 8.8(1) and (2).

(4) If your source generates consecutive PM CEMS hourly responses that are greater than 125 percent of the highest PM CEMS response used to develop the correlation curve for 24 hours or for a cumulative period that amounts to more than 5 percent of the PM CEMS operating hours for the previous 30-day period, you must report the reason for the higher PM CEMS responses.

9.0 What Quality Control Measures Are Required?

Quality control measures for PM CEMS are specified in 40 CFR 60, Appendix F, Procedure 2.

10.0 What Calibration and Standardization Procedures Must I Perform? [Reserved]

11.0 What Analytical Procedures Apply to This Procedure?

Specific analytical procedures are outlined in the applicable reference method(s).

12.0 What Calculations and Data Analyses Are Needed?

You must determine the primary relationship for correlating the output from your PM CEMS to a PM concentration, typically in units of mg/acm or mg/dscm of flue gas, using the calculations and data analysis process in sections 12.2 and 12.3. You develop the correlation by performing an appropriate regression analysis between your PM CEMS response and your reference method data.

12.1 How do I calculate upscale drift and zero drift? You must determine the difference in your PM CEMS output readings from the established reference values (zero and upscale check values) after a stated period of operation during which you performed no unscheduled maintenance, repair, or adjustment.

(1) Calculate the upscale drift (UD) using Equation 11–1:

$$UD = \frac{|R_{CEM} - R_U|}{R_U} \times 100 \qquad \text{(Eq. 11-1)}$$

Where:

UD = The upscale (high-level) drift of your PM CEMS in percent,

R_{CEM} = The measured PM CEMS response to the upscale reference standard, and

R_U = The preestablished numerical value of the upscale reference standard.

(2) Calculate the zero drift (ZD) using Equation 11–2:

$$ZD = \frac{|R_{CEM} - R_L|}{R_U} \times 100 \qquad \text{(Eq. 11-2)}$$

Where:

ZD = The zero (low-level) drift of your PM CEMS in percent,

R_{CEM} = The measured PM CEMS response to the zero reference standard,

R_L = The preestablished numerical value of the zero reference standard, and

R_U = The preestablished numerical value of the upscale reference standard.

(3) Summarize the results on a data sheet similar to that shown in Table 2 (see section 17).

12.2 How do I perform the regression analysis? You must couple each reference method PM concentration measurement, y, in the appropriate units, with an average PM CEMS response, x, over corresponding time periods. You must complete your PM CEMS correlation calculations using data deemed acceptable by quality control procedures identified in 40 CFR 60, Appendix F, Procedure 2.

(1) You must evaluate all flagged or suspect data produced during measurement periods and determine whether they should be excluded from your PM CEMS's average.

(2) You must assure that the reference method and PM CEMS results are on a consistent moisture, temperature, and diluent basis. You must convert the reference method PM concentration measurements (dry standard conditions) to the units of your PM CEMS measurement conditions. The conditions of your PM CEMS measurement are monitor-specific. You must obtain from your PM CEMS vendor or instrument manufacturer the conditions and units of measurement for your PM CEMS.

(i) If your sample gas contains entrained water droplets and your PM CEMS is an extractive system that measures at actual conditions (*i.e.*, wet basis), you must use the measured moisture content determined from the impinger analysis when converting your reference method PM data to PM CEMS conditions; do not use the moisture content calculated from a psychrometric chart based on saturated conditions.

12.3 How do I determine my PM CEMS correlation? To predict PM concentrations from PM CEMS responses, you must use the calculation method of least squares presented in paragraphs (1) through (5) of this section. When performing the calculations, each reference method PM concentration measurement must be treated as a discrete data point; if using paired sampling trains, do not average reference method data pairs for any test run.

This performance specification describes procedures for evaluating five types of correlation models: linear, polynomial, logarithmic, exponential, and power. Procedures for selecting the most appropriate correlation model are presented in section 12.4 of this specification.

(1) How do I evaluate a linear correlation for my correlation test data? To evaluate a linear correlation, follow the procedures described in paragraphs (1)(i) through (iv) of this section.

(i) Calculate the linear correlation equation, which gives the predicted PM concentration ($\hat{y}$) as a function of the

PM CEMS response (x), as indicated by Equation 11–3:

$$\hat{y} = b_0 + b_1 x \qquad \text{(Eq. 11-3)}$$

Where:

$\hat{y}$ = the predicted PM concentration,

b_0 = the intercept for the correlation curve, as calculated using Equation 11–4,

b_1 = the slope of the correlation curve, as calculated using Equation 11–6, and

x = the PM CEMS response value.

Calculate the y intercept (b_0) of the correlation curve using Equation 11–4:

$$b_0 = \bar{y} - b_1 \cdot \bar{x} \qquad \text{(Eq. 11-4)}$$

Where:

$\bar{x}$ = the mean value of the PM CEMS response data, as calculated using Equation 11–5, and

$\bar{y}$ = the mean value of the PM concentration data, as calculated using Equation 11–5:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i,\ \bar{y} = \frac{1}{n}\sum_{i=1}^{n} y_i \qquad \text{(Eq. 11-5)}$$

Where:

x_i = the PM CEMS response value for run i,

y_i = the PM concentration value for run i, and

n = the number of data points.

Calculate the slope (b_1) of the correlation curve using Equation 11–6:

$$b_1 = \frac{S_{xy}}{S_{xx}} \qquad \text{(Eq. 11-6)}$$

Where:

S_{xx}, S_{xy} = as calculated using Equation 11–7:

$$S_{xx} = \sum_{i=1}^{n}(x_i - \bar{x})^2,\ S_{xy} = \sum_{i=1}^{n}(x_i - \bar{x})(y_i - \bar{y}) \qquad \text{(Eq. 11-7)}$$

(ii) Calculate the half range of the 95 percent confidence interval (CI) for the predicted PM concentration ($\bar{y}$) at the mean value of x, using Equation 11–8:

$$CI = t_{df,1-a/2} \cdot S_L \sqrt{\frac{1}{n}} \qquad \text{(Eq. 11-8)}$$

Where:

CI = the half range for the 95 percent confidence interval for the mean x value,

$t_{df,1-a/2}$ = the value for the t statistic provided in Table 1 for df = n-2, and

S_L = the scatter or deviation of $\hat{y}$ values about the correlation curve, which is determined using Equation 11–9:

$$S_L = \sqrt{\frac{1}{n-2}\sum_{i=1}^{n}(\hat{y}_i - y_i)^2} \qquad \text{(Eq. 11-9)}$$

Calculate the confidence interval half range at the mean x value as a percentage of the emission limit (CI%) using Equation 11–10:

$$CI\% = \frac{CI}{EL} \cdot 100\% \qquad \text{(Eq. 11-10)}$$

Where:

CI = the confidence interval half range at the mean x value, and

EL = PM emission limit, as described in section 13.2.

(iii) Calculate the half range of the tolerance interval at the mean x value (TI) using Equation 11–11:

$$TI = k_t \cdot S_L \qquad \text{(Eq. 11-11)}$$

Where:

TI = the tolerance interval half range at the mean x value,

k_t = as calculated using Equation 11–12, and

S_L = as calculated using Equation 11–9:

$$k_t = u_{n'} \cdot v_{df} \qquad \text{(Eq. 11-12)}$$

Where:

n′ = the number of test runs (n),

$u_{n'}$ = the tolerance factor for 75 percent provided in Table 1, and

v_{df} = the value from Table 1 for df = n − 2.

Calculate the tolerance interval half range at the mean x value as a percentage of the emission limit (TI%) using Equation 11–13:

$$TI\% = \frac{TI}{EL} \cdot 100\% \qquad \text{(Eq. 11-13)}$$

Where:

TI = the tolerance interval half range at the mean value of x, and

EL = PM emission limit, as described in section 13.2.

(iv) Calculate the linear correlation coefficient (r) using Equation 11–14:

$$r = \sqrt{1 - \frac{S_L^2}{S_y^2}} \qquad \text{(Eq. 11-14)}$$

Where:

S_L = as calculated using Equation 11–9, and

S_y = as calculated using Equation 11–15:

$$S_y = \sqrt{\frac{\sum_{i=1}^{n}(y_i - \bar{y})^2}{n-1}} \qquad \text{(Eq. 11-15)}$$

(2) How do I evaluate a polynomial correlation for my correlation test data? To evaluate a polynomial correlation, follow the procedures described in paragraphs (2)(i) through (iv) of this section.

(i) Calculate the polynomial correlation equation, which is indicated by Equation 11–16, using Equations 11–17 through 11–22:

$$\hat{y} = b_0 + b_1 x + b_2 x^2 \qquad \text{(Eq. 11-16)}$$

Where:

$\hat{y}$ = the PM CEMS concentration predicted by the polynomial correlation equation, and

b_0, b_1, b_2 = the coefficients determined from the solution to the matrix equation Ab=B where:

$$A = \begin{bmatrix} n & S_1 & S_2 \\ S_1 & S_2 & S_3 \\ S_2 & S_3 & S_4 \end{bmatrix},\ b = \begin{bmatrix} b_0 \\ b_1 \\ b_2 \end{bmatrix},\ B = \begin{bmatrix} S_5 \\ S_6 \\ S_7 \end{bmatrix},$$

$$S_1 = \sum_{i=1}^{n}(x_i),\ S_2 = \sum_{i=1}^{n}\left(x_i^2\right),\ S_3 = \sum_{i=1}^{n}\left(x_i^3\right),\ S_4 = \sum_{i=1}^{n}\left(x_i^4\right), \quad \text{(Eq. 11-17)}$$

$$S_5 = \sum_{i=1}^{n}(y_i),\ S_6 = \sum_{i=1}^{n}(x_i y_i),\ S_7 = \sum_{i=1}^{n}\left(x_i^2 y_i\right). \quad \text{(Eq. 11-18)}$$

Where:

x_i = the PM CEMS response for run i,

y_i = the reference method PM concentration for run i, and

n = the number of test runs.

Calculate the polynomial correlation curve coefficients (b_0, b_1, and b_2) using Equations 11–19 to 11–21, respectively:

$$b_0 = \frac{\left(S_5 \cdot S_2 \cdot S_4 + S_1 \cdot S_3 \cdot S_7 + S_2 \cdot S_6 \cdot S_3 - S_7 \cdot S_2 \cdot S_2 - S_3 \cdot S_3 \cdot S_5 - S_4 \cdot S_6 \cdot S_1\right)}{\det A} \quad \text{(Eq. 11-19)}$$

$$b_1 = \frac{\left(n \cdot S_6 \cdot S_4 + S_5 \cdot S_3 \cdot S_2 + S_2 \cdot S_1 \cdot S_7 - S_2 \cdot S_6 \cdot S_2 - S_7 \cdot S_3 \cdot n - S_4 \cdot S_1 \cdot S_5\right)}{\det A} \quad \text{(Eq. 11-20)}$$

$$b_2 = \frac{\left(n \cdot S_2 \cdot S_7 + S_1 \cdot S_6 \cdot S_2 + S_5 \cdot S_1 \cdot S_3 - S_2 \cdot S_2 \cdot S_5 - S_3 \cdot S_6 \cdot n - S_7 \cdot S_1 \cdot S_1\right)}{\det A} \quad \text{(Eq. 11-21)}$$

Where:

$$\det A = n \cdot S_2 \cdot S_4 - S_2 \cdot S_2 + S_1 \cdot S_3 \cdot S_2 - S_3 \cdot S_3 \cdot n + S_2 \cdot S_1 \cdot S_3 - S_4 \cdot S_1 \cdot S_1 \quad \text{(Eq. 11-22)}$$

(ii) Calculate the confidence interval half range (CI) by first calculating the C coefficients (C_0 to C_5) using Equations 11–23 and 11–24:

Where:

$$C_0 = \frac{\left(S_2 \cdot S_4 - S_3^2\right)}{D},\ C_1 = \frac{\left(S_3 \cdot S_2 - S_1 \cdot S_4\right)}{D},\ C_2 = \frac{\left(S_1 \cdot S_3 - S_2^2\right)}{D},\ C_3 = \frac{\left(nS_4 - S_2^2\right)}{D},\ C_4 = \frac{\left(S_1 \cdot S_2 - nS_3\right)}{D},\ C_5 = \frac{\left(nS_2 - S_1^2\right)}{D} \quad \text{(Eq. 11-23)}$$

Where:

$$D = n\left(S_2 \cdot S_4 - S_3^2\right) + S_1\left(S_3 \cdot S_2 - S_1 \cdot S_4\right) + S_2\left(S_1 \cdot S_3 - S_2^2\right) \quad \text{(Eq. 11-24)}$$

Calculate Δ using Equation 11–25 for each x value:

$$\Delta = C_0 + 2C_1 x + \left(2C_2 + C_3\right)x^2 + 2C_4 x^3 + C_5 x^4 \quad \text{(Eq. 11-25)}$$

Determine the x value that corresponds to the minimum value of Δ (Δ_{min}). Determine the scatter or deviation of ŷ values about the polynomial correlation curve (S_P) using Equation 11–26:

$$S_P = \sqrt{\frac{1}{n-3}\sum_{i=1}^{n}\left(\hat{y}_i - y_i\right)^2} \quad \text{(Eq. 11-26)}$$

Calculate the half range of the 95 percent confidence interval (CI) at the x value that corresponds to Δ_{min} using Equation 11–27:

$$CI = t_{df} \cdot S_P \sqrt{D_{min}} \quad \text{(Eq. 11-27)}$$

Where:

df = n − 3, and

t_{df} = as listed in Table 1 (see section 17).

Calculate the confidence interval half range at the x value for Δ_{min} as a percentage of the emission limit (CI%) using Equation 11–28:

$$CI\% = \frac{CI}{EL} \cdot 100\% \quad \text{(Eq. 11-28)}$$

Where:

CI = the confidence interval half range at the *x* value that corresponds to Δ_{min}, and

EL = PM emission limit, as described in section 13.2.

(iii) Calculate the tolerance interval half range (TI) at the x value for Δ_{min}, as indicated in Equation 11–29 for the polynomial correlation, using Equations 11–30 and 11–31:

$$TI = k_T \cdot S_P \quad \text{(Eq. 11-29)}$$

Where:

$$k_T = u_{n'} \cdot v_{df} \qquad \text{(Eq. 11-30)}$$

$$n' = \frac{1}{\Delta_{min}} \qquad \text{(Eq. 11-31)}$$

$u_{n'}$ = the value indicated in Table 1, and
v_{df} = the value indicated in Table 1 for df = n − 3.

If the calculated value for n is less than 2, then n = 2.

Calculate the tolerance interval half range at the x value for Δ_{min} as a percentage of the emission limit (TI%) using Equation 11–32:

$$TI\% = \frac{TI}{EL} \cdot 100\% \qquad \text{(Eq. 11-32)}$$

Where:
TI = the tolerance interval half range at the x value that corresponds to Δ_{min}, and
EL = PM emission limit, as described in section 13.2.

(iv) Calculate the polynomial correlation coefficient (r) using Equation 11–33:

$$r = \sqrt{1 - \frac{S_p^2}{S_y^2}} \qquad \text{(Eq. 11-33)}$$

Where:
S_P = as calculated using Equation 11–26, and
S_y = as calculated using Equation 11–15.

(3) How do I evaluate a logarithmic correlation for my correlation test data? To evaluate a logarithmic correlation, which has the form indicated by Equation 11–34, follow the procedures described in paragraphs (3)(i) through (iii) of this section.

$$\hat{y} = b_0 + b_1 Ln(x) \qquad \text{(Eq. 11-34)}$$

(i) Perform a logarithmic transformation of each PM CEMS response value (x values) using Equation 11–35:

$$x_i' = Ln(x_i) \qquad \text{(Eq. 11-35)}$$

Where:
x_i' = is the transformed value of x_i, and
$Ln(x_i)$ = the natural logarithm of the PM CEMS response for run i.

(ii) Using the values for x_i' in place of the values for x_i, perform the same procedures used to develop the linear correlation equation described in paragraph (1)(i) of this section. The resulting equation has the form indicated by Equation 11–36:

$$\hat{y} = b_0 + b_1 x' \qquad \text{(Eq. 11-36)}$$

Where:
x′ = the natural logarithm of the PM CEMS response, and the variables $\hat{y}$, b_0, and b_1 are as defined in paragraph (1)(i) of this section.

(iii) Using the values for x_i' in place of the values for x_i, calculate the confidence interval half range at the mean x′ value as a percentage of the emission limit (CI%), the tolerance interval half range at the mean x′ value as a percentage of the emission limit (TI%), and the correlation coefficient (*r*) using the procedures described in paragraphs (1)(ii) through (iv) of this section.

(4) How do I evaluate an exponential correlation for my correlation test data? To evaluate an exponential correlation, which has the form indicated by Equation 11–37, follow the procedures described in paragraphs (4)(i) through (v) of this section:

$$\hat{y} = b_1 e^{b_0 x} \qquad \text{(Eq. 11-37)}$$

(i) Perform a logarithmic transformation of each PM concentration measurement (y values) using Equation 11–38:

$$y_i' = Ln(y_i) \qquad \text{(Eq. 11-38)}$$

Where:
y_i' = is the transformed value of y_i, and
$Ln(y_i)$ = the natural logarithm of the PM concentration measurement for run i.

(ii) Using the values for y_i in place of the values for y_i' perform the same procedures used to develop the linear correlation equation described in paragraph (1)(i) of this section. The resulting equation will have the form indicated by Equation 11–39.

$$\hat{y}' = b_0 + b_1 x \qquad \text{(Eq. 11-39)}$$

Where:
$\hat{y}_{i'}$ = the natural logarithm of the predicted PM concentration values, and the variables b_0, b_1, and x are as defined in paragraph (1)(i) of this section.

(iii) Using the values for y_i' in place of the values for y_i, calculate the confidence interval half range (CI), as described in paragraph (1)(ii) of this section. However, for the exponential correlation, you must calculate the value for CI at the median x value, instead of the mean x value for linear correlations. Calculate the confidence interval half range at the median x value as a percentage of the emission limit (CI%) using Equation 11–40:

$$CI\% = \frac{CI}{Ln\,(EL)} \cdot 100\% \qquad \text{(Eq. 11-40)}$$

Where:
CI = the confidence interval half range at the median x value, and
Ln(EL) = the natural logarithm of the PM emission limit, as described in section 13.2.

(iv) Using the values for y_i' in place of the values for y_i, calculate the tolerance interval half range (TI), as described in paragraph (1)(iii) of this section. For the exponential correlation, the value for TI also must be calculated at the median x value. Calculate the tolerance interval half range at the median x value as a percentage of the emission limit (TI%) using Equation 11–41:

$$TI\% = \frac{TI}{Ln\,(EL)} \cdot 100\% \qquad \text{(Eq. 11-41)}$$

Where:
TI = the tolerance interval half range at the median x value, and
Ln(EL) = the natural logarithm of the PM emission limit, as described in section 13.2.

(v) Using the values for y_i' in place of the values for y_i, calculate the correlation coefficient (r) using the procedure described in paragraph (1)(iv) of this section.

(5) How do I evaluate a power correlation for my correlation test data? To evaluate a power correlation, which has the form indicated by Equation 11–42, follow the procedures described in paragraphs (5)(i) through (v) of this section.

$$\hat{y} = b_1 x^{b_0} \qquad \text{(Eq. 11-42)}$$

(i) Perform logarithmic transformations of each PM CEMS response (x values) and each PM concentration measurement (y values) using Equations 11–35 and 11–38, respectively.

(ii) Using the values for x_i' in place of the values for x_i, and the values for y_i' in place of the values for y_i, perform the same procedures used to develop the linear correlation equation described in paragraph (1)(i) of this section. The resulting equation will have the form indicated by Equation 11–43:

$$\hat{y}' = b_0 + b_1 x' \qquad \text{(Eq. 11-43)}$$

Where:
$\hat{y}'$ = the natural logarithm of the predicted PM concentration values, and
x' = the natural logarithm of the PM CEMS response values, and the variables b_0 and b_1 are as defined in paragraph (1)(i) of this section.

(iii) Using the values for y_i' in place of the values for y_i, calculate the confidence interval half range (CI), as

described in paragraph (1)(ii) of this section. You must calculate the value for CI at the median x' value, instead of the mean x value for linear correlations. Calculate the confidence interval half range at the median x' value as a percentage of the emission limit (CI%) using Equation 11–40.

(iv) Using the values for y_i, in place of the values for y_i, calculate the tolerance interval half range (TI), as described in paragraph (1)(iii) of this section. The value for TI also must be calculated at the median x' value. Calculate the tolerance interval half range at the median x' value as a percentage of the emission limit (CI%) using Equation 11–41.

(v) Using the values for y_i' in place of the values for y_i, calculate the correlation coefficient (r) using the procedure described in paragraph (1)(iv) of this section.

12.4 Which correlation model should I use? Follow the procedures described in paragraphs (1) through (4) of this section to determine which correlation model you should use.

(1) For each correlation model that you develop using the procedures described in section 12.3 of this specification, compare the confidence interval half range percentage, tolerance interval half range percentage, and correlation coefficient to the performance criteria specified in section 13.2 of this specification. You can use the linear, logarithmic, exponential, or power correlation model if the model satisfies all of the performance criteria specified in section 13.2 of this specification. However, to use the polynomial model you first must check that the polynomial correlation curve satisfies the criteria for minimum and maximum values specified in paragraph (3) of this section.

(2) If you develop more than one correlation curve that satisfy the performance criteria specified in section 13.2 of this specification, you should use the correlation curve with the greatest correlation coefficient. If the polynomial model has the greatest correlation coefficient, you first must check that the polynomial correlation curve satisfies the criteria for minimum and maximum values specified in paragraph (3) of this section.

(3) You can use the polynomial model that you develop using the procedures described in section 12.3(2) if the model satisfies the performance criteria specified in section 13.2 of this specification, and the minimum or maximum value of the polynomial correlation curve does not occur within the expanded data range. The minimum or maximum value of the polynomial correlation curve is the point where the slope of the curve equals zero. To determine if the minimum or maximum value occurs within the expanded data range, follow the procedure described in paragraphs (3)(i) through (iv) of this section.

(i) Determine if your polynomial correlation curve has a minimum or maximum point by comparing the polynomial coefficient b_2 to zero. If b_2 is less than zero, the curve has a maximum value. If b_2 is greater than zero, the curve has a minimum value. (Note: If b_2 equals zero, the correlation curve is linear.)

(ii) Calculate the minimum value using Equation 11–44.

$$\text{maximum or minimum} = -\frac{b_1}{2b_2} \qquad \text{(Eq. 11-44)}$$

(iii) If your polynomial correlation curve has a minimum point, you must compare the minimum value to the minimum PM CEMS response used to develop the correlation curve. If the correlation curve minimum value is less than or equal to the minimum PM CEMS response value, you can use the polynomial correlation curve, provided the correlation curve also satisfies all of the performance criteria specified in section 13.2 of this specification. If the correlation curve minimum value is greater than the minimum PM CEMS response value, you cannot use the polynomial correlation curve to predict PM concentrations.

(iv) If your polynomial correlation curve has a maximum, the maximum value must be greater than the allowable extrapolation limit. If your source is not a low-emitting source, as defined in section 3.16 of this specification, the allowable extrapolation limit is 125 percent of the highest PM CEMS response used to develop the correlation curve. If your source is a low-emitting source, the allowable extrapolation limit is 125 percent of the highest PM CEMS response used to develop the correlation curve or the PM CEMS response that corresponds to 50 percent of the emission limit, whichever is greater. If the polynomial correlation curve maximum value is greater than the extrapolation limit, and the correlation curve satisfies all of the performance criteria specified in section 13.2 of this specification, you can use the polynomial correlation curve to predict PM concentrations. If the correlation curve maximum value is less than the extrapolation limit, you cannot use the polynomial correlation curve to predict PM concentrations.

(4) You may petition the Administrator for alternative solutions or sampling recommendations if the correlation models described in section 12.3 of this specification do not satisfy the performance criteria specified in section 13.2 of this specification.

13.0 What Are the Performance Criteria for My PM CEMS?

You must evaluate your PM CEMS based on the 7-day drift check, the accuracy of the correlation, and the sampling periods and cycle/response time.

13.1 What is the 7-day drift check performance specification? Your daily PM CEMS internal drift checks must demonstrate that the average daily drift of your PM CEMS does not deviate from the value of the reference light, optical filter, Beta attenuation signal, or other technology-suitable reference standard by more than 2 percent of the upscale value. If your CEMS includes diluent and/or auxiliary monitors (for temperature, pressure, and/or moisture) that are employed as a necessary part of this performance specification, you must determine the calibration drift separately for each ancillary monitor in terms of its respective output (see the appropriate performance specification for the diluent CEMS specification). None of the calibration drifts may exceed their individual specification.

13.2 What performance criteria must my PM CEMS correlation satisfy? Your PM CEMS correlation must meet each of the minimum specifications in paragraphs (1), (2), and (3) of this section. Before confidence and tolerance interval half range percentage calculations are made, you must convert the emission limit to the appropriate units of your PM CEMS measurement conditions using the average of emissions gas property values (*e.g.*, diluent concentration, temperature, pressure, and moisture) measured during the correlation test.

(1) The correlation coefficient must satisfy the criterion specified in paragraph (1)(i) or (ii), whichever applies.

(i) If your source is not a low-emitting source, as defined in section 3.16 of this specification, the correlation coefficient (r) must be greater than or equal to 0.85.

(ii) If your source is a low-emitting source, as defined in section 3.16 of this specification, the correlation coefficient (r) must be greater than or equal to 0.75.

(2) The confidence interval half range must satisfy the applicable criterion specified in paragraph (2)(i), (ii), or (iii) of this section, based on the type of correlation model.

(i) For linear or logarithmic correlations, the 95 percent confidence interval half range at the mean PM CEMS response value from the correlation test must be within 10 percent of the PM emission limit value specified in theapplicable regulation, as calculated using Equation 11–10.

(ii) For polynomial correlations, the 95 percent confidence interval half range at the PM CEMS response value from the correlation test that corresponds to the minimum value for Δ must be within 10 percent of the PM emission limit value specified in the applicable regulation, as calculated using Equation 11–28.

(iii) For exponential or power correlations, the 95 percent confidence interval half range at the median PM CEMS response value from the correlation test must be within 10 percent of the natural logarithm of the PM emission limit value specified in the applicable regulation, as calculated using Equation 11–40.

(3) The tolerance interval half range must satisfy the applicable criterion specified in paragraph (3)(i), (ii), or (iii) of this section, based on the type of correlation model.

(i) For linear or logarithmic correlations, the tolerance interval half range at the mean PM CEMS response value from the correlation test must have 95 percent confidence that 75 percent of all possible values are within 25 percent of the PM emission limit value specified in the applicable regulation, as calculated using Equation 11–13.

(ii) For polynomial correlations, the tolerance interval half range at the PM CEMS response value from the correlation test that corresponds to the minimum value for Δ must have 95 percent confidence that 75 percent of all possible values are within 25 percent of the PM emission limit value specified in the applicable regulation, as calculated using Equation 11–32.

(iii) For exponential or power correlations, the tolerance interval half range at the median PM CEMS response value from the correlation test must have 95 percent confidence that 75 percent of all possible values are within 25 percent of the natural logarithm of the PM emission limit value specified in the applicable regulation, as calculated using Equation 11–41.

13.3 What are the sampling periods and cycle/response time? You must document and maintain the response time and any changes in the response time following installation.

(1) If you have a batch sampling PM CEMS, you must evaluate the limits presented in paragraphs (1)(i) and (ii) of this section.

(i) The response time of your PM CEMS, which is equivalent to the cycle time, must be no longer than 15 minutes. In addition, the delay between the end of the sampling time and reporting of the sample analysis must be no greater than 3 minutes. You must document any changes in the response time following installation.

(ii) The sampling time of your PM CEMS must be no less than 30 percent of the cycle time. If you have a batch sampling PM CEMS, sampling must be continuous except during pauses when the collected pollutant on the capture media is being analyzed and the next capture medium starts collecting a new sample.

13.4 What PM compliance monitoring must I do? You must report your CEMS measurements in the units of the standard expressed in the regulations (*e.g.*, mg/dscm @ 7 percent oxygen, pounds per million Btu (lb/mmBtu), etc.). You may need to install auxiliary data monitoring equipment to convert the units reported by your PM CEMS into units of the PM emission standard.

14.0 Pollution Prevention [Reserved]

15.0 Waste Management [Reserved]

16.0 Which References Are Relevant to This Performance Specification?

16.1 Technical Guidance Document: Compliance Assurance Monitoring. U.S. Environmental Protection Agency Office of Air Quality Planning and Standards Emission Measurement Center. August 1998.

16.2 40 CFR 60, Appendix B, ''Performance Specification 2—Specifications and Test Procedures for SO_2, and NO_X, Continuous Emission Monitoring Systems in Stationary Sources.''

16.3 40 CFR 60, Appendix B, ''Performance Specification 1—Specification and Test Procedures for Opacity Continuous Emission Monitoring Systems in Stationary Sources.''

16.4 40 CFR 60, Appendix A, ''Method 1—Sample and Velocity Traverses for Stationary Sources.''

16.5 ''Current Knowledge of Particulate Matter (PM) Continuous Emission Monitoring.'' EPA–454/R–00–039. U.S. Environmental Protection Agency, Research Triangle Park, NC. September 2000.

16.6 40 CFR 266, Appendix IX, Section 2, ''Performance Specifications for Continuous Emission Monitoring Systems.''

16.7 ISO 10155, ''Stationary Source Emissions—Automated Monitoring of Mass Concentrations of Particles: Performance Characteristics, Test Procedures, and Specifications.'' American National Standards Institute, New York City. 1995.

17.0 What Reference Tables and Validation Data Are Relevant to PS–11?

Use the information in Table 1 for determining the confidence and tolerance interval half ranges. Use Table 2 to record your 7-day drift test data.

TABLE 1.—FACTORS FOR CALCULATION OF CONFIDENCE AND TOLERANCE INTERVAL HALF RANGES

df or n'	t_{df}	v_{df}	u_n' (75)
2	4.303	4.415	1.433
3	3.182	2.920	1.340
4	2.776	2.372	1.295
5	2.571	2.089	1.266
6	2.447	1.915	1.247
7	2.365	1.797	1.233
8	2.306	1.711	1.223
9	2.262	1.645	1.214
10	2.228	1.593	1.208

TABLE 1.—FACTORS FOR CALCULATION OF CONFIDENCE AND TOLERANCE INTERVAL HALF RANGES—Continued

df or n'	t_{df}	v_{df}	u_n' (75)
11	2.201	1.551	1.203
12	2.179	1.515	1.199
13	2.160	1.485	1.195
14	2.145	1.460	1.192
15	2.131	1.437	1.189
16	2.120	1.418	1.187
17	2.110	1.400	1.185
18	2.101	1.385	1.183
19	2.093	1.370	1.181
20	2.086	1.358	1.179
21	2.080	1.346	1.178
22	2.074	1.335	1.177
23	2.069	1.326	1.175
24	2.064	1.317	1.174
25	2.060	1.308	1.173
26	2.056	1.301	1.172
27	2.052	1.294	1.172
28	2.048	1.287	1.171
29	2.045	1.281	1.171
30	2.042	1.274	1.170
31	2.040	1.269	1.169
32	2.037	1.264	1.169
33	2.035	1.258	1.168
34	2.032	1.253	1.168
35	2.030	1.248	1.167
36	2.028	1.244	1.167
37	2.026	1.240	1.166
38	2.025	1.236	1.166
39	2.023	1.232	1.165
40	2.021	1.228	1.165
41	2.020	1.225	1.165
42	2.018	1.222	1.164
43	2.017	1.219	1.164
44	2.015	1.216	1.163
45	2.014	1.213	1.163
46	2.013	1.210	1.163
47	2.012	1.207	1.163
48	2.011	1.205	1.162
49	2.010	1.202	1.162
50	2.009	1.199	1.162
51	2.008	1.197	1.162
52	2.007	1.194	1.162
53	2.006	1.191	1.161
54	2.005	1.189	1.161
55	2.005	1.186	1.161
56	2.004	1.183	1.161
57	2.003	1.181	1.161
58	2.002	1.178	1.160
59	2.001	1.176	1.160
60	2.000	1.173	1.160
61	2.000	1.170	1.160
62	1.999	1.168	1.160
63	1.999	1.165	1.159

TABLE 2.—7-DAY DRIFT TEST DATA

Zero drift day #	Date and time	Zero check value (R_L)	PM CEMS response (R_{CEMS})	Difference ($R_{CEMS} - R_L$)	Zero drift $((R_{CEMS} - R_L) / R_U) \times 100$
1					
2					
3					
4					
5					

TABLE 2.—7-DAY DRIFT TEST DATA—Continued

Zero drift day #	Date and time	Zero check value (R_L)	PM CEMS response (R_{CEMS})	Difference ($R_{CEMS} - R_L$)	Zero drift $((R_{CEMS} - R_L) / R_U) \times 100$
6					
7					
Upscale drift day #	**Date and time**	**Upscale check value (R_U)**	**PM CEMS response (R_{CEMS})**	**Difference ($R_{CEMS} - R_U$)**	**Upscale drift $((R_{CEMS} - R_U)/R_U) \times 100\%$**
1					
2					
3					
4					
5					
6					
7					

■ 3. Appendix F, part 60 is amended by adding Procedure 2 to read as follows:

Appendix F—Quality Assurance Procedures

* * * * *

PROCEDURE 2—Quality Assurance Requirements for Particulate Matter Continuous Emission Monitoring Systems at Stationary Sources

1.0 What Are the Purpose and Applicability of Procedure 2?

The purpose of Procedure 2 is to establish the minimum requirements for evaluating the effectiveness of quality control (QC) and quality assurance (QA) procedures and the quality of data produced by your particulate matter (PM) continuous emission monitoring system (CEMS). Procedure 2 applies to PM CEMS used for continuously determining compliance with emission standards or operating permit limits as specified in an applicable regulation or permit. Other QC procedures may apply to diluent (*e.g.*, O_2) monitors and other auxiliary monitoring equipment included with your CEMS to facilitate PM measurement or determination of PM concentration in units specified in an applicable regulation.

1.1 What measurement parameter does Procedure 2 address? Procedure 2 covers the instrumental measurement of PM as defined by your source's applicable reference method (no Chemical Abstract Service number assigned).

1.2 For what types of devices must I comply with Procedure 2? You must comply with Procedure 2 for the total equipment that:

(1) We require you to install and operate on a continuous basis under the applicable regulation, and

(2) You use to monitor the PM mass concentration associated with the operation of a process or emission control device.

1.3 What are the data quality objectives (DQOs) of Procedure 2? The overall DQO of Procedure 2 is the generation of valid, representative data that can be transferred into useful information for determining PM CEMS concentrations averaged over a prescribed interval. Procedure 2 is also closely associated with Performance Specification 11 (PS–11).

(1) Procedure 2 specifies the minimum requirements for controlling and assessing the quality of PM CEMS data submitted to us or the delegated permitting authority.

(2) You must meet these minimum requirements if you are responsible for one or more PM CEMS used for compliance monitoring. We encourage you to develop and implement a more extensive QA program or to continue such programs where they already exist.

1.4 What is the intent of the QA/QC procedures specified in Procedure 2? Procedure 2 is intended to establish the minimum QA/QC requirements for PM CEMS and is presented in general terms to allow you to develop a program that is most effective for your circumstances. You may adopt QA/QC procedures that go beyond these minimum requirements to ensure compliance with applicable regulations.

1.5 When must I comply with Procedure 2? You must comply with the basic requirements of Procedure 2 immediately following successful completion of the initial correlation test of PS–11.

2.0 What Are the Basic Requirements of Procedure 2?

Procedure 2 requires you to perform periodic evaluations of PM CEMS performance and to develop and implement QA/QC programs to ensure that PM CEMS data quality is maintained.

2.1 What are the basic functions of Procedure 2?

(1) Assessment of the quality of your PM CEMS data by estimating measurement accuracy;

(2) Control and improvement of the quality of your PM CEMS data by implementing QC requirements and corrective actions until the data quality is acceptable; and

(3) Specification of requirements for daily instrument zero and upscale drift checks and daily sample volume checks, as well as routine response correlation audits, absolute correlation audits, sample volume audits, and relative response audits.

3.0 What Special Definitions Apply to Procedure 2?

The definitions in Procedure 2 include those provided in PS–11 of Appendix B, with the following additions:

3.1 ''Absolute Correlation Audit (ACA)'' means an evaluation of your PM CEMS response to a series of reference

standards covering the full measurement range of the instrument (*e.g.*, 4 mA to 20 mA).

3.2 ''Correlation Range'' means the range of PM CEMS responses used in the complete set of correlation test data.

3.3 ''PM CEMS Correlation'' means the site-specific relationship (*i.e.*, a regression equation) between the output from your PM CEMS (*e.g.*, mA) and the particulate concentration, as determined by the reference method. The PM CEMS correlation is expressed in the same units as the PM concentration measured by your PM CEMS (*e.g.*, mg/acm). You must derive this relation from PM CEMS response data and manual reference method data that were gathered simultaneously. These data must be representative of the full range of source and control device operating conditions that you expect to occur. You must develop the correlation by performing the steps presented in sections 12.2 and 12.3 of PS–11.

3.4 ''Reference Method Sampling Location'' means the location in your source's exhaust duct from which you collect manual reference method data for developing your PM CEMS correlation and for performing relative response audits (RRAs) and response correlation audits (RCAs).

3.5 ''Response Correlation Audit (RCA)'' means the series of tests specified in section 10.3(8) of this procedure that you conduct to ensure the continued validity of your PM CEMS correlation.

3.6 ''Relative Response Audit (RRA)'' means the brief series of tests specified in section 10.3(6) of this procedure that you conduct between consecutive RCAs to ensure the continued validity of your PM CEMS correlation.

3.7 ''Sample Volume Audit (SVA)'' means an evaluation of your PM CEMS measurement of sample volume if your PM CEMS determines PM concentration based on a measure of PM mass in an extracted sample volume and an independent determination of sample volume.

4.0 Interferences. [Reserved]

5.0 What Do I Need To Know To Ensure the Safety of Persons Using Procedure 2?

People using Procedure 2 may be exposed to hazardous materials, operations, and equipment. Procedure 2 does not purport to address all of the safety issues associated with its use. It is your responsibility to establish appropriate safety and health practices and determine the applicable regulatory limitations before performing this procedure. You must consult your CEMS user's manual for specific precautions to be taken with regard to your PM CEMS procedures.

6.0 What Equipment and Supplies Do I Need?

[Reserved]

7.0 What Reagents and Standards Do I Need?

You will need reference standards or procedures to perform the zero drift check, the upscale drift check, and the sample volume check.

7.1 What is the reference standard value for the zero drift check? You must use a zero check value that is no greater than 20 percent of the PM CEMS's response range. You must obtain documentation on the zero check value from your PM CEMS manufacturer.

7.2 What is the reference standard value for the upscale drift check? You must use an upscale check value that produces a response between 50 and 100 percent of the PM CEMS's response range. For a PM CEMS that produces output over a range of 4 mA to 20 mA, the upscale check value must produce a response in the range of 12 mA to 20 mA. You must obtain documentation on the upscale check value from your PM CEMS manufacturer.

7.3 What is the reference standard value for the sample volume check? You must use a reference standard value or procedure that produces a sample volume value equivalent to the normal sampling rate. You must obtain documentation on the sample volume value from your PM CEMS manufacturer.

8.0 What Sample Collection, Preservation, Storage, and Transport Are Relevant to This Procedure?

[Reserved]

9.0 What Quality Control Measures Are Required by This Procedure for My PM CEMS?

You must develop and implement a QC program for your PM CEMS. Your QC program must, at a minimum, include written procedures that describe, in detail, complete step-by-step procedures and operations for the activities in paragraphs (1) through (8) of this section.

(1) Procedures for performing drift checks, including both zero drift and upscale drift and the sample volume check (see sections 10.2(1), (2), and (5)).

(2) Methods for adjustment of PM CEMS based on the results of drift checks, sample volume checks (if applicable), and the periodic audits specified in this procedure.

(3) Preventative maintenance of PM CEMS (including spare parts inventory and sampling probe integrity).

(4) Data recording, calculations, and reporting.

(5) RCA and RRA procedures, including sampling and analysis methods, sampling strategy, and structuring test conditions over the prescribed range of PM concentrations.

(6) Procedures for performing ACAs and SVAs and methods for adjusting your PM CEMS response based on ACA and SVA results.

(7) Program of corrective action for malfunctioning PM CEMS, including flagged data periods.

(8) For extractive PM CEMS, procedures for checking extractive system ducts for material accumulation.

9.1 What QA/QC documentation must I have? You are required to keep the written QA/QC procedures on record and available for inspection by us, the State, and/or local enforcement agency for the life of your CEMS or until you are no longer subject to the requirements of this procedure.

9.2 How do I know if I have acceptable QC procedures for my PM CEMS? Your QC procedures are inadequate or your PM CEMS is incapable of providing quality data if you fail two consecutive QC audits (*i.e.*, out-of-control conditions resulting from the annual audits, quarterly audits, or daily checks). Therefore, if you fail the same two consecutive audits, you must revise your QC procedures or modify or replace your PM CEMS to correct the deficiencies causing the excessive inaccuracies (see section 10.4 for limits for excessive audit inaccuracy).

10.0 What Calibration/Correlation and Standardization Procedures Must I Perform for My PM CEMS?

You must generate a site-specific correlation for each of your PM CEMS installation(s) relating response from your PM CEMS to results from simultaneous PM reference method testing. The PS–11 defines procedures for developing the correlation and defines a series of statistical parameters for assessing acceptability of the correlation. However, a critical component of your PM CEMS correlation process is ensuring the accuracy and precision of reference method data. The activities listed in sections 10.1 through 10.10 assure the quality of the correlation.

10.1 When should I use paired trains for reference method testing? Although not required, we recommend that you should use paired-train reference method testing to generate data used to develop your PM CEMS correlation and

for RCA testing. Guidance on the use of paired sampling trains can be found in the PM CEMS Knowledge Document (see section 16.5).

10.2 What routine system checks must I perform on my PM CEMS? You must perform routine checks to ensure proper operation of system electronics and optics, light and radiation sources and detectors, and electric or electro-mechanical systems. Necessary components of the routine system checks will depend on design details of your PM CEMS. As a minimum, you must verify the system operating parameters listed in paragraphs (1) through (5) of this section on a daily basis. Some PM CEMS may perform one or more of these functions automatically or as an integral portion of unit operations; for other PM CEMS, you must initiate or perform one or more of these functions manually.

(1) You must check the zero drift to ensure stability of your PM CEMS response to the zero check value. You must determine system output on the most sensitive measurement range when the PM CEMS is challenged with a zero reference standard or procedure. You must, at a minimum, adjust your PM CEMS whenever the daily zero drift exceeds 4 percent.

(2) You must check the upscale drift to ensure stability of your PM CEMS response to the upscale check value. You must determine system output when the PM CEMS is challenged with a reference standard or procedure corresponding to the upscale check value. You must, at a minimum, adjust your PM CEMS whenever the daily upscale drift check exceeds 4 percent.

(3) For light-scattering and extinction-type PM CEMS, you must check the system optics to ensure that system response has not been altered by the condition of optical components, such as fogging of lens and performance of light monitoring devices.

(4) You must record data from your automatic drift-adjusting PM CEMS before any adjustment is made. If your PM CEMS automatically adjusts its response to the corrected calibration values (*e.g.*, microprocessor control), you must program your PM CEMS to record the unadjusted concentration measured in the drift check before resetting the calibration. Alternately, you may program your PM CEMS to record the amount of adjustment.

(5) For extractive PM CEMS that measure the sample volume and use the measured sample volume as part of calculating the output value, you must check the sample volume on a daily basis to verify the accuracy of the sample volume measuring equipment. This sample volume check must be done at the normal sampling rate of your PM CEMS. You must adjust your PM CEMS sample volume measurement whenever the daily sample volume check error exceeds 10 percent.

10.3 What are the auditing requirements for my PM CEMS? You must subject your PM CEMS to an ACA and an SVA, as applicable, at least once each calender quarter. Successive quarterly audits must occur no closer than 2 months apart. You must conduct an RCA and an RRA at the frequencies specified in the applicable regulation or facility operating permit. An RRA or RCA conducted during any calendar quarter can take the place of the ACA required for that calendar quarter. An RCA conducted during the period in which an RRA is required can take the place of the RRA for that period.

(1) When must I perform an ACA? You must perform an ACA each quarter unless you conduct an RRA or RCA during that same quarter.

(2) How do I perform an ACA? You perform an ACA according to the procedure specified in paragraphs (2)(i) through (v) of this section.

(i) You must challenge your PM CEMS with an audit standard or an equivalent audit reference to reproduce the PM CEMS's measurement at three points within the following ranges:

Audit point	Audit range
1	0 to 20 percent of measurement range
2	40 to 60 percent of measurement range
3	70 to 100 percent of measurement range

(ii) You must then challenge your PM CEMS three times at each audit point and use the average of the three responses in determining accuracy at each audit point. Use a separate audit standard for audit points 1, 2, and 3. Challenge the PM CEMS at each audit point for a sufficient period of time to ensure that your PM CEMS response has stabilized.

(iii) Operate your PM CEMS in the mode, manner, and range specified by the manufacturer.

(iv) Store, maintain, and use audit standards as recommended by the manufacturer.

(v) Use the difference between the actual known value of the audit standard and the response of your PM CEMS to assess the accuracy of your PM CEMS.

(3) When must I perform an SVA? You must perform an audit of the measured sample volume (*e.g.*, the sampling flow rate for a known time) once per quarter for applicable PM CEMS with an extractive sampling system. Also, you must perform and pass an SVA prior to initiation of any of the reference method data collection runs for an RCA or RRA.

(4) How do I perform an SVA? You perform an SVA according to the procedure specified in paragraphs (4)(i) through (iii) of this section.

(i) You perform an SVA by independently measuring the volume of sample gas extracted from the stack or duct over each batch cycle or time period with a calibrated device. You may make this measurement either at the inlet or outlet of your PM CEMS, so long as it measures the sample gas volume without including any dilution or recycle air. Compare the measured volume with the volume reported by your PM CEMS for the same cycle or time period to calculate sample volume accuracy.

(ii) You must make measurements during three sampling cycles for batch extractive monitors (*e.g.*, Beta-gauge) or during three periods of at least 20 minutes for continuous extractive PM CEMS.

(iii) You may need to condense, collect, and measure moisture from the sample gas prior to the calibrated measurement device (*e.g.*, dry gas meter) and correct the results for moisture content. In any case, the volumes measured by the calibrated device and your PM CEMS must be on a consistent temperature, pressure, and moisture basis.

(5) How often must I perform an RRA? You must perform an RRA at the frequency specified in the applicable regulation or facility operating permit. You may conduct an RCA instead of an RRA during the period when the RRA is required.

(6) How do I perform an RRA? You must perform the RRA according to the procedure specified in paragraphs (6)(i) and (ii) of this section.

(i) You perform an RRA by collecting three simultaneous reference method

PM concentration measurements and PM CEMS measurements at the as-found source operating conditions and PM concentration.

(ii) We recommend that you use paired trains for reference method sampling. Guidance on the use of paired sampling trains can be found in the PM CEMS Knowledge Document (see section 16.5 of PS–11).

(7) How often must I perform an RCA? You must perform an RCA at the frequency specified in the applicable regulation or facility operating permit.

(8) How do I perform an RCA? You must perform the RCA according to the procedures for the PM CEMS correlation test described in PS–11, section 8.6, except that the minimum number of runs required is 12 in the RCA instead of 15 as specified in PS–11.

(9) What other alternative audits can I use? You can use other alternative audit procedures as approved by us, the State, or local agency for the quarters when you would conduct ACAs.

10.4 What are my limits for excessive audit inaccuracy? Unless specified otherwise in the applicable subpart, the criteria for excessive audit inaccuracy are listed in paragraphs (1) through (6) of this section.

(1) What are the criteria for excessive zero or upscale drift? Your PM CEMS is out of control if the zero drift check or upscale drift check either exceeds 4 percent for five consecutive daily periods or exceeds 8 percent for any one day.

(2) What are the criteria for excessive sample volume measurement error? Your PM CEMS is out of control if sample volume check error exceeds 10 percent for five consecutive daily periods or exceeds 20 percent for any one day.

(3) What are the criteria for excessive ACA error? Your PM CEMS is out of control if the results of any ACA exceed ± 10 percent of the average audit value or 7.5 percent of the applicable standard, whichever is greater.

(4) What is the criterion for excessive SVA error? Your PM CEMS is out of control if results exceed ± 5 percent of the average sample volume audit value.

(5) What are the criteria for passing an RCA? To pass an RCA, you must meet the criteria specified in paragraphs (5)(i) through (iii) of this section. If your PM CEMS fails to meet these RCA criteria, it is out of control.

(i) For all 12 data points, the PM CEMS response value can be no greater than the greatest PM CEMS response value used to develop your correlation curve.

(ii) For 9 of the 12 data points, the PM CEMS response value must lie within the PM CEMS output range used to develop your correlation curve.

(iii) At least 75 percent of a minimum number of 12 sets of PM CEMS and reference method measurements must fall within a specified area on a graph of the correlation regression line. The specified area on the graph of the correlation regression line is defined by two lines parallel to the correlation regression line, offset at a distance of ± 25 percent of the numerical emission limit value from the correlation regression line.

(6) What are the criteria to pass an RRA? To pass an RRA, you must meet the criteria specified in paragraphs (6)(i) and (ii) of this section. If your PM CEMS fails to meet these RRA criteria, it is out of control.

(i) For all three data points, the PM CEMS response value can be no greater than the greatest PM CEMS response value used to develop your correlation curve.

(ii) For two of the three data points, the PM CEMS response value must lie within the PM CEMS output range used to develop your correlation curve.

(iii) At least two of the three sets of PM CEMS and reference method measurements must fall within the same specified area on a graph of the correlation regression line as required for the RCA and described in paragraph (5)(iii) of this section.

10.5 What do I do if my PM CEMS is out of control? If your PM CEMS is out of control, you must take the actions listed in paragraphs (1) and (2) of this section.

(1) You must take necessary corrective action to eliminate the problem and perform tests, as appropriate, to ensure that the corrective action was successful.

(i) Following corrective action, you must repeat the previously failed audit to confirm that your PM CEMS is operating within the specifications.

(ii) If your PM CEMS failed an RRA, you must take corrective action until your PM CEMS passes the RRA criteria. If the RRA criteria cannot be achieved, you must perform an RCA.

(iii) If your PM CEMS failed an RCA, you must follow procedures specified in section 10.6 of this procedure.

(2) You must report both the audit showing your PM CEMS to be out of control and the results of the audit following corrective action showing your PM CEMS to be operating within specifications.

10.6 What do I do if my PM CEMS fails an RCA? After an RCA failure, you must take all applicable actions listed in paragraphs (1) through (3) of this section.

(1) Combine RCA data with data from the active PM CEMS correlation and perform the mathematical evaluations defined in PS–11 for development of a PM CEMS correlation, including examination of alternate correlation models (*i.e.*, linear, polynomial, logarithmic, exponential, and power). If the expanded data base and revised correlation meet PS–11 statistical criteria, use the revised correlation.

(2) If the criteria specified in paragraph (1) of this section are not achieved, you must develop a new PM CEMS correlation based on revised data. The revised data set must consist of the test results from only the RCA. The new data must meet all requirements of PS–11 to develop a revised PM CEMS correlation, except that the minimum number of sets of PM CEMS and reference method measurements is 12 instead of the minimum of 15 sets required by PS–11. Your PM CEMS is considered to be back in controlled status when the revised correlation meets all of the performance criteria specified in section 13.2 of PS–11.

(3) If the actions in paragraphs (1) and (2) of this section do not result in an acceptable correlation, you must evaluate the cause(s) and comply with the actions listed in paragraphs (3)(i) through (iv) of this section within 90 days after the completion of the failed RCA.

(i) Completely inspect your PM CEMS for mechanical or operational problems. If you find a mechanical or operational problem, repair your PM CEMS and repeat the RCA.

(ii) You may need to relocate your PM CEMS to a more appropriate measurement location. If you relocate your PM CEMS, you must perform a new correlation test according to the procedures specified in PS–11.

(iii) The characteristics of the PM or gas in your source's flue gas stream may have changed such that your PM CEMS measurement technology is no longer appropriate. If this is the case, you must install a PM CEMS with measurement technology that is appropriate for your source's flue gas characteristics. You must perform a new correlation test according to the procedures specified in PS–11.

(iv) If the corrective actions in paragraphs (3)(i) through (iii) of this section were not successful, you must petition us, the State, or local agency for approval of alternative criteria or an alternative for continuous PM monitoring.

10.7 When does the out-of-control period begin and end? The out-of-control period begins immediately after the last test run or check of an

unsuccessful RCA, RRA, ACA, SVA, drift check, or sample volume check. The out-of-control period ends immediately after the last test run or check of the subsequent successful audit or drift check.

10.8 Can I use the data recorded by my PM CEMS during out-of-control periods? During any period when your PM CEMS is out of control, you may not use your PM CEMS data to calculate emission compliance or to meet minimum data availability requirements described in the applicable regulation.

10.9 What are the QA/QC reporting requirements for my PM CEMS? You must report the accuracy results for your PM CEMS, specified in section 10.4 of this procedure, at the interval specified in the applicable regulation. Report the drift and accuracy information as a Data Assessment Report (DAR), and include one copy of this DAR for each quarterly audit with the report of emissions required under the applicable regulation. An example DAR is provided in Procedure 1, Appendix F of this part.

10.10 What minimum information must I include in my DAR? As a minimum, you must include the information listed in paragraphs (1) through (5) of this section in the DAR:

(1) Your name and address.

(2) Identification and location of monitors in your CEMS.

(3) Manufacturer and model number of each monitor in your CEMS.

(4) Assessment of PM CEMS data accuracy/acceptability, and date of assessment, as determined by an RCA, RRA, ACA, or SVA described in section 10, including the acceptability determination for the RCA or RRA, the accuracy for the ACA or SVA, the reference method results, the audit standards, your PM CEMS responses, and the calculation results as defined in section 12. If the accuracy audit results show your PM CEMS to be out of control, you must report both the audit results showing your PM CEMS to be out of control and the results of the audit following corrective action showing your PM CEMS to be operating within specifications.

(5) Summary of all corrective actions you took when you determined your PM CEMS to be out of control, as described in section 10.5, or after failing on RCA, as described in section 10.6.

10.7 Where and how long must I retain the QA data that this procedure requires me to record for my PM CEMS? You must keep the records required by this procedure for your PM CEMS onsite and available for inspection by us, the State, and/or local enforcement agency for a period of 5 years.

11.0 What Analytical Procedures Apply to This Procedure?

Sample collection and analysis are concurrent for this procedure. You must refer to the appropriate reference method for the specific analytical procedures.

12.0 What Calculations and Data Analysis Must I Perform for my PM CEMS?

(1) How do I determine RCA and RRA acceptability? You must plot each of your PM CEMS and reference method data sets from an RCA or RRA on a graph based on your PM CEMS correlation line to determine if the criteria in paragraphs 10.4(5) or (6), respectively, are met.

(2) How do I calculate ACA accuracy? You must use Equation 2–1 to calculate ACA accuracy for each of the three audit points:

$$\text{ACA Accuracy} = \frac{|R_{CEM} - R_V|}{R_V} \times 100 \qquad \text{(Eq. 2-1)}$$

Where:

ACA Accuracy = The ACA accuracy at each audit point, in percent,

R_{CEM} = Your PM CEMS response to the reference standard, and

R_V = The reference standard value.

(3) How do I calculate daily upscale and zero drift? You must calculate the upscale drift using to Equation 2–2 and the zero drift according to Equation 2–3:

$$UD = \frac{|R_{CEM} - R_U|}{R_U} \times 100 \qquad \text{(Eq. 2-2)}$$

Where:

UD = The upscale drift of your PM CEMS, in percent,

R_{CEM} = Your PM CEMS response to the upscale check value, and

R_U = The upscale check value.

$$ZD = \frac{|R_{CEM} - R_L|}{R_U} \times 100 \qquad \text{(Eq. 2-3)}$$

Where:

ZD = The zero (low-level) drift of your PM CEMS, in percent,

R_{CEM} = Your PM CEMS response of the zero check value,

R_L = The zero check value, and

R_U = The upscale check value.

(4) How do I calculate SVA accuracy? You must use Equation 2–4 to calculate the accuracy, in percent, for each of the three SVA tests or the daily sample volume check:

$$\text{Accuracy} = \frac{(V_R - V_M)}{FS} \times 100 \qquad \text{(Eq. 2-4)}$$

Where:

V_M = Sample gas volume determined/reported by your PM CEMS (*e.g.*, dscm),

V_R = Sample gas volume measured by the independent calibrated reference device (*e.g.*, dscm) for the SVA or the reference value for the daily sample volume check, and

FS = Full-scale value.

Note: Before calculating SVA accuracy, you must correct the sample gas volumes measured by your PM CEMS and the independent calibrated reference device to the same basis of temperature, pressure, and moisture content. You must document all data and calculations.

13.0 Method Performance. [Reserved]

14.0 Pollution Prevention. [Reserved]

15.0 Waste Management. [Reserved]

16.0 Which References are Relevant to This Method? [Reserved]

17.0 What Tables, Diagrams, Flowcharts, and Validation Data Are Relevant to This Method? [Reserved]

[FR Doc. 04–5 Filed 1–9–04; 8:45 am]

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Federal Register

Monday,
January 12, 2004

Part III

Environmental Protection Agency

40 CFR Part 90

Amendments to the Phase 2 Requirements for Spark-Ignition Nonroad Engines at or Below 19 Kilowatts; Direct Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 90

[AMS–FRL–7606–1]

RIN 2060–AL88

Amendments to the Phase 2 Requirements for Spark-Ignition Nonroad Engines at or Below 19 Kilowatts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA adopted Phase 2 requirements for spark-ignition nonroad handheld engines at or below 19 kilowatts in April 2000. The Phase 2 requirements are being phased-in between 2002 and 2007. Based on initial experience with the Phase 2 program for handheld engines, we are adopting several amendments intended to provide additional compliance flexibility to engine manufacturers to smooth the transition to the Phase 2 requirements. The amendments contain two revisions intended to increase flexibility in the averaging, banking, and trading program as it applies to handheld engines. First, the credit discounts and credit bonuses will be eliminated from the program. Second, manufacturers will be allowed to carry limited credit deficits during the phase-in period (through 2007) provided the deficits are made up within a set period of time. The amendments also contain minor changes to the certification requirements intended to help manufacturers respond in a more efficient manner to unexpected variations in the emission levels from production engines while still achieving the required emission objectives.

DATES: This direct final rule is effective on March 12, 2004 without further notice, unless we receive adverse comments by February 11, 2004 or receive a request for a public hearing by January 27, 2004. We are also publishing a notice of proposed rulemaking in the ''Proposed Rules'' section of today's **Federal Register**, which matches the substance of this direct final rule. If we receive any adverse comments on this direct final rule or receive a request for a hearing within the time frame described above, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. We will then take final action to amend the Phase 2 requirements for spark-ignition nonroad engines at or below 19 kilowatts in a final rule based on the accompanying proposal. We will not institute a second comment period.

ADDRESSES: *Comments:* All comments and materials relevant to this action should be submitted to Public Docket No. OAR–2003–0195 at the following address by the date indicated under **DATES** above.

Docket: Materials relevant to this rulemaking are in Public Dockets A–96–55 and OAR–2003–0195 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 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, except on government holidays. You can reach the Air Docket by telephone at (202) 566–1742 and by facsimile at (202) 566–1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Phil Carlson, Assessment and Standards Division, e-mail *carlson.philip@epa.gov,* voice-mail (734) 214–4636.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

This action will affect companies and persons that manufacture, sell, or import into the United States spark-ignition nonroad handheld engines at or below 19 kilowatts. Affected categories and entities include the following:

Category	NAICS Code [1]	Examples of potentially affected entities
Industry	333112	Lawn & Garden Equipment Manufacturers.
Industry	336618	Other Engine Equipment Manufacturers.

[1] North American Industry Classification System (NAICS).

This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be affected by this action. To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action as noted in **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document?

1. *Docket.* EPA has established an official public docket for this action under Air Docket Number OAR–2003–0195. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

2. *Electronic Access.* This direct final rule is available electronically from the EPA Internet Web site. This service is free of charge, except for any cost incurred for internet connectivity. The electronic version of this final rule is made available on the date of publication on the primary Web site listed below. The EPA Office of Transportation and Air Quality also publishes **Federal Register** notices and related documents on the secondary Web site listed below.

1. *http://www.epa.gov/docs/fedrgstr/EPA-AIR* (either select desired date or use Search features).

2. *http://www.epa.gov/otaq* (look in What's New or under the specific rulemaking topic).

Please note that due to differences between the software used to develop the documents and the software into which the document may be downloaded, format changes may occur.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure

that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

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, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in Docket ID No. OAR–2003–0195. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov* Attention Air Docket ID No. OAR–2003–0195. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By Mail.* Send two copies of your comments to: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OAR–2003–0195.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Air Docket ID No. OAR–2003–0195. Such deliveries are only accepted during the Docket's normal hours of operation as identified in **ADDRESSES** above.

4. *By Facsimile.* Fax your comments to: (202) 566–1741, Attention Docket ID No. OAR–2003–0195.

II. Summary of Rule

A. What Is the History of the Phase 2 Handheld Engine Rule?

The development of the Phase 2 regulations for handheld nonroad spark-ignition (SI) engines at or below 19 kilowatts (kW) started in 1992 while the Phase 1 standards were also being developed. Initially, a formal regulatory negotiation process was attempted.

After it became clear that the disparate interests of the multiple parties would not result in an agreement, the regulatory negotiation process concluded without reaching consensus in February 1996. Thereafter, EPA developed the framework for a Phase 2 handheld rule which was described in a Statement of Principles signed by manufacturers representing a significant portion of the United States handheld equipment market and by other stakeholders. The Statement of Principles was issued as part of an Advance Notice of Proposed Rulemaking on March 27, 1997 (*see* 62 FR 14740). The Statement of Principles for handheld engines formed the basis of requirements proposed in the Phase 2 Notice of Proposed Rulemaking (NPRM) on January 27, 1998 (*see* 63 FR 3950). (The January 1998 NPRM proposed standards for both handheld and nonhandheld nonroad SI engines at or below 19 kW. We finalized Phase 2 standards and compliance program requirements for Class I and Class II nonhandheld nonroad SI engines at or below 19 kW in a separate final rulemaking on March 30, 1999 (*see* 64 FR 15208).)

The January 1998 NPRM contained a lengthy discussion of the proposed Phase 2 standards for handheld engines, the expected costs of their implementation, and the technologies that we expected manufacturers would use to meet the standards. The January 1998 NPRM also discussed the potential costs and benefits of adopting more stringent standards such as the second phase of standards that were under consideration by the California Air Resources Board (ARB) at that time.

Upon reviewing information supplied during and after the comment period for the January 1998 NPRM, we determined that it was desirable to get further details regarding the technological feasibility, cost and lead time implications of meeting handheld engine standards more stringent than those contained in the January 1998 NPRM. For the purpose of gaining additional information on feasibility, cost and lead time implications of more stringent standards, we had several meetings, phone conversations, and written correspondence with specific engine manufacturers, with industry associations representing engine and equipment manufacturers, with developers of emission control technologies and suppliers of emission control hardware, with representatives of state regulatory associations, and with members of Congress. We published a Notice of Availability on December 1, 1998 (*see* 63 FR 66081) highlighting the additional information gathered in response to the January 1998 NPRM and continued having discussions with various parties regarding low emission technologies for the small SI handheld engine market.

After the publication of the Phase 2 NPRM in January 1998, members of the industry provided data to EPA which indicated that rapid advances in emission reduction technologies for handheld engines were in the offing. After having reviewed the most up-to-date information available on these new technologies, we believed the information supported Phase 2 standards for handheld engines that were significantly more stringent than those proposed in the January 1998 NPRM and even more stringent than the second phase of standards that, by that time, had been adopted by the California ARB. In light of this new information, and in the interest of providing an opportunity for public comment on the stringent levels being considered for the Phase 2 handheld engine emission standards and the potential technologies available for meeting such standards, we reproposed Phase 2 regulations for handheld engines in a July 28, 1999 Supplemental NPRM (*see* 64 FR 40940). The July 1999

Supplemental NPRM proposed Phase 2 hydrocarbon plus oxides of nitrogen ($HC+NO_X$) standards of 50 grams per kilowatt-hour (g/kW-hr) for Class III and Class IV engines and of 72 g/kW-hr for Class V engines, phased in over several years. The reproposal also proposed to include handheld engines in an averaging, banking, and trading program for all nonroad small SI engines that had been adopted in the separate March 1999 final rule for nonhandheld engines. The July 1999 Supplemental NPRM also proposed revised compliance program requirements for handheld engines, including requirements for a production line testing program. Most of the proposed compliance program changes were intended to make the handheld engine compliance program the same as the requirements finalized for nonhandheld engines in March 1999 and to establish a consistent approach to compliance for all nonroad small SI engines.

The Phase 2 final rule for Class III, Class IV, and Class V handheld engines was finalized on April 25, 2000 (*see* 65 FR 24268). Table 1 summarizes the Phase 2 $HC+NO_X$ emission standards adopted for Class III, Class IV, and Class V handheld engines and when the standards are scheduled to take effect. In response to comments submitted on the July 1999 Supplemental NPRM, the standards and implementation schedule contained in the Phase 2 final rule for handheld engines reflected a four year phase in schedule instead of a five year phase in schedule as proposed in the Supplemental NPRM. When fully phased in, these Phase 2 standards were projected to result in an estimated 70 percent annual reduction in combined $HC+NO_X$ emissions from small SI handheld engines compared to the Phase 1 emission requirements for such engines.

TABLE 1.—PHASE 2 $HC+NO_X$ EMISSION STANDARDS FOR HANDHELD ENGINES

Engine class	$HC+NO_X$ standards (g/kW-hr) by model year					
	2002	2003	2004	2005	2006	2007 and later
Class III	238	175	113	50	50	50
Class IV	196	148	99	50	50	50
Class V	.....	.....	143	119	96	72

Table 2 summarizes the technologies we concluded were capable of meeting the newly adopted Phase 2 standards for handheld engines by engine class. The compression wave technology and the stratified scavenging with lean combustion design are based on 2-stroke engine designs which are used to power the great majority handheld applications.

TABLE 2.—POTENTIAL TECHNOLOGIES FOR MEETING THE PHASE 2 STANDARDS FOR HANDHELD ENGINES

Engine class	Technologies
III	—Compression wave technology + low-medium efficiency catalyst. —Stratified scavenging with lean combustion + medium-high efficiency catalyst. —4-Stroke.
IV	—Compression wave technology. —Compression wave technology + low efficiency catalyst. —Stratified scavenging with lean combustion + medium efficiency catalyst. —4-Stroke.
V	—Compression wave technology. —Stratified scavenging with lean combustion. —4-Stroke (on certain applications).

To help engine manufacturers meet the Phase 2 $HC+NO_X$ standards, we adopted provisions to include Phase 2 handheld engines in the averaging, banking and trading (ABT) program, previously adopted in the March 1999 final rule for Phase 2 nonhandheld engines. The combination of the declining Phase 2 handheld standards and the ABT program were intended to help manufacturers make an orderly and efficient transition from their existing Phase 1 engine designs and technologies to those able to meet the Phase 2 requirements and to provide an incentive for the early introduction of clean engines. The basic framework of the ABT program adopted for handheld engines is the same as the program previously adopted for nonhandheld engines. However, to address comments submitted on the July 1999 Supplemental NPRM relating to the stringency of the phase-in standards and the periods, we adopted a number of unique provisions for handheld engines.

The ABT program is an integral part of the Phase 2 $HC+NO_X$ standards adopted for handheld engines. Averaging means the exchange of emission credits among engine families within a given engine manufacturer's product line. Averaging allows a manufacturer to certify one or more engine families to Family Emissions Limits (FELs) above the applicable emission standard. However, the increased emissions have to be offset by one or more engine families certified to FELs below the same emission standard, such that the average emissions in a given model year from all of the manufacturer's families (weighted by various parameters including engine power, useful life, and number of engines produced) are at or below the level of the emission standard. Banking means the retention of emission credits by the engine manufacturer generating the credits for use in future model year averaging or trading. Trading means the exchange of emission credits between engine manufacturers which then can be used for averaging purposes, banked for future use, or traded to another engine manufacturer.

Under the April 2000 rule's ABT provisions for handheld engines (those promulgated in §§ 90.201 through 90.220), manufacturers are able to select

from two options for the purpose of generating credits. One we refer to as the ''Normal'' program, the second as the ''Optional Transition Year Program.'' These two programs have some significantly different design parameters, so credits from the two programs may be used only in the program in which they are generated.

Under the ''Normal'' credit program of the April 2000 rule, manufacturers certifying Class III or IV engine families with FELs at or below 72 g/kW-hr and Class V engine families with FELs at or below 87 g/kW-hr may generate credits that have an unlimited credit life. Such credits are available to the manufacturer for the duration of the Phase 2 program and are not discounted in any manner. Under the ''Normal Credit'' program, credits generated by Class III or IV engine families certified with FELs above 72 g/kW-hr and Class V engine families with FELs above 87 g/kW-hr can be used by a manufacturer in the model year in which they are generated for its own averaging purposes, or traded to another manufacturer to be used for averaging purposes in that model year. However, such credits may not be carried over to the next model year (*i.e.*, the credits cannot be banked), including when traded to another manufacturer.

Alternatively under the April 2000 regulations, a manufacturer may choose to have a family participate in the ''Optional Transition Year'' credit program. Under this program, any family with FELs below the applicable phase-in standards shown in Table 1 is eligible to generate credits. However, these credits are progressively discounted the higher the family's FEL is compared to the final standards for that class. For example, in Class IV, a family with an FEL of 87 g/kW-hr or higher in model year 2002 would have its credits discounted by 75 percent if they are to be banked for use in future model years. If the family's FEL was equal to 72 g/kW-hr but less than 87 g/kW-hr, its credits would be discounted by 50 percent before being banked for use in future model years. This combination of ability to generate credits with families of higher emission levels but discounting the credits for these higher-emitting engines was intended to provide an increased incentive for manufacturers to make interim emission improvements while preserving the environmental benefits of the Phase 2 program. The ''Optional Transition Year'' program also provides an additional incentive for manufacturers to produce especially clean equipment by providing a 25 percent credit bonus for engines certified with an FEL below specified levels in the first two years of the phase-in period.

''Optional Transition Year'' credits have a limited life and application under the April 2000 regulations. They may be used without limitation through the 2007 model year. For model years 2008 through 2010, they may also be used, but only if the manufacturer's production- and power-weighted average $HC+NO_X$ emission level is below an emission level determined by production-weighting the manufacturer's product line assuming emission levels of 72 g/kW-hr for Class III and IV engines and 87 g/kW-hr for Class V engines. The ''Optional Transition Year'' program expires at the end of the 2010 model year, under the April 2000 rules.

The provisions related to credit generation in these two programs were revised in the April 2000 final rule in response to comments on the Supplemental NPRM. At the time, we believed the approach adopted in the final rule was necessary to ensure that the ABT program did not contribute to a significant delay in implementation of the low-emitting technologies envisioned under the Phase 2 program, a risk under the proposed program which commenters raised to us in comments on the Supplemental NPRM. Without the limitations on credit generation, we were concerned that manufacturers could certify marginally cleaner engines, especially during the first years of the phase in period when the fleet average standards were the highest, and generate enough credits to significantly delay implementation of technologies meeting the long term standards (*i.e.*, 50 g/kW-hr for Classes III and IV and 72 g/kW-hr for Class V) for a significant portion of the fleet. We noted that generation of a significant amount of credits through short-term engine improvements that would not result in compliance with either California's standards or the final Phase 2 standards was an unacceptable outcome if it caused delay of the ultimate transition to cleaner technology.

We also adopted a Production Line Testing (PLT) program for Phase 2 handheld engines. The intent of the PLT program is to require a sample of production line engines to be tested for emission performance to assure that the certified emissions levels demonstrated on production prototypes are being achieved in mass production. The amount of PLT testing required by the manufacturer depends on how close the test results from the initial engines tested are to the applicable standards. If the initial test results indicate the design is well below the applicable standards, few engines need to be tested. For those designs where the test results indicate emission levels are very close to the applicable standards, additional tests are required to make sure the design is being produced with acceptable emission performance. The PLT program requires manufacturers to conduct testing on each of their engine families (unless they have been relieved of this requirement under a small-volume flexibility provision). The maximum sample size required for each engine family is 30 engines or 1 percent of a family's projected production, whichever is smaller. However, the actual number of tests ultimately required is determined by the testing results.

In adopting the Phase 2 standards for handheld engines, we concluded that the standards adopted, considering the lead time provided and other flexibility provisions such as averaging, banking, and trading, were technologically feasible for the handheld industry and appropriate under section 213 of the Clean Air Act. At the same time, we recognized that certain manufacturers who would be subject to the Phase 2 provisions believed that the standards may not be technologically feasible for them. This issue was most clearly raised with respect to the Class V standards. While EPA's adoption of the standards reflected our view that the Class V standards were achievable, we also believed that it was appropriate in responding to the manufacturers' comments and concerns to invite all members of the regulated industry as well as other interested parties to continue to explore the issue of technological feasibility of the Class V standards as industry made progress in moving towards implementation of the Phase 2 program. Therefore, in the April 2000 final rule, we stated our intent to perform a study of the technological feasibility of the Phase 2 Class V standards, to be completed by the end of 2002. We noted that the intent of the technology study was to focus on availability of technology, certification data, in-use performance, and other factors of interest.

Shortly after the April 2000 final rule was published, two members of the industry sued EPA over the Phase 2 handheld engine requirements. There were three main points in the lawsuit. First, they claimed that the Phase 2 standards did not meet the Clean Air Act requirement to provide the best balance of factors. Second, they claimed the standards were not supported by substantial evidence in the record. Last,

they claimed that we did not follow proper procedural requirements of the Clean Air Act with regard to changes made between the Supplemental NPRM and the FRM, specifically citing the 4-year phase-in period and the significantly revised ABT programs. In June, 2001, the United States Court of Appeals for the District of Columbia Circuit rejected all of industry's substantive and procedural challenges to the Phase 2 rule, and upheld EPA's rules as reasonably supported by substantial evidence. *Husqvarna AB* v. *EPA,* 254 F.3d 195 (DC Cir. 2001).

In the Fall of 2001, EPA began preliminary investigation of industry's progress in complying with the fully phased-in Class V emission standard of 72 g/kW-hr HC+NO_X. (As noted earlier, as part of the April 2000 FRM we committed to perform a study of the technological feasibility of the Phase 2 Class V standards.) The investigation focused on certification information for engines currently certified to meet the Phase 2 standards and on discussions with certain manufacturers regarding promising Phase 2 technologies.

The results of the preliminary investigation showed that manufacturers were focusing their Phase 2 development efforts primarily on Class IV engines. (As noted earlier in Table 1, the Phase 2 standards for Class IV engines took effect in 2002—two years before the Class V standards—and become more stringent each year until 2005.) The investigation also showed that while a small number of Class V engine families were certified with HC+NO_X levels below 72 g/kW-hr, little work had been done with regard to the majority of Class V engines. Given the limited information available on Class V engines, we drafted a memorandum and placed it in the small engine Phase 2 docket (EPA Air Docket A–96–55) in early 2002 noting that it would be premature to initiate the Class V feasibility study described in the April 2000 final rule. We also noted that we would continue to monitor the status of technology development for handheld engines and make further progress in conducting the Class V technology review during 2002.

Beginning in 2002, the Phase 2 requirements for Classes III and IV began to take effect. As noted earlier in Table 1, the Phase 2 standards are based on a declining average over four years in each class. (The Phase 2 standards for Class V engines do not start until 2004.) As expected, manufacturers have certified a number of different technologies with a wide range in emission levels with certification levels ranging from 16 g/kW-hr HC+NO_X on a 4-stroke engine to 245 g/kW-hr HC+NO_X on a 2-stroke engine. (This range is based on Class IV certification information; for Classes III–V, most industry sales are in Class IV.) The technologies being used currently are mostly 2-stroke engines with a limited number of 4-stroke engines as well. For the 2-stroke engines, there are a number of stratified scavenging designs as well as a number of engines equipped with catalysts.

With regard to the ABT program, manufacturers are using the program primarily for averaging purposes. Contrary to our earlier concerns about manufacturers certifying marginally-cleaner engines and earning significant credits which could delay the transition to the final Phase 2 standards, the sales-weighted certification levels for individual manufacturers in model year 2002 and 2003 have been near the required average standard. Because most manufacturer's average emission are near the phase-in standards, there has been only limited use of the banking provisions.

In April and November of 2002, the Outdoor Power Equipment Institute (OPEI), a trade organization that represents most of the manufacturers of handheld engines in the United States, met with EPA to raise concerns about a number of the Phase 2 provisions for handheld engines. EUROMOT, a trade organization that represents European handheld engine manufacturers also met with EPA in August 2002 to discuss their concerns with the Phase 2 program for handheld engines. OPEI and EUROMOT highlighted similar areas of concern in the meetings. First, they noted concerns over the Class V schedule of emission standards, indicating that the Phase II standards were more challenging than first thought and that they were pushing hard to meet the Class III and IV requirements with the hope and expectation that this experience would enhance their Class V compliance. Second, they noted their desire to revise the two ABT programs for handheld engines into one program without the discounting provisions of the current programs. They provided data which showed that there were relatively few credits being generated (compared to EPA's original concern) and they claimed that in some cases the provisions of the two ABT programs created a disincentive to introduce clean technology as soon as otherwise possible. Finally, they noted their interest in gaining some flexibility in the PLT program, especially with regard to the procedure for revising Family Emission Limits (FELs).

In follow-up to the meetings with OPEI and EUROMOT, we held individual discussions with eight handheld engine manufacturers to explore the status of each manufacturer's progress on the Phase 2 program and to better understand each manufacturer's perspective on the issues highlighted by OPEI and EUROMOT. The eight manufacturers represent over 90 percent of total handheld engine sales in the United States. Although each manufacturer's situation is different, there were several common themes raised during our discussions about the Phase 2 program. A summary of our findings is presented below.

With regard to the Phase 2 standards, we found that all of the manufacturers expect to be able to comply with the ultimate standards of 50/50/72 g/kW-hr HC+NO_X for Classes III/IV/V, respectively, although, as noted below, several raised concerns about being able to comply with the timing of the phase-in. Manufacturers view the emission standards and ABT program as an inter-related package. Since the declining average emission standard is expected to be met on a power/life/sales weighted average basis for all families in Classes III–V, it is important that the ABT program be structured such that it maximizes the opportunity to gain extra and early emission reductions. The manufacturers stressed the technological and practical challenges of meeting the emission standards in all of their different engines/equipment and emphasized the need for an ABT program which functioned as intended in order to meet the declining average emission standards.

It appears that the technology to be used most widely for complying with the final Phase 2 standards will be the stratified scavenging 2-stroke design, with or without a catalyst. There will also be a number of 4-stroke engine designs and limited engines equipped with the compression wave technology. While the compression wave technology was touted by some as a simple solution to meeting the Phase 2 standards during the rulemaking, it is not expected to see widespread use.

Based on their experience to date in developing technologies for Phase 2, manufacturers raised concerns about their ability to comply with the set of declining average phase-in standards, especially in the later years of the phase in and in Class V. Manufacturers have been focusing their design efforts on Class III and IV engines because the Phase 2 standards for those classes took effect first. Manufacturers are finding it more challenging than expected to develop their Phase 2 designs for all of

their engine families across the wide range of applications in which they are used. Many engines are used in multiple types of equipment applications, resulting in significant design challenges as the manufacturers need to ensure compliance with the emission standards while maintaining acceptable operating characteristics, including temperature issues and the need for additional cooling associated with the use of catalysts. There are approximately 275 Class III–V engine families and many of these are used in multiple equipment designs and cover both residential and commercial applications.

Because of the need to focus on Class III and IV engines and the challenges of applying new designs across their entire product mix, manufacturers of Class V engines (all of which are heavily involved in Class III and IV as well) have not focused as much effort on their Class V engines designs which are scheduled to begin to phase in during 2004. While Class V manufacturers expect to use the same basic technologies as they are employing in Class III and IV, they are still addressing the technical challenges facing Class V engines.

Unlike most Class III and IV engines which are used primarily in residential applications, Class V engines are used almost exclusively in commercial applications. Commercial equipment is operated under much more rigorous conditions than residential equipment and is operated for much longer periods of time by professionals in forestry and lawn care operations. Class V engines, which have the largest displacement of all handheld engines, also have the largest volume of exhaust. Manufacturers expect to use catalysts on at least some of their Class V designs. Manufacturers are still working to address the best way to incorporate catalysts on such large engines, while maintaining current levels of performance and addressing weight concerns and temperature issues with the need for upgraded cooling.

With regard to ABT, we found that manufacturers are using the current ABT programs primarily for averaging purposes and are not significantly below the fleet average levels required in Class III and IV in the first two years of the Phase 2 program. There is some banking of credits taking place, but at relatively low levels. This is in stark contrast to the concerns cited in the April 2000 final rule over the potential for significant levels of ''windfall'' credits from marginally cleaner engines. Manufacturers believe the current ABT programs have discouraged the pull ahead of clean technologies because of the steep discounts placed on credits in the program. Because of the high level of competition in the marketplace, especially for residential equipment which makes up the large majority of equipment in Classes III and IV, the incentive to pull ahead cleaner, more expensive engine designs has been removed by applying such high levels of discounting for any engines not meeting very low emission levels. Because most of the residential equipment is sold to large retailers, small differences in price between manufacturers, can result in lost sales. Manufacturers have been unwilling to take the business risk to pull ahead the introduction of any significant number of clean engines especially whenever the ABT program heavily discounts the value of credits that might be earned from these engines. In addition, because of the continuing efforts to address Class V engines discussed above, manufacturers are less certain regarding the ability to rely on the April 2000 rule's ABT programs for help in complying with the Phase 2 standards in Class V.

One final issue raised by manufacturers was related to the production line testing program required under the Phase 2 rules. Manufacturers believe they need additional flexibility beyond that currently allowed in the event that they need to revise the FEL limits because of unexpected variations in production engine emission levels. Manufacturers are allowed to make such changes under the current rules, but must notify EPA and await approval before continuing production of the engine. If approval is not received quickly, a manufacturer is forced to stop production. As manufacturers are making the transition to new technologies to comply with the Phase 2 standards, the potential for producing new designs on an assembly line where the emission levels of production engines (which are tested under the PLT program) are not at the levels expected is increased. Manufacturers would like to be able to revise their FELs, provided they have data to support their changes, without prior EPA approval so that the production of engines is not interrupted.

Shortly after completing our discussions with engine manufacturers, OPEI, on behalf of their members, submitted an administrative ''Petition for Reopening'' the Phase 2 handheld rules to EPA in February 2003. The petition contained a request to modify the Phase 2 program for handheld engines in three areas. First, OPEI requested a delay in the Class V implementation schedule (citing either a one year delay in the phase-in schedule or a change in the level of the standards during the phase-in). Second, OPEI requested that the ''Optional Transition Year'' credit program be eliminated, and that FEL caps that apply for banking credits in the ''Normal Credit'' program be dropped. Finally, OPEI requested that manufacturers be allowed to generate and use credits for averaging purposes in the PLT program in a given model year. A copy of the petition has been placed in the public docket for this rulemaking.

This action is a fulfillment of the technology review concerning the Class V standards and also is responsive to OPEI's request that we reopen the Phase 2 handheld rule. We believe that these amendments sufficiently resolve all issues related to these matters, and expect to take no further action in response to OPEI's petition or in relation to the technology review beyond that in this final rule.

We also note that while OPEI in its petition relied upon section 307(c) of the Clean Air Act, 42 U.S.C. 7607(c), as a basis for its requests, we do not agree that section 307(c) has any applicability to either OPEI's petition or to our action in response. Nor are EPA's rulemakings regarding nonroad engines under CAA section 213 subject to section 553(e) of the Administrative Procedure Act, 5 U.S.C. 553(e), another provision relied upon by OPEI in its request. *See* CAA section 307(d)(1), 42 U.S.C. 7607(d)(1). Finally, we disagree with OPEI's suggestion that, pursuant to section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1), OPEI has presented ''grounds arising after [the] sixtieth day'' following publication of the April 2000 final Phase 2 rule, such that a new petition for judicial review of that rule could be filed in the DC Circuit Court of Appeals in the absence of further final regulatory action on EPA's part. As OPEI is aware, in the face of a challenge by one of OPEI's member companies that court has already fully affirmed EPA's Phase 2 handheld regulations, and the court did not retain jurisdiction of the case pending any possible ongoing technology review or discussions with industry. *Husqvarna AB* v. *EPA,* 254 F.3d 195 (D.C. Cir. 2001).

B. What Amendments Are We Adopting Today?

Based on our analysis of the information gathered under the Class V technology review and our assessment of the petition presented by industry, we do not believe it is necessary to revise our April 2000 final rule determination that the Phase II

handheld standards are technologically feasible and otherwise appropriate under the Act. Thus, we are not taking action to revise the standards and phase-in schedule of the Phase II handheld program (Classes III–V) and they remain as promulgated. However, we also believe that several relatively modest changes to the rule are appropriate to ensure an orderly transition to compliance with the Phase 2 standards for the industry as a whole. Toward that end, we are promulgating three changes to the Phase II program. These changes facilitate transition to the Phase 2 standards while retaining all of the long term emission control benefits of the program. Each of these changes is discussed below.

Because EPA views the provisions of the action as noncontroversial and does not expect adverse comment, it is appropriate to proceed by direct final rulemaking. If we receive adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule.

1. Averaging Banking, and Trading (ABT)

The first set of changes is related to the certification ABT programs. As discussed above, the April 2000 final rule for handheld engines contained two ABT programs, referred to as the ''Normal'' credit program and the ''Optional Transition Year'' credit program.

Under the ''Normal'' credit program, manufacturers certifying Class III or IV engine families with FELs at or below 72 g/kW-hr and Class V engine families with FELs at or below 87 g/kW-hr may generate credits that have an unlimited credit life and are not discounted in any manner. (We refer to these as the ''credit program trigger levels.'') Under the ''Normal Credit'' program, credits generated by handheld engine families certified with FELs above the credit program trigger levels can be used by a manufacturer in the model year in which they are generated for its own averaging purposes, or traded to another manufacturer to be used for averaging purposes in that model year. However, such credits may not be carried over to the next model year (*i.e.*, banked), including when traded to another manufacturer.

Alternatively under the April 2000 final regulations, a manufacturer may choose to have a family participate in what is referred to as the ''Optional Transition Year'' credit program. Under this program, any engine family with FELs below the applicable phase-in standards shown in Table 1 is eligible to generate credits. However, as is described in 40 CFR 90.216, these credits are progressively discounted or in some cases multiplied depending on the certification FEL. This combination of ability to generate credits with families of higher emission levels for current year averaging but adjusting the credits for these higher/lower-emitting engines for purposes of banking was intended to provide an increased incentive for manufacturers to make interim emission improvements while preserving the environmental benefits of the Phase 2 program. ''Optional Transition Year'' credits have a limited life and application under the April 2000 final regulations. They may be used without limitation through the 2007 model year. For model years 2008 through 2010, they may also be used, but only if, prior to the use of any credits, the manufacturer's production- and power-weighted average emission level is below a level determined by production-weighting the manufacturer's product line by emission levels of 72/72/87 g/kW-hr for Classes III/IV/V. The ''Optional Transition Year'' credit program expires at the end of the 2010 model year, under the April 2000 final rule.

When we adopted the April 2000 final rule, we believed the ABT provisions contained therein were necessary to ensure that neither the ''Normal'' credit program nor the ''Optional Transition Year'' credit program would contribute to a significant delay in implementation of the low-emitting technologies envisioned under the Phase 2 program. Without the limitations on credit generation, we were concerned that manufacturers could certify marginally cleaner engines, especially during the first years of the phase in period when the new equipment standards are the highest, and generate enough credits to significantly delay implementation of technologies meeting the long term standards shown in Table 1 for a significant portion of the equipment population.

There have now been several model years of experience with certifying Class III and IV Phase 2 engines. The results indicate that the manufacturers have been able to comply with the declining average $HC+NO_X$ standards, but the certification compliance margins have generally not been large and there have not been a large number of credits generated. The ''windfall'' credit generation concern discussed in the April 2000 final rule has not occurred and would not have occurred even if the ''credit program trigger level'' provisions of the Normal ABT program and the discount and multiplier provisions of the Optional Transition Year program were not in place. Thus, to enable the ABT program to better fulfill its intended purpose and avoid maintaining unnecessary restrictions, EPA is revising the ABT program for 2003 and later model years: ABT credit program trigger levels are eliminated as are the credit discount and multipliers and limits on credit life. Essentially, the program is being revised to follow a simple ABT program such as was discussed in the July 1999 Supplemental NPRM. Provisions related to credits generated in model year 2002 and earlier would not be changed. In assessing the appropriateness of this change, EPA examined the potential future emissions impact of the removing the discounts and multipliers as part of the ABT program changes for 2003 and later. Using 2003 certification information, we have estimated that these ABT changes could potentially result in about 3,000 tons of future new ABT program credits in 2003 and 2004 with the in-use emissions impact spread out over the next five to seven years. This represents less than one percent of the emission reductions from the Phase 2 standards over these years. EPA expects these credits will be used to comply with the Class V standards during the transition years.

2. Class V Credit Deficit Carryforward

Several manufacturers have indicated that the engines used in Class V present the biggest technological challenge and assert that progress in Class V has been slowed by the need to meet the standards in Classes III and IV in earlier model years. Manufacturers are likely to adapt the technologies used in Class IV engines into Class V. They have indicated that they are confident that the long-term standards are feasible for Class V, but that they may need additional transition flexibility. Even with the cross class averaging and the ABT program changes made above, compliance during the transition years may depend on the expected success of technological progress, meeting expected sales goals in other Classes for purposes of credit generation, and a favorable sales mix among the products and Classes. Toward that end, as a

transition tool, we are revising the certification provisions to facilitate compliance for Class V.

Specifically, and only for Class V, we are revising the certification and compliance provisions to allow for credit deficit carryforward flexibility for model years 2004 through 2007. Under these provisions, a manufacturer who certifies Class V equipment during the transition period (model years 2004 through 2007) may run a net accumulated credit deficit within its three Class average (III–V) for a given model year if the deficit is attributable to negative credits from Class V engine families. Such credit deficits are permitted in any model year of the transition, but cannot occur for more than two consecutive model years. Once a deficit occurs, a manufacturer could, in the first subsequent model year, cover it at a 1:1 rate with credits from any or all of the handheld or non-handheld equipment classes. In the second and third following model years the deficit payback rate would be 1.1:1. In the fourth following model year, the deficit payback rate would be 1.2:1. Manufacturers with a credit deficit are prohibited from trading credits to other manufacturers (although manufacturers would be allowed to purchase credits from other manufacturers in trading), and from banking credits for future use. Any positive credit balance must be applied to that deficit. A manufacturer can use banked or traded credits to cover deficits.

As with the April 2000 regulations, two groups of engines are excluded from the ABT program. California certified sales in non pre-empted classes would not be included in the program in any way. Small volume manufacturers and small volume families which have extended compliance dates under the April 2000 final rule (an extra three years beyond the last of the transition years) would not be included, unless the manufacturer opted to pull-ahead certification of such engines for the purpose of generating credits.

EPA implemented a deficit carryforward provision in its Tier 2 automotive rule (65 FR 6867, February 10, 2002) and its recreational vehicle rule (67 FR 68389, November 8, 2002) to address similar concerns in the affected industries. This approach has the benefits of assuring the expected emission reductions are achieved while providing both the industry and EPA the flexibility to attain an orderly transition to the new standards.

3. Production Year FEL Changes

The implementation of new technology often brings with it unexpected emissions variability and performance shortfalls during the transition from prototype to mass production. Manufacturers account for this in setting their FELs, but even so there are times when an FEL adjustment is needed. Under the April 2000 final rule, manufacturers identifying an emissions problem with its production engines must contact EPA to get approval to change its FEL upward and subsequently to implement a certification running change to fix the problem and reduce the FEL. This process is time consuming for EPA and the industry and can result in production line slowdowns and stoppages as manufacturers await EPA approvals. In this rule, we are revising the process to adjust FELs upward and downward during the production year. Specifically, we are streamlining the certification FEL change process (up or down) through a regulatory revision to permit changes without pre-approval. Any changes to FELs must be based on engineering evaluation and emission test data which justifies the new FEL and be submitted to EPA within three working days. Failure to meet these requirements would be a violation of the certificate for any engines produced during the interim period. EPA believes such a provision streamlines both its internal processes and those of the manufacturers without compromising the emission reductions associated with the standards.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of this Executive Order. The Executive Order defines a ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may:

- 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;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This direct final rule is not a significant regulatory action as it merely amends previously adopted requirements for handheld engines to provide additional compliance flexibility to manufacturers in meeting the Phase 2 requirements. There are no new costs associated with this rule. A Final Regulatory Support Document was prepared in connection with the original Phase 2 regulations for handheld engines as promulgated on April 25, 2000 (65 FR 24268) and we have no reason to believe that our analysis in the original rulemaking is inadequate. The relevant analysis is available in the docket for the Phase 2 rulemaking (A–96–55) and at the following Internet address: *http://www.epa.gov/otaq/equip-ld.htm.* The original action was submitted to the Office of Management and Budget for review under Executive Order 12866.

B. Paperwork Reduction Act

This direct final rule does not include any new collection requirements. The information collection requirements (ICR) for the original Phase 2 rulemaking (65 FR 24268, April 25, 2000) were approved on September 21, 2001 by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of this final rule on small entities, a small entity is defined as: (1) A small business that meets the definition for business based on SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives ''which minimize the

significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on small entities subject to the rule. This direct final rule merely amends the previously adopted Phase 2 requirements for handheld engines to provide additional compliance flexibility to engine manufacturers, including small entities, and will reduce regulatory burden.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why such an alternative was adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates for State, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments. EPA has determined that this rule contains no Federal mandates that may result in expenditures of more than $100 million to the private sector in any single year. This direct final rule merely amends previously adopted requirements for Phase 2 handheld engines to provide additional compliance flexibility to manufacturers. The requirements of UMRA therefore do not apply to this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (*i.e.*, the rules 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). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This direct final rule merely amends previously adopted requirements for Phase 2 handheld engines to provide additional compliance flexibility to manufacturers.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (59 FR 22951, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.''

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. This rule does not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of this rule. This direct final rule merely amends previously adopted requirements for Phase 2 handheld engines to provide additional compliance flexibility to manufacturers. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant, and does not involve decisions on environmental health or safety risks that may disproportionately affect children.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This direct final rule merely amends previously adopted requirements for Phase 2 handheld engines to provide additional compliance flexibility to manufacturers.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This direct final rule does not involve technical standards. This direct final rule merely amends previously adopted requirements for Phase 2 handheld engines to provide additional compliance flexibility to manufacturers. Thus, we have determined that the requirements of the NTTAA do not apply.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended 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 Congress and the Comptroller General of the United States. We 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 before publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This direct final rule is effective on March 12, 2004.

K. Statutory Authority

The statutory authority for this action comes from sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)). This action is a rulemaking subject to the provisions of Clean Air Act section 307(d). See 42 U.S.C. 7606(d)(1).

List of Subjects in 40 CFR Part 90

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Reporting and recordkeeping requirements, Research, Warranties.

Dated: December 23, 2003

Michael O. Leavitt,

Administrator.

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

PART 90—CONTROL OF EMISSIONS FROM NONROAD SPARK-IGNITION ENGINES AT OR BELOW 19 KILOWATTS

■ 1. The authority citation for part 90 continues to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a).

Subpart B—Emission Standards and Certification Provisions

■ 2. Section 90.122 is amended by revising paragraphs (e)(1) and (e)(2) to read as follows:

§ 90.122 Amending the application and certificate of conformity.

* * * * *

(e)(1) Alternatively, an engine manufacturer may make changes in or additions to production engines concurrently with amending the application for an engine family as set forth in paragraph (a) and (b) of this section. In these circumstances the manufacturer may implement the production change without EPA pre-approval provided the request for change together with all supporting emission test data, related engineering evaluations, and other supporting documentation is received at EPA within three working days of implementing the change. Such changes are ultimately still subject to the provisions of paragraphs (c) and (d) of this section.

(2) If, after a review, the Administrator determines that additional testing or information is required, the engine manufacturer must provide required test data or information within 30 days or cease production of the affected engines.

* * * * *

Subpart C—Certification Averaging, Banking, and Trading Provisions

■ 3. Section 90.203 is amended by revising paragraphs (e)(1), (e)(5), (g)(1), and the second sentence of paragraph (h) to read as follows:

§ 90.203 General provisions.

* * * * *

(e) (1) A manufacturer may certify engine families at Family Emission Limits (FELs) above or below the applicable emission standard subject to the limitation in paragraph (f) of this section, provided the summation of the manufacturer's projected balance of credits from all calculations and credit transactions for all engine classes in a given model year is greater than or equal to zero, as determined under § 90.207. Notwithstanding the previous sentence, a manufacturer may project a negative balance of credits as allowed under § 90.207(c)(2).

* * * * *

(5) In the case of a production line testing (PLT) failure pursuant to subpart H of this part, a manufacturer may revise the FEL based upon production line testing results obtained under

subpart H of this part and upon Administrator approval pursuant to § 90.122(d). The manufacturer may use credits to cover both past production and subsequent production of the engines as needed as allowed under § 90.207(c)(1).

* * * * *

(g)(1) Credits generated in a given model year by an engine family subject to the Phase 2 emission requirements may only be used in averaging, banking or trading, as appropriate, for any other engine family for which the Phase 2 requirements are applicable. Credits generated in one model year may not be used for prior model years, except as allowed under § 90.207(c).

* * * * *

(h) * * * Except as provided in § 90.207(c), an engine family generating negative credits for which the manufacturer does not obtain or generate an adequate number of positive credits by that date from the same or previous model year engines will violate the conditions of the certificate of conformity. * * *

* * * * *

■ 4. Section 90.204 is amended by adding a sentence to the end of paragraph (a) and adding a sentence to paragraph (c) immediately after the first sentence to read as follows:

§ 90.204 Averaging.

(a) * * * A manufacturer may have a negative balance of credits as allowed under § 90.207(c)(2).

* * * * *

(c) * * * Credits generated under the previously available ''Optional transition year averaging, banking, and trading program for Phase 2 handheld engines'' of §§ 90.212 through 90.220, since repealed, may also be used in averaging. * * *

* * * * *

■ 5. Section 90.205 is amended by revising paragraphs (a)(4) and (a)(5) to read as follows:

§ 90.205 Banking.

(a) * * *

(4) For the 2002 model year, a manufacturer of a Class III or Class IV engine family may bank credits for use in future model year averaging and trading from only those Class III or Class IV engine families with an FEL at or below 72 g/kW-hr. Beginning with the 2003 model year, a manufacturer of a Class III or Class IV engine family with an FEL below the applicable emission standard may generate credits for use in future model year averaging and trading.

(5) Beginning with the 2004 model year, a manufacturer of a Class V engine family with an FEL below the applicable emission standard may generate credits for use in future model year averaging and trading.

* * * * *

■ 6. Section 90.206 is amended by revising paragraph (a) to read as follows:

§ 90.206 Trading.

(a) An engine manufacturer may exchange emission credits with other engine manufacturers in trading, subject to the trading restriction specified in § 90.207(c)(2).

* * * * *

■ 7. Section 90.207 is amended by redesignating paragraph (c) as paragraph (c)(1), adding a new paragraph (c)(2), and adding a new paragraph (g) to read as follows:

§ 90.207 Credit calculation and manufacturer compliance with emission standards.

* * * * *

(c)(2) For model years 2004 through 2007, an engine manufacturer who certifies at least one Class V engine family in a given model year may carry forward a credit deficit for four model years, but must not carry such deficit into the fifth year, provided the deficit is attributable to negative credits from its Class V engine families, subject to the following provisions:

(i) Credit deficits are permitted for model years 2004 through 2007 but cannot occur for more than two consecutive model years for a given manufacturer;

(ii)(A) If an engine manufacturer calculates that it has a credit deficit for a given model year, it must obtain sufficient credits from engine families produced by itself or another manufacturer in a model year no later than the fourth model year following the model year for which it calculated the credit deficit. (Example: if a manufacturer calculates that it has a credit deficit for the 2004 model year, it must obtain sufficient credits to offset that deficit from its own production or that of other manufacturers' 2008 or earlier model year engine families.);

(B) An engine manufacturer carrying the deficit into the first model year following the year in which it was generated must generate or obtain credits to offset that deficit and apply them to the deficit at a rate of 1:1. An engine manufacturer carrying the deficit into the second and third model years must generate or obtain credits to offset that deficit and apply them to the deficit at a rate of 1.1:1 (*i.e.*, deficits carried into the second and third model year must be repaid with credits equal to 110 percent of the deficit). Deficits carried into the fourth model year must be offset by credits at a rate of 1.2:1 (*i.e.*, 120 percent of the deficit);

(iii) An engine manufacturer who has a credit deficit may use credits from any class of spark-ignition nonroad engines at or below 19 kilowatts generated or obtained through averaging, banking or trading to offset the credit deficit; and,

(iv) An engine manufacturer must not bank credits for future use or trade credits to another engine manufacturer during a model year in which it has generated a deficit or into which it has carried a deficit.

* * * * *

(g) Credit deficits. (1) Manufacturers must offset any deficits for a given model year by the reporting deadline for the fourth model year following the model year in which the deficits were generated as required in paragraph (c)(2) of this section. Manufacturers may offset deficits by generating credits or acquiring credits generated by another manufacturer.

(2)(i) Failure to meet the requirements of paragraph (c)(2) of this section within the required timeframe for offsetting deficits will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the individual noncomplying engines not covered by the certificate must be determined according to this section.

(ii) If deficits are not offset within the specified time period, the number of engines which could not be covered in the calculation to show compliance with the fleet average $HC+NO_X$ standard in the model year in which the deficit occurred and thus are not covered by the certificate must be calculated using the methodology described in paragraph (g)(2)(iii) of this section.

(iii) EPA will determine the engines for which the condition on the certificate was not satisfied by designating engines in the Class V engine family with the highest $HC+NO_X$ FELs first and continuing progressively downward through the Class V engine families until a number of engines having a credit need, as calculated under paragraph (a) of this section, equal to the remaining deficit is reached. If this calculation determines that only a portion of engines in a Class V engine family contribute to the deficit situation, then EPA will designate a subset of actual engines in that engine family as not covered by the certificate, starting with the last engine produced and counting backwards. EPA may request additional information from the manufacturer that would help identify the actual engine not covered by the certificate.

(iv) In determining the engine count, EPA will calculate the mass of credits based on the factors identified in paragraph (a) of this section.

(3) If a manufacturer is purchased by, merges with or otherwise combines with another manufacturer, the manufacturer continues to be responsible for offsetting any deficits outstanding within the required time period. Any failure to offset the deficits will be considered to be a violation of paragraph (g)(1) of this section and may subject the manufacturer to an enforcement action for sale of engines not covered by a certificate, pursuant to paragraph (g)(2) of this section.

(4) If a manufacturer that has a deficit ceases production of handheld engines, the manufacturer will be considered immediately in violation of paragraph (g)(1) of this section and may be subject to an enforcement action for sale of engines not covered by a certificate, pursuant to paragraph (g)(2) of this section

(5) For purposes of calculating the statute of limitations, a violation of the requirements of paragraph (g)(1) of this section, a failure to satisfy the conditions upon which a certificate(s) was issued and hence a sale of engines not covered by the certificate, all occur upon the expiration of the deadline for offsetting deficits specified in paragraph (g)(1) of this section.

§§90.212, 90.213, 90.214, 90.215, 90.216, 90.217, 90.218, 90.219, 90.220 [REMOVED]

■ 8. Sections 90.212 through 90.220 are removed.

[FR Doc. 04–458 Filed 1–9–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 90

[AMS–FRL–7605–9]

RIN 2060–AL88

Amendments to the Phase 2 Requirements for Spark-Ignition Nonroad Engines at or Below 19 Kilowatts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA adopted Phase 2 requirements for spark-ignition nonroad handheld engines at or below 19 kilowatts in April 2000. The Phase 2 requirements are being phased-in between 2002 and 2007. Based on initial experience with the Phase 2 program for handheld engines, we are proposing several amendments intended to provide additional compliance flexibility to engine manufacturers to smooth the transition to the Phase 2 requirements. The proposed amendments contain two revisions intended to increase flexibility in the averaging, banking, and trading program as it applies to handheld engines. First, the credit discounts and credit bonuses would be eliminated from the program. Second, manufacturers would be allowed to carry limited credit deficits during the phase-in period (through 2007) provided the deficits are made up within a set period of time. The proposed amendments also contain minor changes to the certification requirements intended to help manufacturers respond in a more efficient manner to unexpected variations in emission levels from production engines while still achieving the required emission objectives.

We are publishing in the ''Rules and Regulations'' section of today's **Federal Register** a direct final rule that will amend the Phase 2 requirements as noted above without further EPA action unless we receive adverse comment. We have explained our reasons for today's action in detail in the preamble to the direct final rule. The interested reader is encouraged to review that document for a full explanation of all provisions and an explanation of the data and rationale supporting these changes. If we receive adverse comment, we will withdraw the pertinent amendments, sections, or paragraphs of the direct final rule prior to its effective date, and will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments must be received by February 11, 2004. Request for a public hearing must be received by January 27, 2004. If we receive a request for a public hearing, we will publish information related to the timing and location of the hearing and the timing of a deadline for the submission of rebuttal and supplementary information.

ADDRESSES: Comments: All comments and materials relevant to this action should be submitted to Public Docket No. OAR–2003–0195 at the following address by the date indicated under **DATES** above. Materials relevant to this rulemaking are in Public Dockets A–96–55 and OAR–2003–0195 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 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, except on government holidays. You can reach the Air Docket by telephone at (202) 566–1742 and by facsimile at (202) 566–1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Philip Carlson, Assessment and Standards Division, e-mail *carlson.philip@epa.gov,* voice-mail (734) 214–4636.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

This action will affect companies and persons that manufacture, sell, or import into the United States spark-ignition nonroad handheld engines at or below 19 kilowatts. Affected categories and entities include the following:

Category	NAICS Code [a]	Examples of potentially affected entities
Industry ...	333112	Lawn & Garden Equipment Manufacturers.
Industry ...	336618	Other Engine Equipment Manufacturers.

[a] North American Industry Classification System (NAICS)

This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be affected by this action. To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action as noted in **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Send Comments?

See the direct final rule EPA has published in the ''Rules and Regulations'' section of today's **Federal Register** for information about accessing these documents. The direct final rule also includes detailed instructions for sending comments to EPA.

II. Summary of Rule

This proposed rule contains amendments to the Phase 2 requirements for spark-ignition nonroad engines at or below 19 kilowatts. The amendments have arisen from initial experience with the Phase 2 requirements for handheld engines that began in 2002 and are intended to provide additional compliance flexibility to manufacturers as they complete the transition to Phase 2 technologies over the next few years. For additional discussion of these amendments, see the direct final rule EPA has published in the ''Rules and Regulations'' section of today's **Federal Register**. This proposed rule incorporates by reference all the reasoning, explanation, and regulatory text from the direct final rule.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This proposed rule is not a significant regulatory action as it merely amends previously adopted requirements for handheld engines to provide additional compliance flexibility to manufacturers in meeting the Phase 2 requirements. There are no new costs associated with this proposed rule. A Final Regulatory Support Document was prepared in connection with the original Phase 2 regulations for handheld engines as promulgated on April 25, 2000 (65 FR 24268) and we have no reason to believe that our analysis in the original rulemaking is inadequate. The relevant analysis is available in the docket for the Phase 2 rulemaking (A–96–55) and at the following internet address: *http://www.epa.gov/otaq/equip-ld.htm*. The original action was submitted to the Office of Management and Budget for review under Executive Order 12866. See the direct final rule EPA has published in the ''Rules and Regulations'' section of today's **Federal**

Register for a more extensive discussion of Executive Order 12866.

B. Paperwork Reduction Act

This proposed rule does not include any new collection requirements. The information collection requirements (ICR) for the original Phase 2 rulemaking (65 FR 24268, April 25, 2000) were approved on September 21, 2001 by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Analysis

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, a small entity is defined as: (1) A small business with fewer than 1,000 employees, consistent with the definition for business based on SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any new requirements on small entities. This proposed rule merely amends the previously adopted Phase 2 requirements for handheld engines to provide additional compliance flexibility to engine manufacturers, including small entities, and would relieve regulatory burden.

D. Unfunded Mandates Reform Act

This proposed rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments. EPA has determined that this rule contains no federal mandates that may result in expenditures of more than $100 million to the private sector in any single year. This proposed rule merely amends the previously adopted Phase 2 requirements for handheld engines to provide additional compliance flexibility to engine manufacturers. The requirements of UMRA therefore do not apply to this action. See the direct final rule EPA has published in the ''Rules and Regulations'' section of today's **Federal Register** for a more extensive discussion of UMRA policy.

E. Executive Order 13132: Federalism

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule merely amends the previously adopted Phase 2 requirements for handheld engines to provide additional compliance flexibility to engine manufacturers. See the direct final rule EPA has published in the ''Rules and Regulations'' section of today's **Federal Register** for a more extensive discussion of Executive Order 13132.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule does not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of this rule. This proposed rule merely amends the previously adopted Phase 2 requirements for handheld engines to provide additional compliance flexibility to engine manufacturers. Thus, Executive Order 13175 does not apply to this rule. See the direct final rule EPA has published in the ''Rules and Regulations'' section of today's **Federal Register** for a more extensive discussion of Executive Order 13175.

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

This rule is not subject to the Executive Order because it is not economically significant, and does not involve decisions on environmental health or safety risks that may disproportionately affect children. See the direct final rule EPA has published in the ''Rules and Regulations'' section of today's **Federal Register** for a more extensive discussion of Executive Order 13045.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This proposed rule merely amends the previously adopted Phase 2 requirements for handheld engines to provide additional compliance flexibility to engine manufacturers.

I. National Technology Transfer and Advancement Act

This rule does not involve technical standards. This proposed rule merely amends the previously adopted Phase 2 requirements for handheld engines to provide additional compliance flexibility to engine manufacturers. Thus, we have determined that the requirements of the NTTAA do not apply. See the direct final rule EPA has published in the ''Rules and Regulations'' section of today's **Federal Register** for a more extensive discussion of NTTAA policy.

J. Statutory Authority

The statutory authority for this action comes from sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)). This action is a rulemaking subject to the provisions of Clean Air Act section 307(d). See 42 U.S.C. 7606(d)(1).

List of Subjects in 40 CFR Part 90

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Reporting and recordkeeping requirements, Research, Warranties.

Dated: December 23, 2003.

Michael O. Leavitt,

Administrator.

[FR Doc. 04–457 Filed 1–9–04; 8:45 am]

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Federal Register

Monday,
January 12, 2004

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2002–11301; Amendment No. 121–302]

RIN 2120–AH14

Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: As a result of a number of years of experience inspecting the aviation industry's Antidrug and Alcohol Misuse Prevention Programs, the FAA is clarifying regulatory language, increasing consistency between the antidrug and alcohol misuse prevention program regulations where possible, and eliminating regulatory provisions that are no longer appropriate. The major changes the FAA is making include the requirements for submission of antidrug plans and alcohol misuse prevention certification statements by employers and contractors; and the timing of pre-employment testing. The effect of these changes is to improve safety and lessen administrative burdens on the regulated public.

DATES: These amendments become effective February 11, 2004.

FOR FURTHER INFORMATION CONTACT: Diane J. Wood, Manager, Drug Abatement Division, AAM–800, Office of Aerospace Medicine, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone number (202) 267–8442.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page *(http://dms.dot.gov/search)*;

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm*; or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at *http://www.faa.gov/avr/arm/sbrefa.htm,* or by e-mailing us at *-AWA-SBREFA@faa.gov.*

General Information

The General Information portion of the preamble is organized as follows:

- Background information about the drug and alcohol rules (14 CFR part 121, appendices I and J, respectively).
- Two charts highlighting the principal changes in appendices I and J.
- Two charts highlighting the clarifying changes in appendices I and J.
- Discussion of comments received.

Background Information About the Drug and Alcohol Rules

The Antidrug and Alcohol Misuse Prevention Program regulations are part of a long history of FAA actions to combat the use of drugs and alcohol in the aviation industry. For many decades the FAA has had regulations prohibiting crewmembers from operating aircraft under the influence of alcohol or drugs that impair their ability to operate the aircraft. Because of the broad use of drugs in American society, the FAA adopted rules in the 1980s to require testing of persons performing safety functions in the commercial aviation industry for certain illegal drugs. On November 14, 1988, the FAA published a final rule entitled, Antidrug Program for Personnel Engaged in Specified Aviation Activities (53 FR 47024), which required specified aviation employers and operators to initiate antidrug programs for personnel performing safety-sensitive functions.

Congress enacted the Omnibus Transportation Employee Testing Act of 1991 (49 U.S.C. 45101, *et seq.*) (the Act), requiring drug and alcohol testing of air carrier employees. To conform with the Act, the Office of the Secretary of Transportation (OST) coordinated the efforts of Department of Transportation (DOT) modal administrations to address the issue of alcohol use in the transportation industries. On August 19, 1994, the FAA published a final rule entitled, Antidrug Program for Personnel Engaged in Specified Aviation Activities (59 FR 42911), which made clarifying and substantive changes in the FAA's antidrug rule to comport with revised DOT drug testing procedures. On February 15, 1994, the FAA published a final rule entitled, Alcohol Misuse Prevention Program for Personnel Engaged in Specified Aviation Activities (59 FR 7380). The final rule required certain aviation employers to conduct alcohol testing.

The FAA's regulatory efforts have proven to be effective in detecting and deterring illegal drug use and alcohol misuse in the aviation industry. From 1990 through 2001, aviation employers required to report have told the FAA that approximately 19,400 positive pre-employment test results have occurred. Hence, pre-employment testing has proven to be an effective detection tool for the aviation industry.

In addition to these pre-employment test results, between 1990 and 2001 there were approximately 11,100 positive drug test results reported to the FAA by employers. For alcohol tests conducted between 1995 and 2001, employers have reported a total of approximately 900 breath alcohol test results of 0.04 or greater. This is further evidence of the success of the FAA's drug and alcohol testing regulations.

While the drug and alcohol testing regulations have proven successful, experience has led the FAA to identify some aspects of the regulations that need to be amended. These amendments change requirements regarding: reasonable cause drug testing; periodic drug testing; the approval process of antidrug program plans; and the approval process of certification statements for alcohol misuse prevention programs. The FAA is also clarifying regulatory language, increasing consistency between the antidrug and alcohol misuse prevention program regulations where possible, and eliminating regulatory provisions that are no longer appropriate.

On February 28, 2002, the FAA published a Notice of Proposed Rulemaking (NPRM), Notice 02–04 (67 FR 9365). We proposed clarifying regulatory language, increasing consistency between the antidrug and alcohol misuse prevention program regulations where possible and eliminating regulatory provisions that were no longer appropriate. We proposed these changes to improve safety and lessen administrative burdens. The comment period for Notice 02–04 was scheduled to close May 29, 2002, but was extended until July 29, 2002 (67 FR 37361; May 29, 2002) as a result of public requests for extension.

In Notice 02–04, the FAA proposed to make it clear that each person who performs a safety-sensitive function directly or by any tier of a contract for an employer is subject to testing. Several commenters stated that this was more than a clarifying change. The commenters suggested that, because more people would have to be tested, there would be an economic impact from this proposed change. In order to gather more information on the concerns expressed by the commenters, the FAA is not adopting the proposed revision in this final rule and will be publishing a Supplemental Notice of Proposed Rulemaking (SNPRM) in the near future. All other issues and comments related to Notice 02–04 are addressed and resolved in this final rule.

This amendment also replaces ''Office of Aviation Medicine'' with ''Office of Aerospace Medicine,'' wherever it appears in the regulations.

Charts Summarizing the Changes

The following charts summarize the principal and clarifying changes to appendices I and J to 14 CFR part 121. Where the proposed change is modified in this final rule, the FAA's reason is discussed in this preamble.

Current section number and title	Summary
Principal Changes—Appendix I (Drug Testing)	
Section II. Definitions	• Changes the definition of ''Employer'' to clarify that employer may use a contract employee to perform a safety-sensitive function if the contract employee is included in the: 1. Employer's FAA-mandated antidrug program; or 2. Contractor's FAA-mandated antidrug program while performing a safety-sensitive function on behalf of that contractor (*i.e.*, within the scope of employment with the contractor.)
Section V. Types of Testing Required	• Changes paragraph A., ''Pre-employment Testing,'' to require pre-employment testing before hiring or transferring an individual into a safety-sensitive position. • Requires an employer to conduct another pre-employment test before hiring or transferring an individual into a safety-sensitive position if more than 180 days elapse between a pre-employment test and placing the individual into a safety-sensitive position. • Eliminates periodic drug testing.
Section IX. Implementing an Antidrug Program	• Changes the title of the section. • Eliminates the requirement for plan approvals. Instead requiring that: —New and existing part 121 and 135 certificate holders obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification. Only one operations specification is required for both the drug and alcohol programs. —New and existing part 145 certificate holders obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification if they opt to have the drug and alcohol programs because they perform safety-sensitive functions for an employer. Only one operations specification is required for both the drug and alcohol programs. —All other entities required or opting to have Antidrug and Alcohol Misuse Prevention Programs register with the FAA. Only one registration is required for both the drug and alcohol programs. • Eliminates the 60-day grace period before employers must ensure that contractors and part 145 certificate holders that perform safety-sensitive functions are subject to an antidrug program. • Requires updates to registration information as changes occur. • Makes it clear that employers may use contractors (including part 145 certificate holders) to perform safety-sensitive functions only if the contractors are subject to an antidrug program for the entire time they are performing safety-sensitive functions.
Clarifying Changes—Appendix I (Drug Testing)	
Section I. General	• Adds a paragraph that lists applicable Federal regulations. • Adds a paragraph that prohibits falsification of any logbook, record, or report.
Section II. Definitions	• Changes the defined term ''Contractor company'' to ''Contractor'' to emphasize that ''Contractor'' could mean an individual or a company. • Changes the definition of ''Employee'' to eliminate unnecessary language. • Adds a definition of ''Hire'' to ensure that we do not inadvertently eliminate anyone who was required to submit to pre-employment testing under the 1994 pre-performance provision.
Section III. Employees Who Must Be Tested	• Makes it clear that all employees who perform safety-sensitive functions, *e.g.*, assistant, helper, or individual in a training status, whether they are full-time, part-time, temporary, or intermittent employees, are subject to an antidrug program regardless of the degree of supervision.
Section V. Types of Drug Testing Required	• Clarifies pre-employment notification requirements. • Clarifies random testing requirements.

Current section number and title	Summary
Principal Changes—Appendix J (Alcohol Testing)	
Section VII. Implementing an Alcohol Misuse Prevention Certification Program.	• Eliminates the FAA-required Alcohol Misuse Prevention Certfication Statement. Instead the FAA is requiring: —New and existing part 121 and 135 certificate holders to obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification. Only one operations specification is required for both the drug and alcohol programs. —New and existing part 145 certificate holders to obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification if they opt to have the drug and alcohol programs because they perform safety-sensitive functions for an employer. Only one operations specification is required for both the drug and alcohol programs. —All other entities required or opting to have Antidrug and Alcohol Misuse Prevention Programs to register with the FAA. Only one registration is required for both the drug and alcohol programs. • Eliminates the 180-day grace period before employers must ensure that their contractors and part 145 certificate holders that perform safety-sensitive functions are subject to an alcohol misuse prevention program. • Requires updates to registration information as changes occur. • Makes it clear that employers may use contractors (including part 145 certificate holders) to perform safety-sensitive functions only if the contractors are subject to an alcohol misuse prevention program for the entire time they are performing safety-sensitive functions.
Clarifying Changes—Appendix J (Alcohol Testing)	
Section I. General	• Eliminates in paragraph D. the definition of ''Administrator,'' because it is defined elsewhere in the regulations. • Eliminates in paragraph D. the definition of ''Consortium.'' • Changes in paragraph D. the defined term ''Contractor company'' to ''Contractor'' to emphasize that ''Contractor'' could mean an individual or a company. • Adds paragraph H. that lists applicable Federal regulations. • Adds paragraph I. that prohibits falsification of any logbook, record, or report.
II. Covered Employees	Makes it clear that all employees who perform safety-sensitive functions, *e.g.*, assistant, helper, or individual in a training status whether they are full-time, part-time, temporary, or intermittent employees, are subject to an alcohol misuse prevention program regardless of the degree of supervision.

Discussion of Comments Received

General Overview

The FAA received approximately 30 comments in response to Notice 02–04, including comments from the Air Transport Association of America (ATA), Regional Airline Association (RAA), National Air Transportation Association (NATA), Airline Pilots Association, International (ALPA), and a joint filing by the Aeronautical Repair Station Association (ARSA) and 14 other entities.

Appendix I—Drug Testing Program

I. General

In Notice 02–04, the FAA proposed to add two paragraphs to this section: ''Applicable Federal Regulations'' and ''Falsification.'' These paragraphs were designated ''D.'' and ''E.'' respectively. Proposed Paragraph D. included a list of Federal regulations dealing with the antidrug and the alcohol misuse prevention programs. Paragraph E., ''Falsification,'' proposed to specifically prohibit falsification of any logbook, record, or report required to be maintained under the regulations to show compliance with appendix I. Similar language prohibiting falsification is used in 14 CFR 21.2, 61.59, 63.20, and 65.20.

The FAA received only one comment, which was supportive. The FAA is adopting the changes as proposed.

II. Definitions

Contractor

In Notice 02–04, the FAA proposed to change the term ''Contractor company'' to ''Contractor'' to emphasize that a contractor can be an individual or a company who contracts with an aviation employer.

The FAA received one comment regarding the proposed change from ''Contractor company'' to ''Contractor.'' The commenter believed that the term ''Contractor company'' was adequate.

The FAA has determined that the proposed clarification more clearly articulates the intended meaning of the term. Therefore, we are adopting the change as proposed.

Employee

In Notice 02–04, the FAA proposed to change the definition of ''Employee'' to clarify that an employee is either a person hired, directly or by contract, to perform a safety-sensitive function for an employer or a person transferred into a position to perform a safety-sensitive function.

We also proposed eliminating the sentence ''Provided, however, that an employee who works for an employer who holds a part 135 certificate and who holds a part 121 certificate is considered to be an employee of the part 121 certificate holder for purposes of this appendix.'' This sentence was included at the inception of the drug testing regulations, when part 121 certificate holders were required to implement drug testing earlier than part 135 certificate holders. Because all existing part 121 and part 135 certificate holders have implemented the drug testing regulations, this language is no longer necessary.

The FAA did not receive any comments on the proposed changes to the definition of ''Employee.'' We are adopting the changes as proposed.

Employer

In Notice 02–04, the FAA proposed to change the definition of ''Employer.'' The proposed change was intended to make it clear that no employer can use a contract employee to perform a safety-sensitive function unless the contract employee: is included under that employer's FAA-mandated antidrug

program; or is included under the contractor's FAA-mandated antidrug program and is performing a safety-sensitive function on behalf of the contractor (*i.e.*, within the scope of employment with the contractor.)

We proposed to change the definition of ''Employer'' to close a loophole that was sometimes referred to as ''moonlighting.'' Under the moonlighting loophole, when an employee was covered under an employer's drug testing program (Employer A), another employer (Employer B) could have used that employee to perform safety-sensitive functions even when the work was unrelated to the employee's work with Employer A. In many cases, however, Employer A was unaware of its employee's activities for Employer B. One problem arising from this was that if Employer A terminated the employee, Employer B might not know that the employee was no longer covered by Employer A's drug testing program.

Another problem was that, in the event of an accident while an employee was working for Employer B, Employer B could not have post-accident tested the employee because the employee was not included in Employer B's drug testing program. Employer A might not have been aware of the need to test the employee, or it might not have agreed to test the employee if the employee had not been performing a safety-sensitive function within the scope of employment with Employer A. In adopting the original rule, it was not the FAA's intent to create a situation where a person performing a safety-sensitive function could avoid being tested. With adoption of this change, employers will only be permitted to rely on companies with whom they have contractual relationships to cover testing of their employees.

The FAA received comments from several submitters, including ARSA and RAA, on the definition of ''Employer.'' Two commenters approved of the proposed definition of employer. One of the commenters stated that the proposed definition clarified the relationship between employees and employers. Also, this commenter noted ''that the stated problems with 'moonlighting' and the adverse experiences that it has generated over the past years justify the blanket elimination of the practice of moonlighting. * * *

ARSA noted that the proposed elimination of the moonlighting exception would cause great difficulty because, if a non-certificated subcontractor did not want to have its own program, it would need to be covered by the programs of all of the contractors for whom it performed safety-sensitive work. ARSA believed that many of these companies would refuse to establish programs of their own.

ARSA correctly understands that under the final rule certificated and non-certificated contractors performing safety-sensitive functions must either obtain their own drug and alcohol programs or obtain coverage under each company for whom they are performing safety-sensitive functions. This is a business choice that each entity must make. Since the beginning of the drug and alcohol programs, companies have made these choices. If a certificated or non-certificated contractor has its own program, it does not need to be included in the program of each company for whom it works.

In Notice 02–04, the last sentence of the definition of ''Employer'' read as follows: ''An employer may use a contract employee who is not included under that employer's FAA-mandated antidrug program to perform a safety-sensitive function only if that contract employee is subject to the requirements of the contractor's FAA-mandated antidrug program and is performing work within the scope of employment with the contractor.'' RAA recommended that the FAA delete the phrase ''and is performing work within the scope of employment with the contractor.'' RAA believed that the phrase places a burden on an employer to determine whether the work it requires of the contract employee is substantially similar to the work the employee performs for the contractor. RAA believed the language was an attempt to remedy a post-accident testing issue, and in this light, RAA found the language ''within the scope of employment'' to be ''vague, ambiguous, subject to multiple interpretations and should be deleted.'' Instead, RAA proposed that the language of post-accident testing be amended to allow an employer to post-accident test a contract employee.

The examples provided in Notice 02–04 may have confused some commenters. The language ''in the scope of employment'' was not intended to be limited to post-accident testing. Upon further review of the proposal, we decided to include additional language to better explain that ''within the scope of employment'' means that it is part of the employee's job with the contractor to perform a safety-sensitive function for the employer.

In proposing to revise the definition of ''Employer,'' the FAA intended to ensure that an individual performing a safety-sensitive function for an employer is covered by either the employer's program or the program of the contractor when the individual is performing work for the employer within the scope of his or her employment with the contractor. The previous language allowed an employer to use an individual for any safety-sensitive function, so long as the individual was covered by someone else's program. Under this final rule, if an individual is ''performing a safety-sensitive function on behalf of that contractor (*i.e.*, within the scope of employment with the contractor),'' then the contractor is fully knowledgeable of what work the individual is doing, and the contractor can, therefore, remove from service any individual who tests positive while working for a client. This way, the regulation permits the employer to use an individual without directly covering him or her, but also ensures that the contractor will be in a position to know who is working where, so that safety and individual privacy are correctly balanced should a positive test result be received.

Two commenters had concerns about ensuring that contractor employees are actually covered by the contractor's program. One commenter suggested that ''language be added to the final rule to require documentation that a contract employee is enrolled in the contractor's FAA mandated drug and alcohol testing program.'' The other commenter questioned whether or not it is an absolute requirement for FAA-approved repair stations to have actual copies of vendor plans on file at their facilities or whether an electronic means such as an updated listing that the FAA could maintain would be considered acceptable.

The FAA notes an employer must verify that the contract employee is subject to the contractor's FAA-mandated testing program on an on-going basis. While the regulation does not require specific documentation to be kept on file, the employer remains responsible for demonstrating that it has ensured that it has only used a contract employee who is included under the contractor's testing programs. In the past, the FAA's Drug Abatement Division maintained an Internet Web site with a list of aviation companies that had approved drug and alcohol testing programs. The intent of this list was to assist employers in identifying contractors that were operating drug and alcohol testing programs in compliance with 14 CFR part 121, appendices I and J. However, the information on this list was current only at the time the list was placed on the Web site. For example, the list did not indicate whether the

company had implemented or continued to implement its drug and alcohol testing programs. Therefore, the information could not be used to determine compliance with the regulations, and the FAA removed the list from the Internet. The FAA has not imposed a specific documentation requirement for ensuring contractor coverage because we want to give employers the flexibility to meet this requirement on a continuing basis in any manner that is practical and effective for each particular employer.

Another commenter requested that the FAA include within the rule text itself, the examples provided in the preamble to Notice 02–04. The FAA considered this proposal and decided that including examples in the rule text for this definition is unnecessary since we have clarified this definition in the final rule.

The FAA notes that under this change to the regulation, an employer who currently has a ''moonlighting'' employee performing a safety-sensitive function is not required to conduct a pre-employment test on the employee. However, the employer must include the employee under its antidrug and alcohol misuse prevention programs. With the effective date of this final rule, the ''moonlighting'' exception is eliminated and the employer may not hire or transfer any employee into a safety-sensitive function before the employer conducts a pre-employment test on the employee and receives a negative drug test result on the employee. In addition, one of the commenters stated that as a consortium administering drug and alcohol services, he has noticed that § 135.1(c) operators do not read and comply with part 135. The commenter recommended addressing this concern by adding the term ''scenic aircraft operations'' in the definition of employer when § 135.1(c) is mentioned.

The FAA has determined that it is only necessary to reference § 135.1(c) to describe these employers. Section 135.1(c) refers to ''any person or entity conducting non-stop sightseeing flights for compensation or hire in an airplane or rotorcraft that begin and end at the same airport and are conducted within a 25 statute mile radius of that airport.'' ''Scenic aircraft operations'' does not accurately describe these employers. A more elaborate description would not better notify these commercial operators of their regulatory duty to comply with the drug and alcohol testing regulations. As commercial operators, they must read part 135. Section 135.1(c) explicitly directs these operators to §§ 135.249, 135.251, 135.253, 135.255, and 135.353, which require these operators to conduct testing under part 121, appendices I and J. We have concluded that the regulatory requirements are adequate as stated in the existing regulations. Consequently, we are not adopting the commenter's suggestion on this issue.

Therefore, the FAA is adopting the definition of employer as proposed, with minor editorial changes for clarity.

Other Definitions

We received two comments that suggested we clarify the definition of ''Safety-sensitive.'' One of the commenters also suggested that we add definitions for ''Performing maintenance'' and ''Cease to perform.'' The commenter stated, ''To be able to interpret what is meant when safety-sensitive is used the reader must be able to understand the phrase explicitly.'' The commenter also stated, ''without a clear definition of performing maintenance, a clear understanding of safety sensitive can never be comprehended.''

The FAA has determined that these terms are already sufficiently defined. The definition of ''Safety-sensitive function'' cross-references the sections in appendices I and J, respectively, that describe which employees must be tested. It is not necessary to address specific examples of the tasks performed within safety-sensitive functions. Instead, the rule identifies the duties that are subject to drug and alcohol testing because of their relationship to aviation safety.

In requesting a definition for ''Performing maintenance'' the commenter stated, ''Many people can perform regular maintenance on an aircraft engine and its components. Normally, only one or two of these individuals 'release-to-service' the aircraft engine and/or its components after this maintenance is performed.'' The commenter noted that ''performing maintenance is a routine procedure on an aircraft engine,'' and asked when this becomes safety-sensitive. In addition, the commenter questioned when an employer should start drug and alcohol testing.

The commenter seems to be confusing performance of maintenance with release to service. In fact, release to service is only one aspect of the broader concepts of maintenance and preventive maintenance, which are defined by the FAA in 14 CFR § 1.1, and 14 CFR part 43. Maintenance and preventive maintenance are not defined differently for the purposes of drug and alcohol testing. Consequently, the FAA has determined that a definition for ''Performing maintenance'' is not necessary.

In the course of discussing ''Safety-sensitive'' and ''Performing maintenance'' the commenter noted that manufacturing duties are ''just as safety-sensitive, if not more so'' than maintenance duties. The commenter questioned why the FAA does not require drug testing for manufacturing duties.

The purpose of this rulemaking was not to add or remove categories of safety-sensitive employees. Any changes to the types of safety-sensitive employees who must be subject to testing would need to be accomplished by notice and comment rulemaking procedures. The FAA did not propose any such changes; therefore, it would not be appropriate to consider the commenter's issues in this rulemaking.

In requesting that we define ''Cease to perform,'' the commenter stated that: ''In a commercial business some procedures are time critical. In a small business where there are no 'extra' people available to finish a time critical process, removing one person for a random drug test can have significant financial consequences.''

Under the regulations, the employer is responsible for determining when to notify its employees to immediately report for random testing. Therefore, a small business can allow an employee to finish a ''time critical process'' before notifying the employee to report immediately for a random test. For further discussion of random testing, see Section V.B. Consequently, the FAA has determined that a definition for ''Cease to perform'' is not necessary.

Hire

Another commenter suggested that we add a definition of ''Hire'' to clarify when pre-employment testing needs to be done for a person who performs services as a volunteer, through barter, or in some other manner that may not seem to include a clear ''hiring event.'' This commenter also suggested that we ''specifically prohibit the performance of safety-sensitive duties by an applicant or as part of the application process.''

The FAA agrees with the commenter regarding the need for a definition of ''Hire.'' Therefore, we have added a definition of ''Hire'' to Section II. Definitions. The addition of this definition is not a substantive change, rather it is a clarification to ensure that the new pre-employment testing requirement does not inadvertently eliminate anyone who was required to submit to pre-employment testing under the 1994 provision. The FAA has

determined that the rule language and the new definition of hire have made it clear that an applicant is prohibited from performing safety-sensitive duties until a pre-employment test is given and a negative result is received.

III. Employees Who Must Be Tested

In Notice 02–04, the FAA proposed to make it clear that the employer's decision to include an employee in its drug and alcohol testing program must be based on the safety-sensitive duties that the individual performs rather than employment status (full time, part time, temporary, or intermittent). The proposed language was not intended to change the current rule's scope.

We received several comments regarding this clarification, including a comment from RAA. Some commenters supported the clarification, while others expressed concerns.

RAA stated that the phrase ''regardless of the degree of supervision'' confuses the reader on exactly which individuals are required to be tested. RAA saw this language as broadening the scope of coverage beyond individuals who perform safety-sensitive functions. As an example, RAA stated that many air carriers do not currently consider a mechanic's helper as performing a safety-sensitive function, since any task affecting the aircraft is reviewed and signed off by another individual licensed to perform a safety-sensitive function. RAA felt that this change significantly broadened the scope of testing for many air carriers and would increase their expenses.

One commenter stated that the change makes it clear that the determination of who needs to be in a testing program is based on the safety-sensitive duties the individual performs. The commenter noted, however, that ''helpers'' are not mentioned in the regulatory text and that this omission could cause some confusion.

Another commenter believed that the rule change would require a mechanic's helper, who is supervised by a maintenance technician, to be covered by the drug and alcohol testing requirements.

The FAA's drug and alcohol testing regulations have always required testing of any employee who performs a safety-sensitive function regardless of the degree of supervision. Communications with the aviation industry, as well as compliance inspections and investigations, show that employers do not always understand which employees must be tested. Therefore, the FAA is specifying that the testing obligations apply to any individual who is full-time, part-time, temporary, intermittent, or in a training status, if that individual is performing a safety-sensitive function. The revision does not change the scope of the regulation, it merely clarifies that any employee performing a safety-sensitive function must be tested even if that employee is being supervised during the performance of the safety-sensitive function.

Section III lists safety-sensitive functions and it does not list job titles. The determination of who should be tested is not based on the title of the position or the degree of supervision, but the actual functions performed. For example, it is possible that a mechanic's helper in one company might not perform safety-sensitive functions and would not need to be tested, while a mechanic's helper in another company might perform safety-sensitive functions and, therefore, must be subject to testing. The revision does not broaden the scope of testing or the costs associated with testing, but it may help employers to better understand whether they are properly testing all employees who perform safety-sensitive functions.

The FAA agrees, however, that revising the regulatory text to include assistants and helpers would help avoid confusion and this change is made in the final rule.

A commenter on pre-employment testing stated that, ''in small companies especially * * * an individual could begin to perform safety-sensitive duties (without being formally transferred into a safety-sensitive position). Possible examples include a parts warehouseman who performs maintenance on an as-needed basis or a reservations clerk who is trained to do weight and balance calculations.''

The FAA has considered the commenter's concerns. However, we have not adopted the language proposed by the commenter because we believe Section III. Employees Who Must Be Tested, clearly states that the employer must test an employee before allowing the employee to accomplish any safety-sensitive task, even if the task only is accomplished on an as-needed basis. For example, a reservations clerk could be trained in the safety-sensitive duties of weight and balance calculations. However, the employee would only be tested if the employer identifies this person as someone who could be called upon to perform safety-sensitive duties on an as-needed basis. On the other hand, if the employer has not identified this person as someone who could be called upon to perform safety-sensitive duties and has not tested the employee, the employer may not use the person to perform safety-sensitive duties.

V. Types of Drug Testing Required

A. Pre-Employment Testing

As discussed earlier, approximately 19,400 positive pre-employment tests have been reported to the FAA in the last decade, demonstrating that such tests are an effective detection tool. Pre-employment testing is directly tied to aviation safety, in that it is a gateway to safety-sensitive positions. Failure of a pre-employment test is a direct barrier to an individual's entry into safety-sensitive work. Thus, it is vital that the language requiring pre-employment testing be as clear as possible in order to maximize the efficiency of its use.

Originally, the antidrug regulation published in 1988 said, ''No employer may hire any person to perform a function, listed in section III. of this appendix, unless the applicant passes a drug test for that employer.'' The regulation required pre-employment testing before an individual could be hired to perform a safety-sensitive function specified in the appendix.

In 1994, the FAA revised its antidrug rule to require pre-employment testing of an individual prior to the first time the individual performed a safety-sensitive function for an employer instead of requiring this testing ''prior to hiring.'' Under the 1994 revisions, an individual was required to have a verified negative drug test result on a pre-employment test prior to performing a safety-sensitive function, and the employer could not allow the individual to perform such a function until the employer received the verified negative pre-employment test result.

Communications with the aviation industry and enforcement cases have shown that, in the absence of the very clear ''hiring'' event, some employers have misunderstood the pre-employment testing requirement. They neglected to conduct a pre-employment test and receive a negative test result before allowing employees to perform safety-sensitive functions. In the worst cases, this resulted in the performance of safety-sensitive functions by employees who subsequently tested positive for illegal drug use. Before the 1994 change, misunderstandings were not prevalent. The original language was a clearer standard for employers to follow. Therefore, the FAA proposed to change the language in paragraph V.A.1. back to requiring testing and receipt of a negative drug test result prior to hiring an individual for a safety-sensitive function.

In paragraph V.A.2., the FAA proposed to require that employers drug test employees prior to transferring them into safety-sensitive functions.

This paragraph proposed to clarify to the employer that testing is required and a negative test result must be received before an employee is ''hired'' for a safety-sensitive function, even if that ''hiring'' is simply an internal transfer from a nonsafety-sensitive function to a safety-sensitive function.

In paragraph V.A.3., the FAA proposed to address circumstances where individuals are given pre-employment drug tests (and receive negative test results) but a significant period of time passes between the date of the test and the date of hire or transfer into a safety-sensitive function and thus into the employer's FAA-mandated drug testing program. The FAA proposed 60 days as an acceptable time between being given a pre-employment test and being brought into a drug testing program.

The FAA received comments on each of the subparagraphs of V.A. Several commenters, including the Drug & Alcohol Testing Industry Association (DATIA) supported the clarification in paragraph V.A.1. that a negative test result must be received prior to hiring an employee for a safety-sensitive function, especially in light of the number of positive pre-employment test results.

Several commenters, including ATA and RAA opposed the requirement in paragraph V.A.1. to conduct pre-employment testing with a negative test result received prior to hiring an individual. These commenters preferred the 1994 version of the regulation, which only required receiving the negative test result on a pre-employment test prior to performance.

RAA stated that the FAA's proposal to have a negative drug test result received prior to hire rather than prior to the first performance of a safety-sensitive function would severely affect the ability of its members to hire in an efficient manner. In addition they stated that this proposal would unnecessarily increase costs to air carriers, without enhancing safety. RAA noted that, generally, newly-hired pilots receive two to four weeks of classroom training before they perform any activity that could be considered a safety-sensitive function. RAA stated that classroom training generally occurs at the corporation's headquarters, and, since most of the hires do not live there, air carriers conduct pre-employment testing on a new hire's first day of class. They noted that this gives the air carrier ample time to receive and document an individual's results before any safety-sensitive work is performed. RAA stated that the proposed rule would cause air carriers additional costs and administrative burdens because they must conduct a pre-employment test and receive a negative test result prior to beginning training of each individual. RAA noted that air carriers would have to conduct increased numbers of tests. RAA stated that air carriers would potentially be testing individuals who will never perform safety-sensitive functions, resulting in unnecessary costs to air carriers and infringement on the individual's rights.

ATA commented that FAA should not revert to the ''prior to hire'' pre-employment testing language. ATA stated ''that failures to perform pre-employment testing have not been the result of confusion about when these tests must be performed, but instead because of a variety of other reasons: simple human error/forgetfulness, inadequate administrative systems, or occasionally the need to get someone in place in a position.'' They believed that ''the change proposed by FAA will not prevent these kinds of errors from occurring in the future.'' ATA asserted, ''the basic reason for the 1994 language—flexibility that realistically reflects the overall hiring process—has not changed and is as valid today as it was in 1994.'' Although ATA noted that FAA has a laudable goal in trying to reduce employer's errors in conducting pre-employment testing, they stated this goal ''does not outweigh the need for flexibility to conduct pre-employment testing in a way that is operationally efficient and cost-effective.'' ATA stated that the flexibility the 1994 language afforded its members was critical ''because the hiring and training process for safety-sensitive employees can be complex and take a long time.'' ATA felt that its ''members need the flexibility to conduct the pre-employment test at a time that makes sense in the course of the overall hiring process. For example, the pilot hiring/training process can take anywhere from four to six months, and even longer on occasion.'' ATA noted that given both the length of the process and that some individuals ultimately will not make it through the process, these individuals should not be pre-employment tested before being hired. ATA also stated that the same issues and concerns apply to flight attendant and mechanic hiring, although the hiring/training process may be shorter. For these reasons, ATA requested that FAA retain the current text of section V.A.1.

FAA enforcement experience shows that pre-employment testing is more effectively implemented when there is a clear event triggering the test, such as ''hiring'' an employee. Although some commenters preferred the 1994 version, the FAA found that the ''prior to performance'' language caused employers much confusion and made pre-employment testing violations the most frequently occurring enforcement cases.

Pre-employment violations are extremely serious because they indicate that an employee was placed into a safety-sensitive function without the proper testing. Statistics show that pre-employment testing yields the largest number and percentage of positive test results, a larger number and percentage than all other FAA-required drug testing combined. Pre-employment testing functions as the gatekeeper in the FAA-required drug testing program because it prevents the entry into safety-sensitive work of individuals who use illegal drugs. Therefore, any pre-employment violation poses the risk of permitting the entry of an illegal drug user into the aviation industry. For these reasons, it is imperative that we provide employers with a clear and unambiguous standard for the timing in which to conduct pre-employment testing. We have determined that the event of hiring an employee provides an unambiguous standard for the timing of pre-employment testing. Although the ''prior to hire'' language may mean that some employers may conduct testing of individuals who do not complete the employer's training program, this may ultimately save employers money by eliminating illegal drug users before employers expend time, effort, and funds to train those individuals. Consequently, because of the safety implications of allowing undetected drug users to enter into safety-sensitive functions, the FAA is using the more clear and direct ''prior to hire'' language.

Furthermore, pre-employment drug testing is a less expensive and more common prerequisite for employment in the United States today than it was in 1994. Employers across the United States are finding that pre-employment, random, and other forms of testing make economic sense. According to a Substance Abuse and Mental Health Services Administration (SAMHSA) study, illegal drug use and alcohol misuse cost United States' private employers billions of dollars each year in costs associated with absenteeism, on-the-job errors, injuries to employees, increased insurance costs and workers compensation payments, etc. Requiring pre-employment testing prior to hiring an individual should actually save employers from expending salary, benefits, and workers compensation on active illegal drug users.

Therefore, the FAA is adopting paragraph V.A.1. as proposed, with minor editorial changes. Also, we added the words ''conducts a pre-employment test and'' to make it clear that the test for which the employer is receiving a verified negative drug test result is a pre-employment test.

The FAA is adopting paragraph V.A.2. as proposed, with minor editorial changes. Specifically, we added the words ''conducts a pre-employment test and'' to clarify that the test for which the employer is receiving a verified negative drug test result is a pre-employment test.

Some commenters, including NATA, supported the 60-day provision in paragraph V.A.3. However, several commenters, including ATA and RAA, opposed the proposed 60-day provision. ATA stated that the 60-day period would not have any public safety benefit and would have additional cost. They recommended that the 60-day period be deleted. Alternatively, they suggested that the 60-day time period be changed to 180 days because the hiring and training process for pilots and flight attendants can take up to 6 months.

Another commenter opposed the 60-day provision in V.A.3. because he believes ''it is not unusual for 60 days to elapse between the time a pilot or dispatcher candidate walks through the front door, until he/she is completely checked out in his/her safety-sensitive functions. To give the newly checked-out employee yet another pre-employment drug test makes no sense at all.''

RAA opposed the proposed 60-day time frame because this provision would cause many of its members to conduct more than one pre-employment test and would require its members to more closely track the time between pre-employment testing and putting an employee into the testing program. RAA explained that under Postal regulations its members' new hires must be pre-employment tested within 90 days. Thus the proposed 60-day window for pre-employment testing new hires is too narrow for RAA members.

After reviewing the comments, we have determined that 180 days, as suggested by ATA, is an acceptable time between conducting a pre-employment test and repeating the test before bringing an individual into an FAA-mandated drug testing program. While we want to ensure that there is not a significant delay between the pre-employment test and the individual being subject to a drug testing program, we want to give the employer some flexibility. However, the longer the delay between the pre-employment test and the individual assuming a safety-sensitive function, the less the deterrence factor because the individual is not in an on-going testing program. The FAA has determined that increasing the time period from 60 days to 180 days still provides an acceptable deterrence factor, while giving the employer more flexibility.

In looking at the proposed pre-employment testing rule text and accompanying preamble, the FAA has recognized that some of the discussion about the proposed changes to pre-employment testing may have caused misunderstandings about pre-employment testing and performance of a safety-sensitive function. The FAA believes that some commenters may have misunderstood the proposed 60-day provision as requiring that an employee must be tested again if the employee does not begin performing safety-sensitive functions within the 60 days. The final rule requires a second pre-employment test only when the person was not actually hired or transferred within the specified period that is now 180 days. Because of the apparent confusion about the use of the word ''perform'' in the pre-employment testing context, the FAA has revised the rule language in paragraph V.A.1. from ''hire any individual to perform a function listed * * *'' to ''hire any individual for a safety-sensitive function listed * * *'' We did this to remove the word ''perform'' from paragraph V.A.1. because it appeared to cause confusion in paragraph V.A.3. In addition, this change to paragraph V.A.1. more directly mirrors the proposed language in V.A.2., which appears to have been clearer.

Therefore, we are adopting the proposed language in paragraph V.A.3. with the change described above to increase the 60-day period to 180 days.

One commenter correctly recognized that Notice 02–04 proposed requiring pre-employment testing of any individual hired or transferred into a safety-sensitive position, even if that individual were rehired by a former employer. However, when we reviewed the language in paragraph V.A. we realized that there was a conflict between paragraphs V.A.1., V.A.2. and V.A.4. The FAA proposed keeping paragraph V.A.2. with no changes, but redesignating it as V.A.4. Proposed paragraphs V.A.1. and V.A.2. clearly stated that any individual who is hired or transferred must be subject to pre-employment testing. Historically, paragraph V.A.2. (redesignated as V.A.4.) allowed but did not require an employer to pre-employment test an individual who previously performed a covered function for the employer and was removed from the random pool for other than a verified positive test result or a refusal to submit to testing, such as assignment to a nonsafety-sensitive function. This allowed an employer to return an individual to a safety-sensitive function without subjecting that individual to another pre-employment test.

In this final rule we have revised the language of paragraph V.A.4. to be consistent with paragraphs V.A.1. and V.A.2. so that an employer cannot rehire a former employee without a pre-employment test and receipt of a negative drug test result. The final rule continues to allow employers to restore a current employee to a safety-sensitive function without pre-employment testing in limited circumstances. Specifically, if the employee is removed from the random testing pool for reasons unrelated to a positive test result or a refusal to test, and the employee is not a hire or transfer, the employer may put the employee back in the random testing pool without a pre-employment test. For example, if an employee is removed from the random pool because of a work-related injury or family medical leave, the employer may place that employee back into the random testing pool after the absence, so long as the employer is not ''hiring'' or ''transferring'' the employee into a safety-sensitive position.

In addition, in the introductory text to redesignated paragraph V.A.4., we restored the concept that an employer must receive a negative test result on a pre-employment test. Historically, the requirement for the receipt of a negative test result was included in paragraph V.A.3., but it was inadvertently omitted in the proposal.

Another commenter believed that requiring rehired employees to be pre-employment tested would be ''cost prohibitive'' and a large number of employers would need to be educated on this change. Therefore, this commenter requested a long grace period to allow companies to become familiar with this change.

The FAA has determined that postponing the effective date of this provision is not necessary. While all employers governed by the drug and alcohol testing regulations must become familiar with all the changes in this final rule, we have no data to suggest that a large number of pre-employment tests will be triggered by this new provision. Furthermore, while the commenter notes that she believes the change is ''cost prohibitive'', she does not oppose the change or offer data to support that a large number of

employers would need to conduct significantly more pre-employment tests as a result of this change.

One commenter suggested that we add a definition of ''Hire'' to clarify who must be pre-employment tested. The FAA agrees with this commenter. For a discussion of this issue see Section II. Definitions.

There were no changes to paragraphs V.A.4.(b) and (c). They are adopted as proposed.

In reviewing the draft final rule text, we realized that the language in paragraph V.A.5., which has been in the regulation for many years, could have caused some confusion. Specifically, proposed paragraph V.A.5. required an employer to notify ''each individual applying to perform a safety-sensitive function at the time of application that the individual will be required to undergo pre-employment testing.'' This language was not intended to require employers who receive hundreds of unsolicited applications every year to notify each of these individuals of the requirement to test. Instead, the intent is to ensure that prior to pre-employment testing, each individual has been notified of the requirement to take that test and we revised the rule accordingly. Also, we updated the reference in the last sentence of the proposed paragraph because we redesignated paragraph V.A.2. as V.A.4. in Notice 02–04. Further we eliminated the reference to section V.A.1. in the proposal because it was redundant.

In the final rule, we have made minor editorial changes to section V.A., including substituting the word ''individual'' for the words ''applicant,'' ''person,'' and ''employee,'' as appropriate for clarity.

The FAA has adopted the provisions proposed in paragraph V.A., Pre-Employment Testing, with the changes described above and minor editorial changes.

B. Periodic Testing

In Notice 02–04, the FAA proposed to eliminate paragraph V.B, Periodic Testing. Periodic testing was important at the beginning of the program when many people were grandfathered into newly approved antidrug programs without pre-employment testing. Initially, there was also a phase-in period for implementing random testing. Employers were not required to meet the annual random testing rate until the last collection at the end of the first year of testing. Thus, it was likely that a pilot would not be tested in the first year of testing. Because all flight crewmembers are subject to pre-employment testing and annual random testing, the FAA has determined that the elimination of periodic drug testing at this time will not compromise safety and will be a cost benefit to those aviation industry employers implementing drug programs. Also, there has never been a periodic testing requirement in appendix J. Because of the elimination of periodic testing, the remaining paragraphs in this section are being relettered accordingly.

The FAA received several comments, including one from ATA, supporting the proposed elimination of periodic testing. We agreed with the commenters and are adopting the changes as proposed.

C. Random Testing

In Notice 02–04, the FAA proposed adding a paragraph to the random testing section for consistency with appendix J. Under the proposed provision, each employer must ensure that each safety-sensitive employee who is notified of selection for random drug testing proceeds to the collection site immediately. Under the proposal, even if the employee is performing a safety-sensitive function at the time of the notification, the employer must ensure that the employee ceases to perform the safety-sensitive function and proceeds to the collection site as soon as possible. A similar requirement has been included in appendix J since its issuance in 1994 and has worked well. Two commenters supported the proposed change to the random drug testing section. One commenter stated that the proposed change would clear up the misunderstanding of the regulation that some companies have had.

ALPA submitted a comment generally opposing random testing and specifically stated: ''We suggest deleting this new proposed language, and replacing it with the requirement that the employee report for the drug or alcohol test as soon as is practicable after notification of the test.'' ALPA supported the use of the Aircraft Communications Addressing and Reporting System (ACARS) ''to notify pilots flying an aircraft of their obligation to report for a random drug and/or alcohol test upon landing. * * * By using on-board notification to crewmembers of their obligation to submit to urine testing upon landing, the crewmembers are able to defer emptying their bladders and avoid subsequent problems with producing the requisite urine specimen. Such notification and testing has been working well for employees and air carriers.'' ALPA noted that ''the new proposed language would prevent the continued use of this means of notification, as it would require the pilots to cease operating the aircraft after notification of testing.'' Finally, ALPA concluded ''there is no reason to preclude a pilot from completing an assigned flight segment and then reporting for the test as soon as practicable.''

Another commenter noted that ''some level of management oversight and control as to the timeframe allowed after a random drug test notification'' is needed in the random testing section.

The FAA has determined that the proposed rule language continues to provide the employer a reasonable degree of control over when to notify an employee of the need to take a random drug test. The proposed rule language does not preclude pilots from completing a flight segment in progress in order to submit to random testing. Employers have always had the option of notifying employees of random testing after completion of their safety-sensitive duties. In addition, the proposed rule language does not permit advance notification of random testing of pilots and flight attendants. Such advance notification is inherently unfair because pilots and flight attendants are only two of the eight categories of safety-sensitive employees. In other words, six categories of employees are not accessible by ACARS advance notification. In addition to the unfairness issue, ACARS advance notification has been linked, through enforcement cases, to dilutions, substitutions, and adulterations. ACARS notification could provide the employee with an opportunity to consume large quantities of fluid immediately before the test, which may dilute the specimen. Also, ACARS notification could provide the employee with an opportunity to substitute a specimen or to obtain access to adulterants to subvert the testing process.

Another commenter questioned whether ''all personnel performing a safety-sensitive function for a repair station holding an FAA-approved program must be tested equally and throughout the year, regardless of the volume of work performed by contract to an air carrier, and regardless of whether a person actually performs a safety-sensitive function directly on an air carrier's aircraft.''

The FAA notes that if an employer, who conducts testing in accordance with FAA requirements, decides that an employee will be performing safety-sensitive functions at any time, the employer must ensure that the employee is subject to random testing throughout the year. The continuity of

the testing does not depend on the volume of work, but does depend on whether the employee has been designated by the employer to accomplish safety-sensitive functions. Thus, once an employer decides that an employee is subject to the employer's FAA-required testing program, the employee must remain subject to all forms of FAA-required testing, including random testing, as long as the employee may be called upon to perform safety-sensitive functions. The FAA has made it clear in Section III. Employees Who Must Be Tested, that employees who are designated as available to perform safety-sensitive functions even part-time or intermittently must be tested. The FAA has determined that the proposed random testing language does not need to be revised in response to this comment. Therefore, we are adopting the random testing provision as proposed.

E. Testing Based on Reasonable Cause

In Notice 02–04, the FAA proposed to change the reasonable cause language. Specifically, we proposed to allow, but not require, an employer to make a reasonable cause determination regarding a contractor's employee. The employer would be allowed to refer a contract employee for testing under the contractor's drug and alcohol programs without waiting for a supervisor employed by the contractor to confirm the employer's determination.

The FAA received comments from several submitters, including ATA, RAA, NATA, and DATIA, on the proposed change to reasonable cause testing. Four of the commenters, including NATA and DATIA, supported the concept of allowing an employer to have its supervisors make reasonable cause determinations regarding contract employees and refer them for testing under the contractor's drug and alcohol programs.

Two of the commenters, however, suggested that the FAA did not go far enough because the proposed reasonable cause testing of contractors provision was permissive, not mandatory. One commenter recommended that the employer should be required to make a reasonable cause determination regarding any contract employee who performs a safety-sensitive function on the employer's premises and under the employer's supervision. Also, the commenter recommended that the employer be required to refer the contract employee for a reasonable cause test under the contractor's program. Another commenter similarly believed that the provision should be mandatory and noted that the proposed rule language did not ''indicate what steps the employer can or must take after the contractor employee has been identified as a possible drug or alcohol user.'' The commenter listed specific steps for testing the contract employee and for providing the test results to the relevant employers.

ATA and RAA opposed the proposed change to reasonable cause testing. ATA and RAA both had concerns over the legal implications of the proposed permissive language. In addition, ATA stated that it ''opposes this proposal because it would place our members in the middle of a sensitive employer-employee situation with regard to someone else's employee. This provision, if adopted, would create administrative burdens and legal risks that are unacceptable * * * Moreover, even if an airline-employer makes a proper and timely referral there is no guarantee that the contractor will conduct the testing in a timely manner.''

After reviewing the comments received, the FAA agrees with commenters that the permissive nature of this provision is not advisable because there are too many contingencies in the proposal. For example, as ATA pointed out, even if an employer makes a reasonable cause determination on a contract employee, there is no guarantee that the contractor will conduct the testing in a timely manner. Therefore, the FAA has not adopted the proposed reasonable cause testing of contract employees provision.

It is important to note that the FAA proposed the change because there was confusion as to who was responsible for making the determination and conducting reasonable cause testing of contract employees on an employer's premises. The FAA remains concerned that some contract employees are not being tested for reasonable cause because their actual employers are not on-site. The FAA may revisit this issue in future rulemaking. In the meantime, the FAA encourages employers to continue to make reasonable cause determinations regarding their own employees and continue to contact their contractors regarding any reasonable cause concerns that may arise regarding contract employees.

In addition, in Notice 02–04, we proposed to delete the following two sentences from paragraph V.D.1.: ''Each employer shall test an employee's specimen for the presence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, or a metabolite of those drugs. An employer may test an employee's specimen for the presence of other prohibited drugs or drug metabolites only in accordance with this appendix and the DOT Procedures for Transportation Workplace Drug Testing Programs' (49 CFR part 40).'' The first sentence is redundant of the requirements in 49 CFR part 40. The second sentence is no longer appropriate.

The FAA did not receive any comments on the proposed paragraph V.D.1. Therefore, the FAA has adopted this change to paragraph V.D.1. as proposed, now redesignated as paragraph V.D.

IX. Implementing an Antidrug Program

In Notice 02–04, the FAA proposed eliminating the requirement that each employer submit an antidrug program plan to the FAA for approval. Non-certificated employers or contractors conducting testing will be required to register with the FAA. Certificate holders must obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification (OpSpec). This provides the FAA with the information it needs for surveillance of these programs. In addition, we proposed changing the title of this section so it more accurately reflects the section's content.

Replacement of Plan Approvals With OpSpecs and Registrations

We proposed eliminating the requirement for each employer to submit an antidrug program to the FAA for approval. Part 121 and part 135 certificate holders, and part 145 certificate holders who decide to have their own FAA testing program, will be tracked in the FAA's Operations Specifications Sub-System (OPSS). By using OPSS, certificate holders will not need to go to two separate FAA offices, the Flight Standards Service and the Office of Aerospace Medicine, every time they make a change to data regarding their company.

New and existing part 121 and part 135 certificate holders must obtain an Antidrug and Alcohol Misuse Prevention Program OpSpec. The air carrier's FAA Principal Operations Inspector issues the OpSpec. New and existing part 145 certificate holders who choose to have their own FAA testing program must obtain an Antidrug and Alcohol Misuse Prevention Program OpSpec from their FAA Principal Maintenance Inspector. Once the Antidrug and Alcohol Misuse Prevention Program OpSpec has been issued, the certificate holder must contact its FAA Principal Operations Inspector or Principal Maintenance Inspector, as applicable, to make any

future changes to the OpSpec. Under the final rule, an entity will only be required to file one OpSpec that covers both the drug and the alcohol programs. To clarify the certificate holder's responsibility to update its Antidrug and Alcohol Misuse Prevention Program OpSpec, we added section IX.D.4. to the final rule. This clarification incorporated language from the sample Antidrug and Alcohol Misuse Prevention Program OpSpec, included in Notice 02–04, regarding the certificate holder's responsibility to update its OpSpec whenever changes to the data occur.

The FAA also proposed changing the antidrug program plan and alcohol misuse prevention program certification statement requirements for new and existing: (1) Air traffic control facilities not operated by the FAA or by or under contract to the U.S. military; (2) sightseeing operators as defined by § 135.1(c); and (3) non-certificated contractors that elect to have an antidrug and alcohol misuse prevention program. Under the final rule, the first time an entity registers it will only be required to file one registration that covers both the drug and the alcohol programs. However, a company must amend its registration information whenever changes to the data in the registration occur.

Generally, the registration requires less information than the antidrug plan required. The only new item (for the antidrug program) is a statement signed by a company representative that the company will comply with part 121, appendices I and J, and 49 CFR part 40. Companies will be able to meet their registration requirements for both the antidrug program and the alcohol misuse prevention program by signing one statement.

Every employer must either register with the FAA or obtain an Antidrug and Alcohol Misuse Prevention Program OpSpec, as appropriate. Part 145 repair stations and non-certificated contractor companies that are covered under an employer's antidrug and alcohol misuse prevention program may continue to be covered under the employer's program. As long as they continue to be covered under an employer's program and do not have their own programs, they need not register with the FAA or obtain an Antidrug and Alcohol Misuse Prevention Program OpSpec. A part 145 certificate holder or a non-certificated contractor that performs safety-sensitive functions for an employer may choose to have its own testing programs instead of being covered by an employer's program. In that case, the part 145 certificate holder would be required to obtain an Antidrug and Alcohol Misuse Prevention Program OpSpec and the non-certificated contractor would register with the FAA as outlined in the rule.

The FAA received several comments on Section IX. DATIA supported the proposal to eliminate antidrug plan approvals. Another commenter supported the elimination of antidrug plan approvals and noted that the proposed changes standardized the process for employers and the FAA.

The FAA received several comments concerning OpSpecs. RAA viewed the OpSpec requirement as an administrative procedure that could be handled in a variety of other more effective methods instead of being codified. RAA noted that airline individuals who specialize in aircraft navigational and air traffic procedures are typically responsible for maintaining the OpSpecs. RAA also noted that administering the antidrug and alcohol misuse prevention programs is typically accomplished by an individual in human resources. RAA stated that, while such individuals can coordinate their duties within the company, it sees no reason why an administrative task has to be regulated. Therefore, RAA requested that references to the OpSpec be deleted from the adopted rule.

In the past, the FAA has required that certificate holders and other entities receive FAA-approval of their antidrug and alcohol misuse prevention programs. Although the FAA has eliminated the regulatory requirement for a company to obtain FAA approval of these programs, the FAA needs to continue to track companies with programs. The mechanisms in this rule for the FAA to track companies with programs are OpSpecs for certificate holders or registration for other entities. This results in a more streamlined process than the old plan approval process while still providing the FAA with the necessary information. The information received continues to be important to the FAA, and we do not consider this new process merely an administrative task that can be accomplished without regulation. In response to RAA's concern regarding personnel responsibilities, the FAA has determined that while the employer may have to adjust responsibilities within its organization, this initial burden is significantly offset by the reduction in the overall paperwork burden. Therefore, the FAA is adopting the requirement for an Antidrug and Alcohol Misuse Prevention Program OpSpec or registration to replace FAA approval.

ATA supported the proposal to track pertinent information through the OPSS and to eliminate the requirement for companies to have FAA-approved plans. However, ATA was concerned that this administrative change will create confusion as to who will enforce this requirement within the FAA. ATA recommended that FAA clearly state in the final rule that FAA Principal Operations Inspectors are not authorized to require different or additional information and that the Drug Abatement Division has exclusive authority over air carrier OpSpecs submitted in compliance with this appendix.

Another commenter did not agree with adding the new OpSpec because the commenter believed that the new OpSpec intermingled the responsibilities of the Drug Abatement Division and FAA Principal Maintenance Inspectors.

In response to these commenters, the FAA notes that under the new OpSpec process, the role of the local Flight Standards District Office is limited to creating and updating the actual Antidrug and Alcohol Misuse Prevention Program OpSpec. The FAA Principal Operations Inspector and the FAA Principal Maintenance Inspector have no responsibilities for oversight of a company's drug and alcohol testing programs. All oversight responsibility remains with the Drug Abatement Division. We do not see an intermingling of responsibilities, rather the new OpSpec process offers separate but complimentary interaction between the Drug Abatement Division and the Flight Standards Service. Therefore, it is not necessary to add rule language that clarifies internal FAA responsibilities for the OpSpec.

NATA agreed with the FAA that there will be a reduction in the paperwork burden for certificate holders if programs no longer require FAA approval and issuance of plan numbers. However, NATA objected to the FAA placing on the certificate holders the burden of obtaining the new OpSpec. NATA noted that since this is a change mandated by the FAA, FAA inspectors should initiate contact with certificate holders under their supervision as they routinely do when new or changed OpSpecs are issued. NATA requested that the proposed language indicating that certificate holders bear the responsibility for obtaining the OpSpec be revised to clarify that existing operators will be issued the OpSpec by their primary inspector.

Although the FAA's Principal Operations Inspectors or Principal Maintenance Inspectors will continue to

conduct their routine interaction with certificate holders, the information needed to prepare the OpSpec must come from the certificate holder. While this might be an inconvenience, as the commenter noted, there will be a reduction in the certificate holder's overall paperwork burden by eliminating the plan approval process. The ultimate beneficiary of the new OpSpec process will be the certificated entity, which will only be required to update its data in one FAA tracking system, and will no longer be required to provide information for a separate Drug Abatement Division tracking system.

Several commenters, including ATA and NATA, asked procedural questions about implementing the new OpSpec and registration processes. ATA recommended that FAA identify a person within the Drug Abatement Division for air carriers to contact in the event of a problem regarding its OpSpec under this appendix. ATA stated that, to avoid confusion, the FAA should specify the documentation that contractors must provide to employers to prove that they have compliant antidrug and alcohol misuse prevention programs in place. NATA commented that additional information, such as a model certification statement, would be particularly helpful to small operators, including § 135.1(c) operators.

The changes requested by the commenters can be accomplished without modifying the regulatory text. Once the rule becomes effective, the public can obtain information about process and implementation by contacting the Drug Abatement Division at the address in Section IX or by referencing the Drug Abatement Division's Web site: *http://www.faa.gov/avr/aam/adap.*

Another commenter recommended the OpSpec identify the certified laboratory and medical review officer (MRO) that the company is using, and suggested that the FAA Principal Operations Inspector provide a written confirmation of approval/acceptance of the OpSpec. One commenter recommended that the FAA allow a transition period for companies that will be required to have an Antidrug and Alcohol Misuse Prevention Program OpSpec, while another commenter noted that companies were already obtaining this OpSpec.

In response to the recommendation that the OpSpec contain more detailed information and written confirmation of approval/acceptance, the FAA has determined that providing detailed information, including the current laboratory and MRO, could defeat the simplicity of the OpSpec and registration requirement under the new rule. Under the antidrug plan approval process, this level of detail was required. This led to each company filing numerous amendments because such detailed information changed frequently. Also, waiting for the FAA to approve the contents of the antidrug plan added delay.

In deciding to move to the OpSpec and registration requirement, the FAA carefully considered whether it should be evaluating/approving the written information submitted at the beginning of the testing program. The FAA decided that the best evaluation of how a company is testing is done on-site at the company during FAA inspections. Successful implementation of a testing program is the employer's responsibility, and is not shown merely on a paper submission at the beginning of a testing program. Therefore, the FAA decided to collect only enough information in the registration statements and OpSpecs to provide a starting point for our inspections.

The FAA notes that many companies have already obtained the Antidrug and Alcohol Misuse Prevention Program OpSpec. In addition, because the requirement will not become effective until 30 days after this final rule is published, there is a built-in transitional period to obtain an OpSpec for any company that has not already obtained an Antidrug and Alcohol Misuse Prevention Program OpSpec.

One commenter was concerned that the plan approval process took a long time and may have caused the industry to lose revenue because operations could not begin until the FAA approved the antidrug plans. This commenter expressed hope that the OpSpecs and registration processes would streamline and expedite the beginning of operations, thereby minimizing any time delays.

The FAA is going forward with the OpSpec and registration processes as proposed, with minor clarifying changes, because we have determined that these, in fact, will streamline the gathering of basic information that the FAA needs for monitoring the compliance of companies conducting FAA-required drug and alcohol testing. At the same time they will lessen the burden on the operator. As suggested by one of the commenters, we expect that the OpSpec and registration processes will expedite the beginning of operations for employers.

Elimination of 60-Day Grace Period for Contractors

The FAA also proposed eliminating the 60 days allowed for new employers to ensure that their contractors are subject to an antidrug program. This provision provided a grace period that was important at the inception of the antidrug regulations in 1988 because drug testing was a new regulatory requirement for employers and their contractors. However, since contractor programs must be implemented by the time the contractor performs safety-sensitive functions for an employer, this grace period is no longer necessary or appropriate.

The FAA received a supporting comment from DATIA on the proposed elimination of the 60-day grace period for contractors of new employers to implement an antidrug program. The FAA proposed this change in Section IX for employers to ensure that their contractors are covered by an FAA-mandated antidrug program. We are adopting it as proposed.

Adoption of the Plain Language Format for Section IX

The FAA proposed two formats for the rule language in this section. While both proposals had the same requirements, they differed greatly in format. The first option was presented in table format as much as possible. The second option followed the format of the current rule.

The FAA received a comment objecting to inclusion of the words ''a non-certificated repair station, * * * or any other individual or company that provides safety-sensitive service.'' This commenter believed that this language, as posed in option 1, added a new requirement to the regulations.

As stated above, the options offered different formats but had the same requirements. Since the beginning of the program, certificated and non-certificated contractors have been allowed, but not required, to submit and implement antidrug programs under 14 CFR part 121, Appendix I, Sections IX.A.3–4. Therefore, this is not a new requirement.

In the final rule we made a clarifying change to section IX.A. to remind existing companies that they must continue to follow the regulatory provisions in appendix I. In Notice 02–04, we articulated this requirement in option 2, but we did not explicitly address it in option 1. Therefore, we have added it to section IX.A. in the final rule and changed sections IX.C.2.a.iii. and b.iii. for consistency.

The FAA received comments from several submitters, including NATA and

DATIA, supporting the table format. Therefore, the FAA is adopting the table format as proposed with minor editorial changes.

The FAA also received a comment from RAA requesting that we give operators the option of submitting information electronically. RAA noted that even if FAA is not now capable of receiving information electronically, we should nonetheless write it into the rule so that when we do have the capability, operators can submit it to the FAA without first requesting an exemption to the rule.

The FAA has determined that it is premature to incorporate into the current rule text any specific reference to electronic filings. However, we agree with the spirit of RAA's comment that the final rule should allow room for developments in acceptance and retention of electronic filings. Currently, we are not able to receive registration information electronically. The FAA is eager to pursue avenues for electronic filing, and therefore, in response to RAA's suggestion, we have added language in paragraph IX.E.2. to allow for registration information to be sent ''in the form and manner prescribed by the Administrator.''

Appendix J—Alcohol Misuse Prevention Program

I. General

In Notice 02–04, the FAA proposed the following changes in paragraph D. *Definitions.* We proposed to eliminate the definition of ''Administrator'' because it is defined elsewhere in 14 CFR. We also proposed to change ''Contractor company'' to ''contractor'' to emphasize that a contractor could be an individual.

The FAA did not receive any comments on the proposed changes and we adopt them as proposed.

II. Covered Employees

In Notice 02–04, we proposed to make it clear in appendix J as we did with appendix I that including an employee in a drug and alcohol testing program depends on his or her duties not employment status (full time, part time, temporary, or intermittent). In this final rule, we have further modified appendix J to ensure that this is clear. We made a similar change in appendix I in response to a comment.

III. Tests Required

D. Reasonable Suspicion Testing

In Notice 02–04, the FAA proposed to change the reasonable suspicion language to allow, but not require, an employer to have its supervisors make reasonable suspicion determinations and refer a contract employee for testing under the contractor's alcohol misuse prevention program. This change was proposed because there has been confusion about the reasonable suspicion testing of contract employees on an employer's premises.

For the reasons discussed in the preamble to section V.E. of appendix I, the FAA has not adopted the proposed reasonable suspicion language.

IV. Handling of Testing Results, Record Retention, and Confidentiality

In Notice 02–04, the FAA proposed to change paragraph B.4. by adding the sentence ''No other form, including another DOT Operating Administration's form, is acceptable for submission to the FAA.'' The FAA has already made this change in a final rule published December 31, 2003 (68 FR 75455).

VII. Implementing an Alcohol Misuse Prevention Program

In Notice 02–04, the FAA proposed eliminating the requirement that each employer submit an Alcohol Misuse Prevention Program Certification Statement. As with the elimination of program approval under appendix I, each employer or contractor conducting alcohol testing will be required to either register with the FAA or obtain an Antidrug and Alcohol Misuse Prevention Program OpSpec, as specified in the regulation.

Many of the comments on appendix I addressed this change in appendix J as well. For the reasons discussed under appendix I, we have also adopted this change for appendix J.

In Notice 02–04, the FAA also proposed eliminating the 180 days allowed for new employers to ensure that their contractors are subject to an alcohol misuse prevention program. This provision provided a grace period that was important at the inception of the alcohol misuse prevention program regulations in 1994 because alcohol testing was a new regulatory requirement for employers and their contractors. However, since contractor programs must now be implemented by the time the contractor performs safety-sensitive functions for an employer, this grace period no longer applies and so the language is being removed.

The FAA received one comment on the proposed elimination of the 180-day timeframe. The commenter, DATIA, supported the proposed change. The FAA is adopting the elimination of the 180-day timeframe as proposed.

As with appendix I, the FAA proposed two formats for the rule language in this section, one mostly in table format, the other in the format of the current rule. Several commenters supported the table format, and we are adopting it for the final rule.

Miscellaneous Comments

The FAA received a number of comments that are outside the scope of the proposal. We have not addressed them in this final rule.

Paperwork Reduction Act

This final rule contains information collection activities subject to the Paperwork Reduction Act (44 U.S.C. 3507(d)). In accordance with the Paperwork Reduction Act, documentation describing the information collection activities was submitted to the Office of Management and Budget (OMB) for review and approval, and assigned control number 2120–0685.

This rule constitutes a change to the data collection burden for existing and new companies required or electing to implement antidrug and alcohol misuse prevention programs. The respondents are part 121 and 135 certificate holders, operators as defined in § 135.1(c), air traffic control facilities not operated by the FAA or by or under contract to the U. S. military and part 145 certificate holders and non-certificated contractors that elect to obtain antidrug and alcohol misuse prevention programs. Part 121, 135 and 145 certificate holders will obtain an Operations Specification (OpSpec). Operators as defined in § 135.1(c), air traffic control facilities not operated by the FAA or by or under contract to the U. S. military, and non-certificated contractors will register with the FAA.

A protection provided by the Paperwork Reduction Act states 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 OMB control number. As stated above, the OMB control numbers is 2120–0685.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. §§ 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

In conducting these analyses, FAA has determined this rule: (1) Has benefits that justify its costs, is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant economic impact on a substantial number of small entities; (3) will not reduce barriers to international trade; and does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

Cost of Compliance

The FAA is changing several sections of 14 CFR part 121, appendices I and J; not all of these changes will have cost implications. Some of the changes to appendix I parallel changes to appendix J; the analysis will combine the sectional changes where appropriate. Information related to the number of companies, the costs of tests, and the salaries of the employees can be found in the full regulatory evaluation, found in the docket.

(1) The FAA is amending appendix I, section II, to ensure that employers test all employees, including contractor employees, unless the employees are in a testing program for a contractor to the employer; this change will impose costs. The current provision, which has allowed ''moonlighting,'' is confusing to the industry and is a potential loophole in employee coverage. In most circumstances, the second employer does not and cannot know the employee's status with the first employer.

Compliance inspections and investigations also show that employers confuse the regulatory provisions between the drug and alcohol rules. The current drug rule allows ''moonlighting,'' while the alcohol rule does not permit it. Moonlighting occurs mostly among small employers, who often do not know the other employers that the moonlighting employee is working for. Consequently, these employees can potentially escape testing.

Only certain types of employees tend to moonlight; these include part 121/135 pilots, mechanics, screeners, sightseer pilots, and part 135 on-demand pilots, primarily single owner operators. The FAA believes that the number of moonlighting employees is small, but does not know exactly how many of these employees moonlight. Accordingly, the FAA will base costs on an additional 1 percent of these employees having additional drug tests.

The FAA projects over 10 years, the total number of tests, due to the requirement that moonlighting employees be tested, will sum to 11,100, costing $499,200. Costs for employee time for this testing will sum to $147,200 over 10 years. Total 10-year costs of testing these employees will sum to $646,300 (present value, $449,900).

(2) The FAA is eliminating section V. B. of appendix I, periodic testing. The current regulation requires that a new employer must periodically drug test part 67 medical certificate holders during the first calendar year of implementation of its program. Periodic testing was important at the beginning of the program when many people were grandfathered into newly approved antidrug programs without pre-employment testing. Since all flightcrew members are currently subject to pre-employment testing and annual random testing, the FAA believes that the elimination of periodic drug testing will not compromise safety and will be a cost savings. Cost savings from the elimination of periodic drug testing, over ten years, sums to $122,300 (present value, $85,900).

(3) The FAA will make several changes to section IX of appendix I and section VII of appendix J; two of these changes will have cost implications. Provisions that affect part 121, 135, and 145 certificate holders will be covered in section (3a); and operators as defined by § 135.1(c), air traffic control facilities not operated by the FAA or by or under contract to the U.S. military, and non-certificated contractors in section (3b).

(3a) Part 121, 135, and 145 certificate holders will no longer have to submit antidrug and alcohol misuse prevention programs to the FAA for approval. The FAA instead will track these certificate holders using the Operations Specifications Sub-System (OPSS). Using this system will allow the FAA to quickly make a change to a specific type of certificate holders' operations specifications.

Companies with antidrug and alcohol misuse prevention programs will incur additional costs from these rule changes. In the first year of this rule, these companies will have to file new information. New companies will have to do the same in their first year. When the number of employees at a company changes to fewer than 50 or greater than or equal to 50, they will have to send ''employment change reports.''

The 7,240 existing plan holders currently submit 490 amendments each year. The FAA anticipates that 33 of these amendments will be employment change reports each year after their initial year. In addition, 484 companies submit new plans each year.

Each of the existing plan holders will have to spend time to produce the required information, file and store it, and submit it to the FAA. Total first year costs will be $39,700. Subsequent year costs, which will encompass processing new plans, employment change reports, and amendments sum to $5,300. Ten-year costs, at the company level, equal $87,900 (present value, $69,700).

At the FAA, the information being submitted to OPSS will have to be processed. First year costs will be $21,400, while each subsequent year cost will be about $2,900; costs over ten years sum to $47,400 (present value, $37,600).

All companies will also incur some cost savings, for they will no longer have to file a combined drug plan and an alcohol certification statement to the FAA. Thus, each of the existing companies will no longer have to spend time to produce these plans and certification statements. Total first year cost savings will be $238,100. In subsequent years, new companies would have had to handle plans, while existing companies would have had to process amendments; total annual costs savings, from not having to file these amendments and new plans, sum to $18,400. Ten year cost savings, at the

company level, equal $406,000 (present value, $336,100).

Ten year net cost savings sum to $270,700 (present value, $228,800).

(3b) These rule changes also will eliminate the antidrug program plan and alcohol misuse prevention program certification statement requirements for new and existing non-Federal air traffic control facilities and operators as defined by § 135.1(c). Instead, as with certificate holders, a single registration statement requirement will suffice for both programs. In addition, the FAA will require new and existing non-certificated contractors that elect to have an antidrug and alcohol misuse prevention program to register with the FAA.

The FAA has identified 334 part 135.1(c) operators and 1,228 contractors that will be affected by these rule changes; the contractors include 21 Air Traffic Control (ATC) contractors, and 1,207 other contractors. The FAA does not expect any employment change reports from any of these companies.

Each of the existing plan holders will have to spend time to produce the required information, file and store it, and submit it to the FAA. Total first year costs will be $11,000, while total annual costs for existing company amendments and new company plans sum to $1,500. Ten year costs equal $24,200 (present value, $19,200).

At the FAA, first year costs will be $5,900, while each subsequent year cost will be about $800. Costs over ten years sum to $13,000 (present value, $10,400).

These companies will no longer have to file an alcohol certification statement and a drug plan, resulting in cost savings. Total first year cost savings will be $66,000, while total annual costs for the existing company amendments and new company plans sum to $5,400. Ten year cost savings equal $111,900 (present value, $92,700).

Ten year net cost savings sum to $74,700 (present value, $63,200).

Total cost for these rule changes sums to $178,600 (net present cost, $72,000). The total cost to the industry sums to $239,100 (present value, $119,900) and total costs savings to the FAA sums to $60,400 (present value, $48,000).

Analysis of Benefits

The FAA believes that these new rules can result in enhanced safety and concludes that several specific benefits will accrue from these rule changes.

The specific changes to pre-employment testing will result in a number of benefits. The FAA believes that certain employers had misunderstood the current requirements and that the requirements will be better understood. This will reduce the number of pre-employment enforcement cases. From 2000 through 2002, the FAA initiated 197 legal enforcement cases dealing with pre-employment violations, or an average of 66 cases per year. The FAA believes that these changes can reduce the number of legal enforcement cases, saving both the FAA and the industry time and resources.

Pre-employment testing acts as the ''gatekeeper.'' Since this type of testing has the largest number of positives, it is a major tool that would keep drug users from getting into the aviation industry in the first place. Most of the other drug and alcohol tests are largely deterrence based. Clarifying pre-employment requirements is important, as the process will reduce the number of mistakes by employers that can lead to employees not being pre-employment tested, the consequences including both potential safety impacts and enforcement actions for non-compliance.

Companies no longer having to file antidrug plans and alcohol misuse prevention program certification statements will bring about some cost savings. In addition to the cost savings discussed above, each company will benefit from a reduction in the paperwork burden; the FAA will also realize these same benefits. These rule changes will increase consistency between appendices I and J, where possible. Elimination of unnecessary differences will reduce industry inquiries into the current conflicts between the two, saving both individual companies and the FAA time and resources, as well as better compliance with the regulations.

Comparison of Costs and Benefits

This action will make a number of changes in order to make the antidrug and alcohol misuse prevention programs more efficient. The modifications to testing requirements, the changes to program submission requirements, and the elimination of the antidrug plans and the alcohol misuse prevention program certification statements should make these programs more effective.

These rules will result in a net cost of $178,600 (net present value, $72,000). The public will benefit from:

—Increased safety, by reducing the likelihood that a drug user will be employed in a safety-sensitive position due to clarified pre-employment requirements;

—Reduced paperwork, by companies no longer having to file an alcohol certification statement and a drug plan; and

—Enhanced program management, due to the elimination of unnecessary differences between appendices I and J. Accordingly, the FAA finds these requirements to be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

For this rule, the small entity group is considered to be part 121 and 135 air carriers (Standard Industrial Classification Code [SIC] 4512) and part 145 repair stations (SIC Code 4581, 7622, 7629, and 7699). The FAA has identified a total of 98 of a total of 144 part 121 air carriers and 2,118 of a total of 3,074 part 135 air carriers that are small entities. However, the FAA has been unable to determine how many of the 2,412 part 145 repair stations are considered small entities, and so called for comments in Notice 02–04, but received none.

The annualized cost of these rule changes to the industry is $17,100. The FAA is unable to isolate the cost savings to each industry group because some of the changes apply to individual companies while others apply to the employees. So, the FAA looked at the average cost impact on each of the small entities and also on all of the small entity industry groups. If all the cost

were borne by only small part 121 air carriers, small part 135 air carriers, or applicable repair stations, the average cost per certificate holder would be $174, $8, or $7, respectively. If the cost savings were divided among all of these business entities, the average cost savings per entity would be $4 per entity. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of these entities.

International Trade Impact Statement

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

Unfunded Mandates Determination

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, we determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Alcoholism, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends part 121 of title 14, Code of Federal Regulations, as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS.

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

■ 2. Amend appendix I to part 121 as follows:

■ A. In section I., add new paragraphs D and E;

■ B. In section II., remove the definition of Contractor company; add new definitions for Contractor and Hire in alphabetic order; and revise the definitions of Employee and Employer;

■ C. Revise section III.;

■ D. In section V., revise paragraph A.; remove paragraph B.; redesignate paragraph C. as paragraph B.; redesignate paragraphs B.8., B.9., and B.10. as paragraphs B.9., B.10., and B.11., respectively; add a new paragraph B.8; redesignate paragraph D. as paragraph C.; redesignate paragraph E. as paragraph D. and revise it; redesignate paragraph F. as paragraph E.; and redesignate paragraph G. as paragraph F.;

■ E. In section VI., revise paragraph D.1;

■ F. In section VII., revise paragraph C.5;

■ G. Revise section IX; and

■ H. In section XIII., revise introductory text and paragraph B.

The additions and revisions read as follows:

Appendix I to Part 121—Drug Testing Program

* * * * *

I. *General.*

* * * * *

D. *Applicable Federal Regulations.* The following applicable regulations appear in 49 CFR or 14 CFR:

1. 49 CFR

Part 40—Procedures for Transportation Workplace Drug Testing Programs

2. 14 CFR

61.14—Refusal to submit to a drug or alcohol test.
63.12b—Refusal to submit to a drug or alcohol test.
65.23—Refusal to submit to a drug or alcohol test.
65.46—Use of prohibited drugs.
67.107—First-Class Airman Medical Certificate, Mental.
67.207—Second-Class Airman Medical Certificate, Mental.
67.307—Third-Class Airman Medical Certificate, Mental.
121.429—Prohibited drugs.
121.455—Use of prohibited drugs.
121.457—Testing for prohibited drugs.
135.1—Applicability.
135.249—Use of prohibited drugs.
135.251—Testing for prohibited drugs.
135.353—Prohibited drugs.

E. *Falsification.* No person may make, or cause to be made, any of the following:

1. Any fraudulent or intentionally false statement in any application of an antidrug program.

2. Any fraudulent or intentionally false entry in any record or report that is made, kept, or used to show compliance with this appendix.

3. Any reproduction or alteration, for fraudulent purposes, of any report or record required to be kept by this appendix.

II. Definitions. * * *

* * * * *

Contractor is an individual or company that performs a safety-sensitive function by contract for an employer or another contractor.

* * * * *

Employee is a person who is hired, either directly or by contract, to perform a safety-sensitive function for an employer, as defined below. An employee is also a person who transfers into a position to perform a safety-sensitive function for an employer.

Employer is a part 121 certificate holder, a part 135 certificate holder, an operator as defined in § 135.1(c) of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. military. An employer may use a contract employee who is not included under that employer's FAA-mandated antidrug program to perform a safety-sensitive function only if

that contract employee is included under the contractor's FAA-mandated antidrug program and is performing a safety-sensitive function on behalf of that contractor (*i.e.*, within the scope of employment with the contractor.)

* * * * *

Hire means retaining an individual for a safety-sensitive function as a paid employee, as a volunteer, or through barter or other form of compensation.

* * * * *

III. *Employees Who Must be Tested.* Each employee, including any assistant, helper, or individual in a training status, who performs a safety-sensitive function listed in this section directly or by contract for an employer as defined in this appendix must be subject to drug testing under an antidrug program implemented in accordance with this appendix. This includes full-time, part-time, temporary, and intermittent employees regardless of the degree of supervision. The safety-sensitive functions are:

A. Flight crewmember duties.

B. Flight attendant duties.

C. Flight instruction duties.

D. Aircraft dispatcher duties.

E. Aircraft maintenance and preventive maintenance duties.

F. Ground security coordinator duties.

G. Aviation screening duties.

H. Air traffic control duties.

* * * * *

V. *Types of Drug Testing Required.* * * *

A. *Pre-Employment Testing.*

1. No employer may hire any individual for a safety-sensitive function listed in section III of this appendix unless the employer first conducts a pre-employment test and receives a verified negative drug test result for that individual.

2. No employer may allow an individual to transfer from a nonsafety-sensitive to a safety-sensitive function unless the employer first conducts a pre-employment test and receives a verified negative drug test result for the individual.

3. Employers must conduct another pre-employment test and receive a verified negative drug test result before hiring or transferring an individual into a safety-sensitive function if more than 180 days elapse between conducting the pre-employment test required by section V.A.1. or V.A.2. of this appendix and hiring or transferring the individual into a safety-sensitive function, resulting in that individual being brought under an FAA drug-testing program.

4. If the following criteria are met, an employer is permitted to conduct a pre-employment test, and if such a test is conducted, the employer must receive a negative test result before putting the individual into a safety-sensitive function:

(a) The individual previously performed a safety-sensitive function for the employer and the employer is not required to pre-employment test the individual under section V.A.1. or V.A.2 of this appendix before putting the individual to work in a safety-sensitive function;

(b) The employer removed the individual from the employer's random testing program conducted under this appendix for reasons other than a verified positive test result on an FAA-mandated drug test or a refusal to submit to such testing; and

(c) The individual will be returning to the performance of a safety-sensitive function.

5. Before hiring or transferring an individual to a safety-sensitive function, the employer must advise each individual that the individual will be required to undergo pre-employment testing in accordance with this appendix, to determine the presence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, or a metabolite of those drugs in the individual's system. The employer shall provide this same notification to each individual required by the employer to undergo pre-employment testing under section V.A.4. of this appendix.

B. *Random Testing.*

* * * * *

8. Each employer shall require that each safety-sensitive employee who is notified of selection for random drug testing proceeds to the collection site immediately; provided, however, that if the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the collection site as soon as possible.

* * * * *

D. *Testing Based on Reasonable Cause.* Each employer must test each employee who performs a safety-sensitive function and who is reasonably suspected of having used a prohibited drug. The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific contemporaneous physical, behavioral, or performance indicators of probable drug use. At least two of the employee's supervisors, one of whom is trained in detection of the symptoms of possible drug use, must substantiate and concur in the decision to test an employee who is reasonably suspected of drug use; except that in the case of an employer, other than a part 121 certificate holder, who employs 50 or fewer employees who perform safety-sensitive functions, one supervisor who is trained in detection of symptoms of possible drug use must substantiate the decision to test an employee who is reasonably suspected of drug use.

* * * * *

VI. *Administrative and Other Matters.*

* * * * *

D. *Refusal to Submit to Testing.* 1. Each employer must notify the FAA within 5 working days of any employee who holds a certificate issued under part 61, part 63, or part 65 of this chapter who has refused to submit to a drug test required under this appendix. Send these notifications to: Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM–800), 800 Independence Avenue, SW, Washington, DC 20591.

* * * * *

VII. *Medical Review Officer/Substance Abuse Professional, and Employer Responsibilities.*

* * * * *

C. Additional Medical Review Officer, *Substance Abuse Professional, and Employer Responsibilities Regarding 14 CFR part 67 Airman Medical Certificate Holders.*

* * * * *

5. Reports required under this section shall be forwarded to the Federal Air Surgeon, Federal Aviation Administration, Office of Aerospace Medicine, Attn: Drug Abatement Division (AAM–800), 800 Independence Avenue, SW., Washington, DC 20591.

* * * * *

IX. *Implementing an Antidrug Program.*

A. Each company must meet the requirements of this appendix. Use the following chart to determine whether your company must obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification or whether you must register with the FAA:

If you are . . .	You must . . .
1. A part 121 or 135 certificate holder	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your FAA Principal Operations Inspector.
2. A sightseeing operator as defined in § 135.1(c) of this chapter	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM–810), 800 Independence Avenue, SW, Washington, DC 20591 by March 12, 2004.
3. An air traffic control facility not operated by the FAA or by or under contract to the U.S. Military.	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM–810), 800 Independence Avenue, SW, Washington, DC 20591 by March 12, 2004.
4. A part 145 certificate holder who has your own antidrug program	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your Principal Maintenance Inspector.
5. A contractor who has your own antidrug program	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM–810), 800 Independence Avenue, SW, Washington, DC 20591 by March 12, 2004.

B. Use the following chart for implementing an antidrug program if you are applying for a part 121 or 135 certificate, if you intend to begin sightseeing operations as defined in § 135.1(c) of this chapter, or if you intend to begin air traffic control operations (not operated by the FAA or by or under contract to the U.S. military.) Use it to determine whether you need to have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, or whether you need to register with the FAA. Your employees who perform safety-sensitive duties must be tested in accordance with this appendix. The chart follows:

If you are . . .	You must . . .
1. Apply for a part 121 certificate or apply for a part 135 certificate	a. Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, b. Implement an FAA antidrug program no later than the date you start operations, and c. Meet the requirements of this appendix.
2. Intend to begin sightseeing operations as defined in § 135.1(c) of this chapter.	a. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM–810), 800 Independence Avenue, SW, Washington, DC 20591 prior to starting operations, b. Implement an FAA antidrug program no later than the date you start operations, and c. Meet the requirements of this appendix.
3. Intend to begin air traffic control operations (at an air traffic control facility not operated by the FAA or by or under contract to the U.S. military).	a. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM–810), 800 Independence Avenue, SW, Washington, DC 20591, b. Implement an FAA antidrug program no later than the date you start operations, and c. Meet the requirements of this appendix.

C. 1. If you are an individual or company that intends to provide safety-sensitive services by contract to a part 121 or 135 certificate holder, a sightseeing operation as defined in § 135.1(c) of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. military, use the chart in paragraph C.2 of this section to determine what you must do if you opt to have your own antidrug program.

2. The following chart explains what you must do if you opt to have your own antidrug program:

If you . . .	You must . . .
a. Are a part 145 certificate holder	i. Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, ii. Implement an FAA Antidrug Program no later than the date you start performing safety-sensitive functions for a part 121 or 135 certificate holder or sightseeing operator as defined in § 135.1(c) of this chapter, and iii. Meet the requirements of this appendix as if you were an employer.
b. Are a contractor (*e.g.*, a security company, a non-certificated repair station, a temporary employment service company or any other individual or company that provides safety-sensitive services).	i. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM–810), 800 Independence Avenue, SW, Washington, DC 20591, ii. Implement an FAA Antidrug Program no later than the date you start performing safety-sensitive functions for a part 121 or 135 certificate holder, a sightseeing operator as defined in § 135.1(c) of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. military, and iii. Meet the requirements of this appendix as if you were an employer.

D. 1. To obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification, you must contact your FAA Principal Operations Inspector or Principal Maintenance Inspector. Provide him/her with the following information:

a. Company name.

b. Certificate number.

c. Telephone number.

d. Address where your Antidrug and Alcohol Misuse Prevention Program records are kept.

e. Whether you have 50 or more safety-sensitive employees, or 49 or fewer safety-sensitive employees. (Part 121 certificate holders are not required to provide this information.)

2. You must certify on your Antidrug and Alcohol Misuse Prevention Program Operations Specification issued by your FAA Principal Operations Inspector or Principal Maintenance Inspector that you will comply with this appendix, appendix J of this part, and 49 CFR part 40.

3. You are required to obtain only one Antidrug and Alcohol Misuse Prevention Program Operations Specification to satisfy this requirement under this appendix and appendix J of this part.

4. You must update the Antidrug and Alcohol Misuse Prevention Program Operations Specification when any changes to the information contained in the Operation Specification occur.

E. 1. To register with the FAA, submit the following information:

a. Company name.

b. Telephone number.

c. Address where your Antidrug and Alcohol Misuse Prevention Program records are kept.

d. Type of safety-sensitive functions you perform for an employer (such as flight instruction duties, aircraft dispatcher duties, maintenance or preventive maintenance duties, ground security coordinator duties, aviation screening duties, air traffic control duties).

e. Whether you have 50 or more safety-sensitive employees, or 49 or fewer covered employees.

f. A signed statement indicating that: your company will comply with this appendix, appendix J of this part, and 49 CFR part 40; and, if you are a contractor, you intend to provide safety-sensitive functions by contract to a part 121 or part 135 certificate holder, a sightseeing operator as defined in § 135.1(c) of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. military.

2. Send this information in the form and manner prescribed by the Administrator, in duplicate to: The Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM–

810), 800 Independence Avenue, SW., Washington, DC 20591.

3. Update the registration information as changes occur. Send the updates in duplicate to the address specified in paragraph 2.

4. This registration will satisfy the registration requirements for both your Antidrug Program under this appendix and your Alcohol Misuse Prevention Program under appendix J of this part.

* * * * *

XIII. *Waivers from 49 CFR 40.21.* An employer subject to this part may petition the Drug Abatement Division, Office of Aerospace Medicine, for a waiver allowing the employer to stand down an employee following a report of a laboratory confirmed positive drug test or refusal, pending the outcome of the verification process.

* * * * *

B. Each petition for a waiver must be submitted to the Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM–800), 800 Independence Avenue, SW., Washington, DC 20591.

* * * * *

■ 3. In appendix J to part 121:

■ A. In section I., amend paragraph D. to remove the definitions for ''Administrator'' and ''Contractor company''; add a definition for ''Contractor'' in alphabetical order; and add paragraphs H. and I.;

■ B. In section II., revise the introductory text of paragraph A.;

■ C. In section V., revise paragraphs C.3. and D.1.; and

■ D. Revise section VII.

The additions and revisions read as follows:

Appendix J To Part 121—Alcohol Misuse Prevention Program

* * * * *

I. General

* * * * *

D. *Definitions*

* * * * *

Contractor means an individual or company that performs a safety-sensitive function by contract for an employer or another contractor.

* * * * *

H. *Applicable Federal Regulations.* The following applicable regulations appear in 49 CFR and 14 CFR:

1. 49 CFR

Part 40—Procedures for Transportation Workplace Drug Testing Programs

2. 14 CFR

61.14—Refusal to submit to a drug or alcohol test.
63.12b—Refusal to submit to a drug or alcohol test.
65.23—Refusal to submit to a drug or alcohol test.
65.46a—Misuse of Alcohol.
65.46b—Testing for Alcohol.
67.107—First-Class Airman Medical Certificate, Mental.
67.207—Second-Class Airman Medical Certificate, Mental.
67.307—Third-Class Airman Medical Certificate, Mental.
121.458—Misuse of alcohol.
121.459—Testing for alcohol.
135.1—Applicability.
135.253—Misuse of alcohol.
135.255—Testing for alcohol.

I. *Falsification.* No person may make, or cause to be made, any of the following:

1. Any fraudulent or intentionally false statement in any application of an alcohol misuse prevention program.

2. Any fraudulent or intentionally false entry in any record or report that is made, kept, or used to show compliance with this appendix.

3. Any reproduction or alteration, for fraudulent purposes, of any report or record required to be kept by this appendix.

II. Covered Employees

A. Each employee, including any assistant, helper, or individual in a training status, who performs a safety-sensitive function listed in this section directly or by contract for an employer as defined in this appendix must be subject to alcohol testing under an alcohol misuse prevention program implemented in accordance with this appendix. This not only includes full-time and part-time employees, but temporary and intermittent employees regardless of the degree of supervision. The safety-sensitive functions are:

* * * * *

V. Consequences for Employees Engaging in Alcohol-Related Conduct

* * * * *

C. Notice to the Federal Air Surgeon

* * * * *

3. All documents must be sent to the Federal Air Surgeon, Federal Aviation Administration, Office of Aerospace Medicine, Attn: Drug Abatement Division (AAM–800), 800 Independence Avenue, SW, Washington, DC 20591.

* * * * *

D. Notice of Refusals

1. Except as provided in subparagraph 2 of this paragraph D, each employer shall notify the FAA within 5 working days of any covered employee who holds a certificate issued under 14 CFR part 61, part 63, or part 65 who has refused to submit to an alcohol test required under this appendix. Notifications must be sent to: Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM–800), 800 Independence Avenue, SW, Washington, DC 20591.

* * * * *

VII. How To Implement an Alcohol Misuse Prevention Program

A. Each company must meet the requirements of this appendix. Use the following chart to determine whether your company must obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification or whether you must register with the FAA:

If you are . . .	You must . . .
1. A part 121 or 135 certificate holder	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your FAA Principal Operations Inspector.
2. A sightseeing operator as defined in § 135.1(c)	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM–810), 800 Independence Avenue, SW, Washington, DC 20591 by March 12, 2004.
3. An air traffic control facility not operated by the FAA or by or under contract to the U.S. Military.	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM–810), 800 Independence Avenue, SW, Washington, DC 20591 by March 12, 2004.
4. A part 145 certificate holder who has your own alcohol misuse prevention program.	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your FAA Principal Maintenance Inspector.
5. A contractor who has your own alcohol misuse prevention program	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM–810), 800 Independence Avenue, SW, Washington, DC 20591 by March 12, 2004.

B. Use the following chart for implementing an Alcohol Misuse Prevention Program if you are applying for a part 121 or 135 certificate, if you intend to begin sightseeing operations as defined in § 135.1(c) of this chapter, or if you intend to begin air traffic control operations (not operated by the FAA or by or under contract to the U.S. military.) Use it to determine whether you need to have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, or whether you need to register with the FAA. Your employees who perform safety-sensitive

duties must be tested in accordance with this appendix. The chart follows:

If you . . .	You must . . .
1. Apply for a part 121 certificate or apply for a part 135 certificate	a. Have an Antidrug and Alcohol Misuse Prevention Operations Specification, b. Implement an FAA Alcohol Misuse Prevention Program no later than the date you start operations, and c. Meet the requirements of this appendix.
2. Intend to begin sightseeing operations as defined in § 135.1(c) of this chapter..	a. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM–810), 800 Independence Avenue, SW, Washington, DC 20591 prior to starting operations, b. Implement an FAA Alcohol Misuse Prevention Program no later than the date you start operations, and c. Meet the requirements of this appendix.
3. Intend to begin air traffic control operations (at an air traffic control facility not operated by the FAA or by or under contract to the U.S. military).	a. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM–810), 800 Independence Avenue, SW, Washington, DC 20591, b.Implement an FAA Alcohol Misuse Prevention Program no later than the date you start operations, and c. Meet the requirements of this appendix.

C. 1. If you are an individual or a company that intends to provide safety-sensitive services by contract to a part 121 or 135 certificate holder or a sightseeing operator as defined in § 135.1(c) of this chapter, use the chart in paragraph C.2. of this section to determine what you must do if you opt to have your own Alcohol Misuse Prevention Program.

2. The following chart explains what you must do if you opt to have your own Alcohol Misuse Prevention Program:

If you . . .	You must . . .
a. Are a part 145 certificate holder	i. Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, ii. Implement an FAA Alcohol Misuse Prevention Program no later than the date you start performing safety-sensitive functions for a part 121 or 135 certificate holder or sightseeing operator as defined in § 135.1(c) of this chapter, and iii. Meet the requirements of this appendix as if you were an employer.
b. Are a contractor (*e.g.*, a security company, a noncertificated repair station, a temporary employment service company or any other individual or company that provides safety-sensitive services).	i. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM–810), 800 Independence Avenue, SW., Washington, DC 20591, ii. Implement an FAA Alcohol Misuse Prevention Program no later than the date you start performing safety-sensitive functions for a part 121 or 135 certificate holder or sightseeing operator as defined in § 135.1(c) of this chapter, and iii. Meet the requirements of this appendix as if you were an employer.

D. 1. To obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification, you must contact your FAA Principal Operations Inspector or Principal Maintenance Inspector. Provide him/her with the following information:

a. Company name.

b. Certificate number.

c. Telephone number.

d. Address where your Antidrug and Alcohol Misuse Prevention Program records are kept.

e. Whether you have 50 or more covered employees, or 49 or fewer covered employees. (Part 121 certificate holders are not required to provide this information.)

2. You must certify on your Antidrug and Alcohol Misuse Prevention Program Operations Specification, issued by your FAA Principal Operations Inspector or Principal Maintenance Inspector, that you will comply with appendix I of this part, this appendix, and 49 CFR part 40.

3. You are required to obtain only one Antidrug and Alcohol Misuse Prevention Program Operations Specification to satisfy this requirement under appendix I of this part and this appendix.

4. You must update the Antidrug and Alcohol Misuse Prevention Program Operations Specification when any changes to the information contained in the Operation Specification occur.

E. 1. To register with the FAA, submit the following information:

a. Company name.

b. Telephone number.

c. Address where your Antidrug and Alcohol Misuse Prevention Program records are kept.

d. Type of safety-sensitive functions you perform for an employer (such as flight instruction duties, aircraft dispatcher duties, maintenance or preventive maintenance duties, ground security coordinator duties, aviation screening duties, air traffic control duties).

e. Whether you have 50 or more covered employees, or 49 or fewer covered employees.

f. A signed statement indicating that: Your company will comply with this appendix, appendix I of this part, and 49 CFR part 40; and, if you are a contractor, you intend to provide safety-sensitive functions by contract to a part 121 or part 135 certificate holder, a sightseeing operator as defined by § 135.1(c) of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. military.

2. Send this information in the form and manner prescribed by the Administrator, in duplicate to: The Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM–810), 800 Independence Avenue, SW., Washington, DC 20591.

3. Update the registration information as changes occur. Send the updates in duplicate to the address specified in paragraph 2.

4. This registration will satisfy the registration requirements for both your Antidrug Program under appendix I of this part and your Alcohol Misuse Prevention Program under this appendix.

* * * * *

Issued in Washington, DC, on January 5, 2004.

Marion C. Blakey,

Administrator.

[FR Doc. 04–482 Filed 1–9–04; 8:45 am]

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Federal Register

Monday,
January 12, 2004

Part V

Department of Agriculture

Food Safety and Inspection Service

9 CFR Part 301, 309, et al.

Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle; Meat Produced by Advanced Meat/Bone Separation Machinery and Meat Recovery (AMR) Systems; Prohibition of the Use of Certain Stunning Devices Used To Immobilize Cattle During Slaughter; Bovine Spongiform Encephalopathy Surveillance Program; Interim Final Rules and Notice

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 309, 310, 311, 318, and 319

[Docket No. 03–025IF]

Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim final rule and request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to designate the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia (DRG) of cattle 30 months of age and older, and the tonsils and distal ileum of the small intestine of all cattle, as ''specified risk materials'' (SRMs). The Agency is declaring that SRMs are inedible and prohibiting their use for human food. In addition, FSIS is requiring that all non-ambulatory disabled cattle presented for slaughter be condemned. The Agency is requiring that federally-inspected establishments that slaughter cattle and federally-inspected establishments that process the carcasses or parts of cattle develop, implement, and maintain written procedures for the removal, segregation, and disposition of SRMs. Establishments must incorporate these procedures into their HACCP plans or in their Sanitation SOPs or other prerequisite program. FSIS is taking this action in response to the diagnosis on December 23, 2003, by the U.S. Department of Agriculture of a positive case of bovine spongiform encephalopathy (BSE) in an adult Holstein cow in the State of Washington. This action will minimize human exposure to materials that scientific studies have demonstrated as containing the BSE agent in cattle infected with the disease. Infectivity has never been demonstrated in the muscle tissue of cattle experimentally or naturally infected with BSE at any stage of the disease.

DATES: This interim final rule is effective January 12, 2004. Comments on this interim final rule must be received by April 12, 2004.

ADDRESSES: Submit written comments to: FSIS Docket Clerk, Docket #03–025IF, Room 102, Cotton Annex, 300 12th and C Street, SW., Washington, DC 20250–3700. Reference materials cited in this document and any comments received will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 4:30 p.m., Monday through Friday. Reference materials that are not copyrighted will also be available on the FSIS Web site at *http://www.fsis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Ph.D., Executive Associate, Policy Analysis and Formulation, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202)205–0495.

SUPPLEMENTARY INFORMATION:

Background

Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), FSIS issues regulations governing the production of meat and meat food products prepared for distribution in commerce. The regulations, along with FSIS inspection programs, are designed to ensure that meat and meat food products are safe, wholesome, unadulterated, and properly marked, labeled, and packaged. The FMIA prohibits anyone from selling, transporting, offering for sale or transportation, or receiving for transportation in commerce, any adulterated or misbranded meat or meat food product (21 U.S.C. 610).

Under the FMIA, a meat food product is adulterated if, among other circumstances, it bears or contains any poisonous or deleterious substance that may render it injurious to health (21 U.S.C. 601(m)(1)) or if it is for any reason unsound, unhealthful, unwholesome, or unfit for human food (21 U.S.C. 601(m)(3)). The FMIA requires that FSIS inspect the carcasses, parts of carcasses, and meat food products of all cattle, sheep, swine, goats, horses, mules, or other equines that are capable for use as human food to ensure that such articles are not adulterated (21 U.S.C. 604, 606). If the carcasses, parts of carcasses, and meat food products are found, upon inspection, to be not adulterated, FSIS marks them as ''Inspected and passed'' (21 U.S.C. 604, 606, 607). The FMIA gives FSIS broad authority to promulgate such rules and regulations as are necessary to carry out the provisions of the Act (21 U.S.C. 621).

As discussed in greater detail below, infectivity has been confirmed in the brain, trigeminal ganglia, tonsils, spinal cord, DRG, and distal ileum of the small intestine of cattle experimentally infected with BSE, and in the brain, spinal cord, and eyes of cattle infected with BSE under field conditions. Data on the age distribution of clinical cases of BSE in the field reported in the United Kingdom indicate that clinical BSE disease has rarely been reported in cattle younger than 30 months of age.

In cattle experimentally infected with BSE, infectivity has been confirmed in the distal ileum at various stages of the disease process and as early as 6 months after oral exposure to the BSE agent. The tonsils of experimentally infected cattle have demonstrated apparently weak infectivity as early as 10 months after oral exposure to the BSE agent. The other tissues in which BSE infectivity has been confirmed have demonstrated infectivity at the end stages of disease, which, in experimentally infected cattle, was 32 months after exposure to the BSE agent and later. The brain, trigeminal ganglia, tonsils, DRG, and distal ileum are materials of experimentally infected cattle in which infectivity has been confirmed before the onset of clinical disease.

Based on these findings, FSIS has concluded that the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and DRG of cattle 30 months of age and older, and the tonsils and distal ileum of the small intestine of all cattle are unfit for human food under section 1(m)(3) of the FMIA (21 U.S.C 601(m)(3)). Therefore, FSIS is designating these materials as SRMs, declaring that they are inedible and, pursuant to its authority to promulgate regulations necessary to carry out the provisions of the FMIA, prohibiting their use for human food.

Because there are currently no restrictions on the incorporation of spinal cord and DRG into MS(Beef) meat food product, such product may contain concentrated amounts of these high-risk tissues. Therefore FSIS has concluded that, like the SRMs described above, MS(Beef) is unfit for human food under section 1(m)(3) of the FMIA (21 U.S.C. 601(m)(3)).

As discussed in detail below, surveillance data from European countries in which BSE has been detected indicate that non-ambulatory cattle are among the animals that have a greater incidence of BSE than other cattle. Surveillance data also indicate that clinical signs of BSE cannot always be observed in non-ambulatory cattle. Furthermore, due to limitations in the testing methods for BSE that are available today, certain tissues of cattle

infected with BSE may contain BSE infectivity even though the diagnostic test does not indicate that the animal has the disease. For the reasons presented above, FSIS believes that non-ambulatory disabled cattle present a risk of introducing the BSE agent into the human food supply. Therefore, FSIS has determined that the carcasses of non-ambulatory disabled cattle are unfit for human food under section 1(m)(3) of the FMIA and that all non-ambulatory disabled cattle that are presented for slaughter should be condemned.

By declaring SRMs and MS(Beef) inedible and prohibiting their use for human food, and by condemning all non-ambulatory disabled cattle, FSIS will ensure that materials that could present a significant risk to human health, but whose infectivity status cannot be readily ascertained, are excluded from the human food supply.

Because BSE was recently confirmed in a cow in the United States, FSIS has determined that the SRMs identified in this document are unfit for human food. Thus, the status of most of these materials has changed from edible to inedible. Such a change is likely to affect the underlying hazard analysis that must be conducted as prescribed by 9 CFR 417.4(a)(3). Therefore, in response to this change, FSIS expects that establishments that slaughter cattle and establishments that process the carcasses or parts of cattle will reassess their HACCP plans in accordance with 9 CFR 417.4(a)(3) to address SRMs.

BSE and Variant Creutzfeldt-Jakob Disease

BSE is a progressive degenerative disease that affects the central nervous system (CNS) of adult cattle. BSE belongs to the family of diseases known as transmissible spongiform encephalopathies (TSEs), which include, among other diseases, scrapie in sheep and goats, chronic wasting disease (CWD) in deer and elk, and Cruetzfeldt-Jakob disease (CJD) in humans. The typical incubation period (the time from when an animal becomes infected until it first shows disease signs) for BSE is believed to be from two to eight years. BSE was first documented in the United Kingdom in 1986 and has since been identified in approximately 21 other countries in Europe. BSE has also been confirmed in some non-European countries, including Japan, Israel, and Canada.

On December 23, 2003, USDA announced a presumptive diagnosis of BSE in an adult Holstein cow from Washington State. Samples were taken from the cow on December 9 as part of USDA's BSE surveillance program. The BSE diagnosis was made on December 22 and 23 by histopathology and immunohistochemical testing at the National Veterinary Services Laboratory, Ames, Iowa. On December 25, 2003, the International Reference Laboratory in Weybridge, England confirmed the diagnosis of BSE.

The agent that causes BSE and other TSEs has yet to be fully characterized. The theory that is most accepted in the scientific community is that the agent is a prion, which is an abnormal form of a normal protein known as cellular prion protein, although other types of agents have also been implicated. The agent is highly resistant to heat, ultraviolet light, ionizing radiation, and common disinfectants that normally inactivate viruses or bacteria.

In 1996, a newly recognized form of the human disease CJD, referred to as vCJD, was reported in the United Kingdom. Scientific and epidemiological studies have linked vCJD to exposure to BSE, probably through human consumption of beef products contaminated with the agent that causes BSE (Ref. 1–5 available for viewing by the public in the FSIS Docket Room). To date, approximately 150 probable and confirmed cases of vCJD have been reported worldwide.

The Centers for Disease Control and Prevention (CDC) leads a surveillance system for vCJD in the United States, and as of December, 2003, the disease has never been detected in residents of the United States that have never lived in or traveled to the United Kingdom for extended periods of time. In 2002, a probable case of vCJD was reported in a Florida resident who lived in the United Kingdom during the BSE epidemic. Epidemiological data indicate that the patient was likely exposed to the BSE agent before moving to the United States. (Ref. 6 available for viewing by the public in the FSIS Docket Room).

The United States government has implemented a number of measures to prevent BSE from entering the United States and to prevent the spread of the disease should it be introduced into the United States. Since 1989, USDA's Animal and Plant Health Inspection Service (APHIS) has prohibited the importation of live cattle and certain cattle products, including rendered protein products, from countries where BSE is known to exist. In 1997, due to concerns about widespread risk factors and inadequate surveillance for BSE in many European countries, these importation restrictions were extended to include all of the countries in Europe. In 1997, FDA prohibited the use of most mammalian protein in the manufacture of animal feeds given to cattle and other ruminants. In December 2000, APHIS prohibited all imports of rendered animal protein products, regardless of species, from BSE-restricted countries because of concern that feed intended for cattle may have been cross-contaminated with the BSE agent. In addition, APHIS leads an ongoing, comprehensive, interagency surveillance system for BSE in the United States and, in cooperation with FSIS, has drafted an emergency response plan to be used in the event that BSE is identified in the United States. This plan was activated when the BSE test for the cow in Washington State came back presumptive positive on December 23, 2003. Other Federal agencies also have contingency plans that work in concert with the USDA plan.

BSE Infectivity

Animal age. The distribution and amount of the BSE agent in cattle infected with BSE is not known with certainty. It is generally accepted that in animals with clinical BSE disease, the brain and spinal cord contain the greatest concentration of the BSE agent, and that the quantity of the agent increases as the animals progress through the incubation period to the development of clinical disease. Thus, the total infective load in cattle in the early stages of the incubation period is believed to be much lower than in cattle approaching the end of the incubation period or in those cattle with overt clinical BSE. As stated above, the typical incubation period for BSE is believed to be between two to eight years.

Information on the age at which cattle develop clinical BSE under field conditions, *i.e.*, commercially reared cattle not part of a specially designed experiment, can be useful in identifying those cattle that, if infected with the BSE agent, are most likely to contain the highest levels of infectivity. Age-of-onset was known and recorded for approximately 135,000 cattle with confirmed clinical BSE in the United Kingdom between 1988 and August 2003 (Ref. 7, available for viewing by the public in the FSIS Docket Room). These data demonstrate that the age at which cattle develop clinical disease varies. The data from the United Kingdom show a gradual increase in the number of clinical BSE cases with increasing age, and that the number of confirmed cases peaks at 5 years of age. The lower ranges of this age distribution include some cattle younger than 30 months of age.

The age distribution data show that, of the cattle that developed clinical BSE in the field, only 0.01% were less than 30 months of age. Thus, cattle younger than 30 months of age are less likely to be in the later stages of BSE incubation than older BSE-infected cattle, and hence, are less likely to contain high levels of BSE infectivity. Research demonstrates that the incubation period for BSE appears to be linked to the infectious dose of the BSE agent received, *i.e.*, the larger the infectious dose received the shorter the incubation period (Ref. 8, available for viewing by the public in the FSIS docket room). Thus, given these observations, scientists that have studied the disease believe that the occurrence of BSE in young cattle is most likely the result of exposure to a very large dose of the BSE agent at a very young age.

Detection of BSE in cattle younger than 30 months of age. In October 2003, Japan reported a BSE case in a 23-month old bull, the 8th BSE case confirmed in that country. Earlier cases confirmed in Japan were in cattle over 5 years of age. This recent case apparently did not have clinical signs of disease and was detected as part of Japan's regular surveillance for BSE in which all cattle slaughtered for human consumption are screened for the disease. In reporting on this BSE case, Japanese officials stated that tests suggested that the form of the BSE agent found in the affected animal was atypical, and that they planned to conduct further studies on this form of the disease. A similar form of the atypical agent detected in the Japanese animal has been reported in two BSE cases in Italy. However the Italian animals were 11 and 12 years old. Japan has reported importing feed from Italy.

In early November 2003, shortly after reporting the confirmation of BSE in a 23-month-old animal, Japan reported that BSE was confirmed in a 21-month-old animal. The 21-month-old animal is Japan's 9th reported case of BSE. Like the 23-month-old animal, this animal apparently did not have clinical signs of disease. However, the abnormal prion protein detected in this animal does not appear to be the same as the apparently atypical form detected in the 23-month-old animal. Japanese officials reported that they will be conducting testing to determine if the tissues of these relatively young cattle that were recently found positive for BSE contain BSE infectivity.

The immediate implications of the recent detection of BSE in two animals younger than 24 months of age in Japan, one of which has an apparently atypical form of the disease, are not readily apparent at this time. Although rare, confirmed cases of BSE in animals younger than 30 months of age have also been reported in the United Kingdom and in some other European countries. As stated earlier in this document, a confirmed case of BSE in an animal less than 30 months of age generally implies that the animal was exposed to a large dose of the infective agent at a young age. From 1988 to 1996, during the height of the BSE epidemic in the United Kingdom when large amounts of infective agent were being circulated among cattle herds, 19 clinical cases of BSE were confirmed in cattle younger than 30 months of age (Ref. 9, available for viewing by the public in the FSIS docket room). The youngest confirmed case of BSE was in the United Kingdom in an animal with clinical disease at 20 months of age in 1992. However, as of September 30, 2003, no cases of BSE in cattle younger than 30 months of age have been detected in the United Kingdom since 1996, and only 3 cases have been found in European animals less than 30 months of age since 2001.

FSIS requests comment on the potential implications, if any, of the reported 21- and 23-month-old cases of BSE in Japan. The Agency is also requesting comments on whether, and if so how, it should modify the measures in this rulemaking to address the fact that, in rare instances, BSE has been confirmed in cattle younger than 30 months of age.

Infective tissues. Available data on the development and distribution of tissue infectivity in BSE-infected cattle are incomplete. Most of what is known comes from pathogenesis studies conducted in the United Kingdom (Ref. 10, 11, 12 available for viewing by the public in the FSIS Docket Room). In these studies, cattle were deliberately infected with BSE through oral exposure to the brains of cattle with confirmed BSE. The experimentally infected cattle were killed at regular intervals as the disease developed, and at each interval the tissues of the infected cattle were examined for histopathological changes consistent with BSE and for abnormal prion proteins. At each interval, tissues of the BSE infected cattle were also injected into mice to identify those tissues of cattle capable of transmitting the disease.

The pathogenesis studies involved a small number of cattle (30 animals) that received a large, uniform dose of the BSE agent at a very young age (4 months). Thus, the findings may not reflect the development and distribution of infectivity of cattle exposed to the BSE under field conditions, where the level and age of exposure to the BSE agent are unpredictable. Furthermore, the pathogenesis studies did not determine the rate at which the BSE agent increases in the tissues that have demonstrated infectivity or the tissues that the agent must pass through to reach its ultimate destination in the animal after it is ingested. However, the results of these studies are useful in that they provide experimental evidence of the distribution of the infective agent in BSE-infected cattle at various stages of the disease.

The pathogenesis studies demonstrate that in cattle infected with BSE, the total amount of infectivity in the animal, as well as the distribution of infectivity in the animal's body, change over time, with the highest levels of infectivity detected in the brain and spinal cord at the end stages of disease. In the studies, some cattle exhibited clinical signs of BSE as early as 35 months post oral exposure to the BSE agent. By 37 months post oral exposure, all of the 5 animals that were still alive demonstrated clinical evidence of BSE (animals had been serially sacrificed at set intervals). In cattle with clinical BSE, infectivity was demonstrated in the brain, spinal cord, DRG, trigeminal ganglia, and the distal ileum of the small intestine. (DRG are clusters of nerve cells attached to the spinal cord that are contained within the bones of the vertebral column. ''DRG'' as used in this document has the same meaning as the term ''dorsal spinal nerve root ganglia.'' Trigeminal ganglia are clusters of nerve cells connected to the brain that lie close to the exterior of the skull.)

In one set of animals, infectivity was demonstrated in the bone marrow at 38 months post exposure, but these findings were not conclusive. At this time, bone marrow is not designated as SRM. However, in today's **Federal Register**, FSIS is announcing new requirements to limit the presence of bone marrow in meat produced from AMR systems, with iron as a marker. This action is not a food safety measure at this time but is related to misbranding.

In some cattle in the studies, BSE infectivity was demonstrated in the brain, spinal cord, and DRG as early as 32 months post oral exposure to the BSE agent. In addition, infectivity was demonstrated in these tissues three months before animals began to develop clinical signs of the disease. Infectivity was demonstrated in the distal ileum of cattle 6 to 18 months post oral exposure to the BSE agent and again at 38 months and 40 months post oral exposure.

A second phase of the pathogenesis studies that uses a cattle bioassay is being conducted to ensure that low levels of infectivity that may not have

been detected in the first phase using the mouse bioassay are not missed. The cattle bioassay, in which tissues from cattle deliberately infected with BSE are injected directly into the brains of BSE-free cattle, is considered to be several hundred-fold more sensitive in detecting BSE infectivity than the mouse bioassay. Preliminary results from the cattle bioassay demonstrate that, in addition to the materials that were found to contain infectivity when the mouse bioassay was used, the tonsils of calves 10 months post oral exposure to the BSE agent contain infectivity. However, because only one of five animals injected with infected tonsil material developed clinical BSE at 45 months post-inoculation, the level of infectivity in the tonsils appears to be very low. The second phase of the study is still underway and is not expected to be completed for several more years. (Ref. 8 and 13, available for viewing by the public in the FSIS Docket Room).

In cattle infected with BSE under field conditions, BSE infectivity has been confirmed in the brain, spinal cord, and retina of the eye at the end stages of the disease (Ref. 8 available for viewing by the public in the FSIS Docket Room).

BSE infectivity has never been demonstrated in the muscle tissue of cattle experimentally or naturally infected with the disease at any stage of the disease.

Proportion of infectivity in certain tissues. In 2001, the European Commission's Scientific Steering Committee (SSC), a scientific advisory committee for the European Union, considered the amount and distribution of BSE infectivity in a typical case of BSE and estimated that, in an animal with clinical disease, the brain contains 64.1% of the total infectivity in the animal and the spinal cord contains 25.6% of the total infectivity (Ref. 14 available for viewing by the public in the FSIS Docket Room). Thus, the brain and spinal cord of cattle with clinical BSE are estimated to contain nearly 90% of the total infectivity in the animal. According to the SSC, the remaining proportion of infectivity in a typical animal with clinical BSE is found in the DRG (3.8%), the trigeminal ganglia (2.6%), the distal ileum (3.3%), the spleen (0.3%), and the eyes (0.04%).[1] However, as mentioned above, in experimentally infected cattle BSE infectivity has been demonstrated in the distal ileum as early as 6 to 18 months post oral exposure to the BSE agent and in the tonsils as early as 10 months post exposure. Thus, in younger cattle infected with BSE, these materials apparently present the greatest risk of exposing humans to the BSE agent.

Current Regulatory Requirements for Potentially Infective Materials

Under FSIS' regulations, most of the materials that have demonstrated BSE infectivity in cattle with clinical disease, *i.e.*, brain, eyes, trigeminal ganglia, spinal cord, DRG, and the distal ileum of the small intestine, may currently be used in some way for human food. The brains of all livestock species, including the brains of cattle, are permitted for human food, with the exception of brains from animals stunned by lead, sponge iron, or frangible bullets (9 CFR 310.18(b)). Unprocessed cattle brains are typically sold chilled, frozen, or canned, and are consumed as a variety meat. Cattle brains may also be used as a by-product ingredient in certain processed products. When used as a by-product ingredient, cattle brains must be listed in the ingredients statement on the labeling of the product and declared by species (9 CFR 317.2(f)(1)).

Cattle brains are also permitted to be used as a source material in edible rendering. Edible rendering involves the processing of materials inspected and passed for human food into products, such as edible oils, meals, beef extracts, beef protein, beef broths, beef stocks, and beef flavorings. Many of these products are regulated by FSIS and FDA.

Given the invariable presence of bone splinters, detached spinal cords from all livestock species, including cattle, are prohibited for use in the preparation of edible products (9 CFR 318.6(b)(4)). However, detached spinal cords may be used as a raw material in edible rendering (9 CFR 318.6(b)(4)). The labeling of extracts prepared from brains, spinal cords, or other organs or parts of the carcass other than fresh meat from all livestock species, including cattle, must include the true name of the parts from which the product was prepared, *e.g.*, ''extract from beef brain'' (9 CFR 317.8(b)(15)).

Vertebral columns from cattle contain both spinal cord and DRG. FSIS' regulations do not require that the spinal cord or DRG of cattle be removed from the vertebral column at the time of slaughter. Thus, some bone-in beef products may contain spinal cord, DRG, or both.

Bones from the vertebral column of cattle are permitted to be used as source materials in the production of processed products manufactured from edible rendering. When the vertebral columns from cattle are used in the production of such products, spinal cord and DRG that remain attached to the vertebral column could potentially become dislodged and incorporated into the final product. Under the FSIS regulations, the labeling of the final product is not required to disclose the fact that the product may contain spinal cord or DRG.

Bones from the vertebral column of cattle are also permitted for use as a source material in meat recovery systems that use pressure to separate beef muscle tissue from bones. When the vertebral columns are used as a source material in these systems, spinal cord and DRG may become dislodged from the vertebral bones and incorporated into the final product. The use of vertebral columns in systems that mechanically separate meat and meat products from bone, and the labeling requirements for such products, are discussed in greater detail below.

Casings made from the small intestine, including the distal ileum, of cattle are permitted to be used as containers for meat food products (9 CFR 318.6(b)(1)). Cattle intestines, including the distal ileum, are also permitted for use as ingredients in meat food products that do not have an FSIS prescribed standard of identity, provided that the products are properly labeled (9 CFR 318.6(b)(8)).

FSIS' regulations do not prohibit the use of cattle eyes for human food, although direct consumption of such materials is uncommon in the United States. The tonsils of all livestock species, including cattle, are prohibited for use as ingredients of meat food products (9 CFR 318.6(b)(6)). The trigeminal ganglia of cattle are not sold directly as consumer products. However, the heads of cattle (commonly referred to as ''market heads'') are permitted for use as human food and are sold to retail establishments where they are used to produce edible products. Some retail establishments sell market heads of cattle directly to consumers. Cattle market heads contain skull, eyes, trigeminal ganglia, and fragments of brains.

Meat that has been trimmed from the head and cheeks of cattle is permitted to be used in FSIS-regulated products, although some product standards place certain restrictions on the use of head and cheek meat (for examples see 9 CFR 319.81, 9 CFR 319.199, 9 CFR 319.300 9 CFR 319.301, and 9 CFR.303) Head or cheek meat may contain CNS materials if the meat is not removed before the skull is fragmented or split. Although rare, the skulls of cattle are sometimes

[1] For this study, low levels of infectivity were assumed for the spleen and eyes based on scrapie experiments. The spleen has not demonstrated infectivity in cattle.

intentionally split to remove materials contained within the cranial cavity, such as the pituitary gland. The skulls of cattle are sometimes unintentionally fragmented, and the brains of the animals exposed, when a mechanical device is used to remove horns from cattle. In some instances, in addition to the fragmentation that occurs during horn removal, the brain has also been penetrated by the captive bolt of a stun gun, which results in a hole with weeping material that may contain CNS tissue. In these cases, when the head and cheek meat are removed, the heads of the cattle may be manipulated in such a way as to potentially contaminate the meat. Contamination of head or cheek meat with trigeminal ganglia is unlikely because the trigeminal ganglia are embedded within the skull and are not likely to be removed when the meat is harvested.

Meat Produced Using Advanced Meat Recovery Systems and Mechanically Separated (Species) Meat Food Product

Advanced Meat Recovery. Advanced Meat Recovery (AMR) is a technology that enables processors to remove the attached skeletal muscle tissue from livestock bones without incorporating significant amounts of bone and bone products into the final meat product. When produced properly, product from AMR systems is comparable to meat derived by hand deboning and can be labeled as ''meat'' (9 CFR 301.2). Under the FSIS regulations, spinal cord is not a component of meat, and therefore, product from AMR systems identified as ''meat'' that contains spinal cord is misbranded.

From January through August 2002, FSIS conducted a survey of AMR products derived from the vertebral column of cattle to establish a baseline for the prevalence of spinal cord and DRG tissue in beef AMR products (referred to as the 2002 Beef AMR Survey) (Ref. 15 and 16, available for viewing by the public in the FSIS docket room and on the Internet at *http://www.fsis.usda.gov/oa/topics/AMRAnalysis.pdf and http://www.fsis.usda.gov/OA/topics/AMRSurvey.pdf).* In the 2002 Beef AMR Survey, the Agency found that while some establishments were able to consistently produce beef AMR product that was free of spinal cord and DRG tissue, a majority of the establishments had difficulty keeping spinal cord and DRG out of their AMR products. Overall, FSIS found that that approximately 76% (25 of 34) of the establishments whose AMR product was tested had positive laboratory results for spinal cord, DRG, or both in their final beef AMR products. The survey also found that approximately 35% (89 of 256) of all final AMR product samples that were tested had positive laboratory results for spinal cord, DRG, or both.

In March 2003, after completion of the 2002 Beef AMR Survey, FSIS implemented a routine regulatory sampling program of beef products from AMR systems as an additional measure to prevent misbranding of beef AMR products. Prior to the implementation of this regulatory sampling program, FSIS inspection program personnel collected AMR product samples for analysis for the presence of spinal cord tissue only if they believed that the establishment was not completely removing spinal cord from the vertebral column before the vertebral bones entered the AMR system (FSIS Directive 7160.2, April 14, 1997). Under the revised regulatory sampling program, FSIS inspection program personnel take samples of beef AMR product on a routine basis to verify that spinal cord tissue is not present in such product (FSIS Directive 7160.03, Revision 1, August 25, 2003). If spinal cord tissue is detected in beef AMR product, FSIS inspection program personnel take regulatory control action against the AMR product and equipment to prevent misbranded product from entering commerce. If the establishment has distributed misbranded beef AMR product, FSIS requests a voluntary recall.

Removal of the spinal cord before the vertebral columns enter the AMR system does not always ensure that spinal cord or DRG will not be incorporated into the final product. The Harvard study found that, if a beef carcass is mis-split when the spinal cord is removed, a portion of the spinal cord may remain encapsulated in the spinal canal of the vertebral column, and, if it is not removed before the vertebral bones enter the AMR system, the spinal cord could contaminate the final AMR product. Even when the spinal cord is completely removed from the vertebral column, the DRG of cattle are firmly attached to the bones of the vertebral column and are not removed along with the spinal cord. Thus, removing the spinal cord from the vertebral column does not prevent the DRG from entering an AMR system and becoming incorporated into the final AMR product.

Although FSIS and the regulated industry have recently taken actions to prevent the incorporation of spinal cord and, in some instances, DRG, in beef AMR products (Ref. 15 and 16, available for viewing by the public in the FSIS docket room), FSIS continues to detect spinal cord and DRG in its routine regulatory sampling of beef AMR products, although to a lesser extent than it did in the 2002 Beef AMR Survey. In its routine regulatory sampling conducted from March to December in 2003, FSIS detected spinal cord in 23 of 340 randomly scheduled samples, an estimated prevalence of 6.8 percent. In addition, the prevalence in follow-up samples was 13.6 percent, indicating that establishments with an initial positive continued to have some problems controlling for spinal cord in beef AMR systems. While FSIS was testing samples for spinal cord, FSIS also recorded the results for DRG. The prevalence for DRG was found in 10.9 percent of the samples in which DRG was recorded.

Under the current regulations, AMR product that contains DRG is not misbranded and can be identified as meat. However, given the nature of DRG, and the fact that BSE has been confirmed in a cow in the United States, FSIS has reconsidered its approach to this tissue and is issuing a separate interim final rule on AMR systems in this edition of the **Federal Register** that reflects recent developments that have occurred with regard to BSE. The interim final rule on AMR systems also establishes non-compliance criteria to discern ''meat'' from non-meat product.

Mechanically Separated (MS)(Beef). MS(Beef) meat food product is a finely comminuted product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of cattle carcasses and parts of carcasses that meets the specifications contained in 9 CFR 319.5, the regulation that prescribes the standard of identity for MS(Species). Unlike AMR systems in which bone and bone products are not purposefully incorporated in the final meat product, MS(Species) systems are designed to purposefully incorporate significant amounts of bone and bone components in the resulting meat food product. The specifications for product identified as MS(Species) in 9 CFR 319.5 do not establish limits on the incorporation of spinal cord or DRG into this product. Although beef products produced using AMR systems that contain spinal cord cannot be identified as meat, if these products meet the specifications contained in 9 CFR 319.5, they are permitted to be labeled as MS(Beef).

Under the current regulations, MS(Species) product is permitted for use as an ingredient in other processed meat and poultry products in limited amounts (9 CFR 319.6). When MS(Beef) is used as an ingredient in meat or poultry products, it must be identified in the ingredients statement as

MS(Beef). However, the fact that MS(Beef) may contain spinal cord or DRG is not required to be conveyed on the labeling of MS(Beef) product or processed products that contain MS(Beef).

The fact that MS(beef) has been permitted to include spinal cord and DRG makes this product an obvious source of potential human exposure to the BSE agent. Given that a case of BSE was recently confirmed in the United States, FSIS believes that it is necessary to remove this high-risk product from the human food supply. Therefore, in this interim final rule, the Agency is banning the use of MS(beef) for human food. Accordingly, no product may bear the label (MS(Beef)). However, certain products from bones that do not contain CNS tissue, *e.g.*, long bones, that may contain excess bone solids or bone marrow may be produced but must be labeled with an appropriate common or usual name (refer to the interim final rule, ''Meat Produced by Advanced Meat/Bone Separation Machinery and Meat Recovery Systems,'' docket number 03–038IF published in this edition of the **Federal Register**).

The Harvard Risk Assessment

In April 1998, USDA commissioned the Harvard Center for Risk Analysis to conduct an analysis and evaluation of the current measures implemented by the United States government to prevent the spread of BSE in the United States and to reduce the potential exposure of Americans to the BSE agent. The risk assessment (referred to below as the Harvard study) reviewed available scientific information related to BSE and other TSEs, assessed pathways by which BSE could potentially occur in the United States, and identified measures that could be taken to protect human and animal health in the United States (Ref. 17, available for viewing by the public in the FSIS docket room and on the Internet at *http://www.fsis.usda.gov/OA/topics/bse.htm)*.

The Harvard study concluded that if introduced, due to the preventive measures currently in place in the United States, BSE is extremely unlikely to become established in the United States. Should BSE enter the United States, the Harvard study concluded that only a small amount of potentially infective tissues would likely reach the human food supply and be available for human consumption. The Harvard study expressed the amount of infectivity in terms of cattle oral ID50s for the purpose of quantifying both animal and human exposure to the BSE agent. A cattle oral ID50 is the amount of infectious tissue that would be expected to cause 50% of exposed cattle to develop BSE.

Because the exact quantitative relationship between human exposure to the BSE agent and the likelihood of human disease is unknown, the Harvard study did not evaluate the quantitative likelihood that humans will develop vCJD if BSE were introduced into the United States.

The Harvard study also did not address potential human exposure to the BSE agent through products containing ingredients of bovine origin, such as some pharmaceuticals, gelatin, and beef stocks, extracts, and flavorings. Many of these products are derived through the edible rendering process. FSIS is working with FDA, the agency that regulates the use of these products, to address the impact of this issue.

The Harvard study identified three pathways or practices that could contribute most to either human exposure to the BSE agent or to the spread of BSE should it be introduced into the United States. The three pathways are:

- Noncompliance with FDA regulations prohibiting the use of certain proteins in feed for cattle and other ruminants;
- Rendering of animals that die on the farm and use (through illegal diversion or cross-contamination) of the rendered product in ruminant feed;
- Inclusion of high-risk tissue from cattle, such as brain and spinal cord, in edible products.

FDA and USDA's APHIS are taking action to address the first two pathways. FDA is enhancing its enforcement of the feed ban and is evaluating whether further rulemaking is needed (*see* Advance Notice of Proposed Rulemaking, ''*Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed*,'' 67 FR 67572, November 6, 2002). APHIS is developing approaches to control the potential risk that dead stock and non-ambulatory animals could serve as potential pathways for the spread of BSE (*see* Advance Notice of Proposed Rulemaking, ''*Risk Reduction Strategies for Potential BSE Pathways Involving Downer Cattle and Dead Stock of Cattle and Other Species*,'' 68 FR 2703, January 21, 2003). FSIS is prohibiting the use of certain materials from cattle for human food to address the third potential pathway identified in the Harvard study, the inclusion of high-risk tissues in edible product. In addition, in a separate rulemaking published in this edition of the **Federal Register**, FSIS is prohibiting the use of penetrative stunning devices that inject air into the cranial cavity of cattle to ensure that portions of the brain are not dislocated into the tissues of the carcass as a consequence of humanely stunning cattle during the slaughter process (*see* ''*Prohibition on the Use of Certain Stunning Devices Used to Immobilize Cattle During Slaughter*,'' Docket #01–033IF). Although FSIS is not aware of any cattle slaughter establishments in the United States that use air-injection stunning, research has shown that this practice poses a risk of exposing humans to materials that could contain the BSE agent. Given that a case of BSE was recently confirmed in the United States, FSIS believes that this prohibition is a necessary measure to help strengthen the U.S. Government's actions to prevent human exposure to the BSE agent.

The Harvard study concluded that, based on conditions as they existed in 2001, if 10 infected cows were introduced into the United States, on average, three additional new cases of BSE in cattle would be expected. In fact, Harvard predicted that there was a 75 to 95% chance that there would be no new cases at all. The extreme case (95th percentile of the distribution) predicted 11 new cases. However, in all cases, the system in 2001 was robust enough so that model predicts that the disease would be quickly cleared from the United States with virtually no chance that there would be any infected animals 20 years following the import of the 10 infected cattle.

The Harvard study concluded the greatest sources of potential human exposure to the BSE agent would be human consumption of cattle brain (26% of the total potential exposure on average), cattle spinal cord (5% of the total potential exposure on average), and beef products derived from AMR systems (57% of the total potential exposure on average). The Harvard study also determined that other potential human exposure routes to the BSE agent include consumption of bone-in beef (11% of the total potential exposure on average), and intestine (2% of the total potential exposure on average). However, as stated in the Harvard study report, these estimates are likely to overstate true human exposure because they represent the amount of infectivity presented for human consumption but do not take into account waste or actual consumption rate. For example, the reported quantity for potential exposure to infectivity in bone-in beef reflects the presence of spinal cord and DRG in a fraction of cuts like T-bone steaks, although the spinal cord and DRG may never be consumed in these cuts of meat.

The Harvard study divided potential sources of human exposure to BSE infectivity into two categories: specific high-risk tissues and contamination of low risk tissues with high-risk tissues. Specific high-risk tissues identified by Harvard, in order of infectivity, include: brain, spinal cord, DRG, distal ileum, and the trigeminal ganglia and other tissues found in the head (*e.g.*, eyes). Since brain and spinal cord of cattle infected with BSE contain most of the BSE infectivity in the animal, the Harvard study concluded that, if BSE were present in the United States, human consumption of bovine brains and spinal cords would be an obvious source of exposure to the BSE agent.

The Harvard study identified the production of meat through the use of AMR systems as the most important means by which low risk tissue can become contaminated with high-risk tissues because AMR systems can leave spinal cord and DRG in the recovered meat. Assuming that there is no SRM ban in place, the Harvard study estimated that beef AMR product could account for approximately 57% of the potential human exposure to the BSE agent.

Specified Risk Materials (SRMs)

Materials designated as SRMs. In determining which materials of cattle should be removed from the human food supply, FSIS considered the data on the age distribution of confirmed BSE cases in the United Kingdom, the findings of the pathogenesis studies conducted in the United Kingdom, and the findings of the BSE risk analysis conducted by Harvard.

After considering the factors mentioned above, together with the fact that a case of BSE was recently confirmed in the United States, FSIS has decided to designate the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and DRG of cattle 30 months of age and older, and the tonsils and distal ileum of all cattle as SRMs, declare them inedible, and prohibit their use for human food. The Agency believes that removing these materials from the human food supply is a prudent and appropriate measure for preventing human exposure to the BSE agent in the United States.

Except for the skull and vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum) of cattle 30 months of age and older, the materials listed as SRMs in this interim final rule are all materials that have demonstrated infectivity in cattle naturally or experimentally infected with BSE. Thus, in this rule, FSIS is designating all materials from cattle that have demonstrated BSE infectivity as SRMs, regardless of the level or proportion of infectivity contained in each tissue.

Although the skull or vertebral column of cattle infected with BSE have not demonstrated infectivity, the skull contains the eyes, trigeminal ganglia, and brain, and the vertebral column contains DRG and spinal cord. Thus, because they contain high-risk tissues, FSIS is including skulls and vertebral columns (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum) from cattle 30 months of age and older in the list of SRMs that the Agency is declaring inedible and prohibiting for human food. Head meat, cheek meat, and tongue are not part of the skull. Therefore, under this interim final rule, these materials may continue to be used for human food, provided they are not contaminated with SRM. Unlike other parts of the vertebral column, the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum do not contain spinal cord or DRG. Therefore, FSIS is excluding these parts of the vertebral column from the materials designated as SRMs. Under this interim final rule, bone-in beef from cattle 30 months of age and older may be prepared from these sections of the vertebral column. These sections of the vertebral column may also be used as a source material for products produced from edible rendering.

The Harvard study identified the production of meat through the use of AMR systems as the most important means by which low risk tissue can become contaminated with high-risk tissues, such as spinal cord and DRG. Furthermore, as discussed above, although FSIS and the regulated industry have taken actions to prevent the incorporation of spinal cord and, in some instances, DRG, in beef AMR products, FSIS continues to detect spinal cord and DRG in its routine regulatory sampling of this product. By designating the vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum) from cattle 30 months of age and older as SRM and prohibiting its use for human food, FSIS will ensure that spinal cord and DRG from cattle 30 months of age and older are not incorporated into beef AMR product.

The Harvard study determined that some potential exposure to BSE infectivity would result from the presence of spinal cord and DRG in certain bone-in cuts of beef, such as T-bone steaks. By designating vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum) from cattle 30 months of age and older as SRM and prohibiting its use for human food FSIS will ensure that bone-in cuts of meat from cattle 30 months of age and older will not contain spinal cord or DRG.

The Harvard study did not address potential human exposure to the BSE agent through beef stocks, broths, or other products produced from the edible rendering process. However, it is possible that, when vertebral column bones are used as a source material for products produced from edible rendering, spinal cord and DRG could become dislodged from the vertebral bones and incorporated into the final product. By designating vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum) from cattle 30 months of age and older as SRM and prohibiting its use for human food FSIS will ensure that spinal cord and DRG from cattle 30 months of age and older will not be incorporated into beef products produced from the edible rendering process.

Because of its proximity to the vertebral column, some hand-deboned meat may contain DRG depending on the technique used to recover the meat from the bone. Thus, hand-deboned meat from cattle could be a potential source of human exposure to DRG. FSIS is not aware of any data on the extent to which DRG are found in hand-deboned meat. FSIS is examining this issue in a study it is conducting to delineate the characteristics of hand-deboned meat. FSIS is not, at this time, prohibiting hand-deboned meat from the vertebral columns of cattle 30 months of age and older for use as human food. The Agency requests comments on this issue.

The SRMs prohibited for human food in this interim final rule are the same materials prohibited for use as human food by Canada, thus establishing a consistent standard in both countries. The Canadian SRMs include the skull, brain, trigeminal ganglia, eyes, tonsils, spinal cord, and DRG from cattle 30 months of age and older, and distal ileum from all cattle. Although the vertebral column (excluding the vertebrae of the tail, the transverse process of the thoracic and lumbar

vertebrae, and the wings of the sacrum) from cattle 30 months of age and older is not identified as SRM in the Canadian regulations, to ensure complete removal of potentially risky DRG from the human food supply, the Canadian Food Inspection Agency (CFIA) requires that the vertebral column of cattle 30 months of age and older, excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum, be removed and disposed of as inedible product (Meat Hygiene Directive 2003–18 (Amended), July 24 2003). The CFIA also prohibits the use of vertebral columns from cattle 30 months of age and older as a raw material in the preparation of mechanically separated meat or finely textured meat (Meat Hygiene Directive 2003–18 (Amended), July 24, 2003). The Canadian provisions for the removal of SRMs from the carcasses of cattle slaughtered in official Canadian establishments can be accessed on the Internet at *http://www.inspection.gc.ca/english/anima/meavia/mmopmmhv/chap4/annexne.shtml.*

The Canadian SRMs include the distal ileum from all cattle. However, the CFIA presently requires that the small intestine of all cattle be removed and disposed of as inedible product (Meat Hygiene Directive 2003–18 (Amended), July 24, 2003). Therefore, FSIS is designating, consistent with the Canadian rule, the distal ileum of the small intestine as SRM. To ensure that the distal ileum is completely removed from the carcass, FSIS is requiring that establishments remove the entire small intestine and that it be disposed of as inedible. Processors may be able to effectively remove just the distal ileum, and, accordingly, the Agency requests comments on this issue.

Rationale. Given the way that infectivity occurs in BSE-infected cattle, and the fact that a case of BSE has been detected in the United States, FSIS has determined that certain materials from cattle present sufficient risk of exposing humans to the BSE agent that it is prudent and appropriate to find that such materials are unfit for human food within the meaning of section 1(m)(3) of the FMIA (21 U.S.C. 601(m)(3)). For the reasons presented above, FSIS has concluded that these materials are the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and DRG of cattle 30 months of age and older, and the tonsils and distal ileum of all cattle.

The brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and DRG of cattle 30 months of age and older, and the tonsils and distal ileum of all cattle, present a persistent risk of exposing humans to the BSE agent because, in pre-clinical BSE-infected cattle, infectivity in most of these tissues is not readily ascertainable. Thus, humans could unknowingly be exposed to the BSE agent through consumption of these materials.

By designating the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and DRG of cattle 30 months of age and older, and the tonsils and distal ileum of all cattle as SRMs, declaring that they are inedible, and prohibiting their use for human food, FSIS will ensure that materials that could present a significant risk to human health, but whose infectivity status cannot be readily ascertained, are excluded from the human food supply.

Procedures for the Removal, Segregation, and Disposition of SRMs

In this interim final rule, FSIS is requiring that establishments that slaughter cattle and establishments that process the carcasses or parts of cattle develop, implement, and maintain written procedures for the removal, segregation, and disposition of SRMs (section 310.22(d)(1)). The Agency is not prescribing specific procedures that establishments must follow because FSIS believes that establishments should have the flexibility to implement the most appropriate procedures that will best achieve the requirements of this rule.

Establishments are responsible for ensuring that SRMs are completely removed from the carcass, segregated from edible products, and disposed in an appropriate manner. Establishments must address their control procedures in their HACCP plans, Sanitation SOPs, or other prerequisite programs. FSIS will ensure the adequacy and effectiveness of the establishment's procedures.

This interim final rule also requires (section 310.22(d)(4)) that establishments that slaughter cattle and establishments that process the carcasses or parts of cattle maintain daily records that document the implementation and monitoring of their procedures for the removal, segregation, and disposition of SRMs, and that the establishments make these records available to FSIS personnel on request.

FSIS will develop compliance guidelines for use by very small and small establishments to assist them in the development of validated methods for meeting the requirements of this interim final rule. FSIS believes that the use of the Canadian guidance on SRM removal generally is acceptable. FSIS will assess whether additional guidance is necessary (see the FSIS docket room and the FSIS Web site for the link to the Canadian and other compliance guidance information).

Verification of the Age of Cattle

Most of the materials that FSIS is prohibiting for use as human food in this rulemaking are from cattle 30 months of age and older. Thus, FSIS is prescribing the method that inspection program personnel will use to determine the age of cattle slaughtered in official establishments, to verify that the establishments are effectively segregating SRMs from edible materials.

The Agency is aware of two methods that can be used to verify the age of cattle slaughtered in official establishments: (1) Documentation that identifies the age of the animal, such as a birth certificate, cattle passport, or some other form of identification, that is presented with the animal when it arrives for slaughter, and (2) examination of the dentition of the animal to determine whether at least one of the second set of permanent incisors has erupted (the permanent incisors of cattle erupt from 24 through 30 months of age). The Agency has decided to use a combination of both methods.

If the establishment has records that document the age of the cattle slaughtered in the facility, FSIS inspection program personnel will examine the records. If the inspection program personnel conclude that the records are accurate and reliable, they will accept the records as verification of the age of the cattle. However, if FSIS inspection program personnel examine the records and find significant reasons for questioning their validity, they will verify the age of the cattle through dental examination. If the establishment does not have records that document the age of the cattle presented for slaughter, or the inspection program personnel have any reason to question the age of the animals, the Agency will verify age through dental examination.

In establishments that only process the carcasses and parts of carcasses of cattle, the Agency will verify age through establishment records that document the age of the cattle from

which the carcasses were derived. If the establishment does not have records that document the age of the cattle from which the carcasses were derived, it must handle all carcasses and parts of carcasses as if they came from cattle 30 months of age and older.

Although there are various methods of cattle identification in the United States, there is no national cattle identification system. Thus, there is currently no uniform standard of documentation that FSIS can rely on to accurately verify the age of cattle slaughtered in official establishments. On December 30, 2003, the Secretary of Agriculture announced that the USDA will implement a system of national animal identification. The development of such a system has been underway for more than a year and a half to achieve uniformity, consistency, and efficiency across this national system.

FSIS has developed instructions for use by its inspection personnel in verifying the age of cattle that is available for viewing by the public in the FSIS docket room and posted on the FSIS Web site.

Non-Ambulatory Disabled Cattle

Current regulatory requirements. FSIS' regulations prohibit for use as human food all livestock, including cattle, with clinical signs of a CNS disorder (9 CFR 309.4) and livestock that are in a dying condition or that died otherwise than by slaughter (9 CFR 309.3). Under the current regulation, all seriously crippled livestock and livestock commonly termed ''downers'' presented for slaughter are automatically suspected of being affected with a disease or condition that may require condemnation of the animal, in whole or in part, and are identified as ''U.S. Suspects'' (9 CFR 309.2(b)). Such animals are examined at ante-mortem inspection by an FSIS veterinarian, and a record of the veterinarian's clinical findings accompanies the carcass to post-mortem inspection if the animal is not condemned on ante-mortem inspection.

Post-mortem inspections of the carcasses of ''U.S. Suspect'' livestock are performed by veterinarians rather than by food inspectors, and the results of this inspection are recorded. ''U.S. Suspects,'' unless otherwise released pursuant to 9 CFR 309.2(p), must be set apart and slaughtered separately (9 CFR 309.2(n)). If, on post-mortem inspection, the meat and meat food products from such animals are found to be not adulterated, such products may be used for human food (9 CFR 311.1).

Non-ambulatory cattle and BSE. Surveillance data from European countries in which BSE has been detected, indicate that cattle with clinical signs of a CNS disorder, dead cattle, and cattle that can not rise from a recumbent position (in Europe these cattle are distinguished either as ''fallen stock'' if not for human consumption or ''emergency slaughter'' cattle if for human consumption) have a greater incidence of BSE than healthy slaughter cattle. For example, in 2002 the EU reported that for healthy cattle 55–60 months of age, there were 0.55 positive tests for BSE per 10,000 animals tested compared with 3.05 positive tests for BSE per 10,000 cattle tested for the high-risk cattle (*i.e.*, fallen stock, emergency slaughter and animals that show clinical signs of BSE on ante-mortem inspection) (Ref. 18, available for viewing by the public in the FSIS docket room). In addition, an analysis of a targeted screening program for BSE in Switzerland found that when high-risk cattle were targeted for BSE testing, the odds of finding a BSE case was 49 times higher in fallen stock and 58 times higher in emergency-slaughtered cattle than in cattle tested under passive surveillance, *i.e.*, clinical BSE suspects reported to the veterinary authorities (Ref. 19, available for viewing by the public in the FSIS docket room). This study also found that the BSE cases detected through targeted screening of high risk animals were on average four months younger than the BSE cases detected through passive surveillance of clinical suspects.

Surveillance for BSE in Europe has also shown that the typical clinical signs associated with BSE cannot always be observed in non-ambulatory cattle infected with BSE because the signs of BSE often cannot be differentiated from the typical clinical signs of the many other diseases and conditions affecting non-ambulatory cattle. Furthermore, as discussed in greater detail below, there are limitations with the diagnostic tests for BSE that are available today. Under the current testing methods, which are conducted on sections of the brain or spinal cord, certain tissues of cattle infected with BSE, such as the distal ileum and tonsils, may contain BSE infectivity even though the diagnostic test does not show that the animal has the disease. Thus, permitting the carcasses of non-ambulatory cattle to be used for human food if the animal tests negative for BSE will not provide the same level of protection against human exposure to the BSE agent that prohibiting these cattle from entering the human food supply will.

Revised regulatory requirements. Because they present a risk of introducing the BSE agent into the human food supply, FSIS has determined that the carcasses of non-ambulatory disabled cattle are unfit for human food under section 1(m)(3) of the FMIA and that all non-ambulatory disabled cattle that are presented for slaughter should be condemned. Therefore, FSIS is amending its ante-mortem inspection regulations to require the condemnation of non-ambulatory disabled cattle presented for slaughter.

Specifically, FSIS is amending the regulations that prescribe requirements for ''U.S. Suspect'' livestock in 9 CFR 309.2 by replacing the reference to ''animals commonly termed 'downers' '' in § 309.2(b) with the term ''non-ambulatory disabled livestock.'' FSIS is making this modification because there is currently no regulatory definition of ''downer'' and the Agency believes that the term ''non-ambulatory disabled'' more accurately describes the cattle that it believes should be prohibited for human food. ''Non-ambulatory disabled livestock'' is defined as livestock that cannot rise from a recumbent position or that cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column, or metabolic conditions. Thus, this definition includes livestock that are non-ambulatory due to an acute injury in route to the slaughter facility, such as a broken leg, as well as livestock that are non-ambulatory due to an underlying pathological condition.

FSIS is excluding all non-ambulatory disabled cattle from the human food supply, regardless of the reason for their non-ambulatory status or the time at which they became non-ambulatory. Thus, if an animal becomes non-ambulatory in route to the establishment due to an acute injury, it must be humanely removed from the truck, humanely euthanized, and the carcass properly disposed of. Likewise, cattle that become non-ambulatory on the establishment premises, such as an animal that breaks its leg as it is unloaded from the truck, are also required to be humanely moved, humanely euthanized, and the carcass properly disposed of.

FSIS is also amending the regulations that prescribe requirements for dead, dying, disabled, or diseased and similar livestock in 9 CFR 309.3 to require that non-ambulatory disabled cattle be condemned and disposed of in accordance with 9 CFR 309.13. Unless another provision in part 309 applies, under § 309.13, condemned livestock must be killed by the establishment, if

not already dead. Such animals cannot be taken into the establishment to be slaughtered or dressed, or conveyed into any department of the establishment that is used for edible products. The carcasses of condemned livestock must be disposed of in the manner provided for in part 314.

Under part 314, condemned carcasses must be disposed of by ''tanking,'' *i.e.*, inedible rendering (9 CFR 314.1). For those establishments that do not have facilities for tanking, condemned carcasses may be disposed of by incineration or denatured by crude carbolic acid, cresylic disinfectant, a formula consisting of one part FD&C No. 3 green coloring, 40 parts water, 40 parts liquid detergent, and 40 parts oil of citronella, or any other proprietary material approved by the Administrator of FSIS (9 CFR 314.3). The Agency is aware that many establishments use activated charcoal to denature inedible materials. Therefore, FSIS recognizes activated charcoal as a proprietary substance approved by the Administrator.

The regulations in 9 CFR 311.27 permit injured livestock to be slaughtered for humane reasons at hours when an inspector is not available to perform ante-mortem inspection, provided that the carcasses and parts of such animals are kept for inspection. To ensure that non-ambulatory disabled cattle are not slaughtered under this provision and their carcasses and parts used for human food, FSIS is amending 9 CFR 311.27 to prohibit the carcasses and parts of carcasses from cattle slaughtered on an emergency basis without ante-mortem inspection from being used for human food. Without performing ante-mortem inspection on cattle slaughtered on an emergency basis, FSIS inspection program personnel cannot determine whether the carcasses or parts from such cattle came from a non-ambulatory disabled animal, and thus cannot find that the carcasses and parts from these emergency slaughter cattle are not adulterated.

Testing Cattle for BSE

There is no sensitive and reliable live animal test for BSE, and the available post-mortem diagnostic tests can only indicate that cattle have the disease two to three months before the onset of clinical disease or after the onset of clinical disease. Given the limitations of the diagnostic tests available today, which are conducted on sections of the brain or spinal cord, certain tissues of cattle infected with BSE, such as distal ileum and small intestine, may contain BSE infectivity even though the diagnostic test will not show that the animal has the disease. Thus, exempting materials from cattle that test negative for BSE from the restrictions in this rulemaking will likely not provide the same level of protection as prohibiting those materials for use as human food.

Therefore, under this interim final rule, the use of specified risk materials from cattle is prohibited for human food regardless of whether the animal has been tested for BSE. FSIS requests comments on whether further consideration should be given to exempting cattle that have tested negative for BSE from the requirements contained in this interim final rule, and if so, what testing methods and protocols the Agency should accept as providing acceptable and reliable results.

Request for Comments

FSIS requests comments on the measures contained in this interim final rule, and specifically on whether the Agency has chosen measures that are most appropriate for preventing human exposure to the BSE agent in the United States.

Emergency Action

The fact that a cow in Washington State tested as positive for BSE on December 23, 2003, makes this rulemaking necessary on an emergency basis. As discussed above, BSE infectivity has been confirmed in the brain, eyes, trigeminal ganglia, tonsils, spinal cord, DRG and distal ileum. Furthermore, most of these tissues have demonstrated infectivity before experimentally infected animals developed clinical signs of disease. Thus, BSE infectivity in these tissues is not readily ascertainable. Therefore, FSIS has determined that it must take immediate action to ensure that materials that could present a significant risk to human health are excluded from the human food supply.

Under these circumstances, the FSIS Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest, and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**. FSIS will consider comments received during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, the Agency will publish another document in the **Federal Register**. The document will include a discussion of any comments received in response to this interim rule and any amendments made as a result of those comments.

In an effort to ensure that establishments comply with this interim final rule upon publication in the **Federal Register**, FSIS will provide guidance to inspection program personnel regarding the implementation strategy. At a minimum, FSIS inspection program personnel will be directed to meet with management of each affected establishment to discuss how and when the establishment expects to complete its reassessment of its HACCP plan and to ensure that SRMs and MS (Beef) do not adulterate product.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. It has been determined to be economically significant for purposes of Executive Order 12866 and therefore, has been reviewed by the Office of Management and Budget (OMB).

The emergency situation surrounding this rulemaking makes timely compliance with Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable.

FSIS is currently assessing the potential economic effects of this action. When this work is complete, the Agency will publish a notice of availability in the **Federal Register** and will provide an opportunity for public comment.

Executive Order 12988

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5. must be exhausted before any judicial challenge of the application of the provisions of this interim final rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or PPIA.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim final rule have been submitted for emergency approval to the Office of Management and Budget (OMB).

Title: Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle.

Type of collection: New.

Abstract: In this interim final rule, FSIS is requiring that establishments that slaughter cattle and establishments that process the carcasses or parts of cattle develop written procedures for the removal, segregation, and disposition of SRMs. FSIS is also requiring that these establishments maintain daily records sufficient to document the implementation and monitoring of their procedures for the removal, segregation, and disposition of SRMs, and any corrective actions taken. These records are needed for FSIS to verify the effectiveness of an establishment's procedures.

Estimate of burden: FSIS estimates that it will take establishments approximately 8 hours to develop written procedures for the removal, disposition, and segregation of SRMs. FSIS estimates that an establishment will spend about five minutes a day developing an average of nine monitoring records, which includes documentation of any corrective actions taken, and an additional two minutes a day to file each record.

Respondents: Official establishments that slaughter cattle and official establishments that process the carcasses or parts of cattle.

Estimated Number of Respondents: 2,500.

Estimated Number of Responses per Respondent: 2,701.

Estimated Total Annual Burden on Respondents: 807,500 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 112 Annex, 300 12th Street, SW., Washington, DC 20250 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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the 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, 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 both John O'Connell, Paperwork Reduction Act Coordinator, at the address provided above, and the Desk Officer for Agriculture, Office of information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253. To be most effective, comments should be sent to OMB within 30 days of the publication date of this interim final rule.

Government Paperwork Elimination Act (GPEA)

FSIS is committed to achieving the goals of the GPEA, which requires that Government agencies, in general, provide the public with the option of submitting information or transacting business electronically to the maximum extent possible. Under this interim final rule, records that document the implementation and monitoring of an establishment's procedures for the removal, segregation, and disposition of SRMs may be maintained on computers, provided that the establishment implements appropriate controls to ensure the integrity of the electronic data. Allowing establishments to comply with the required recordkeeping requirements will reduce data collection time, and information processing and handling by the regulated industry and FSIS.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this final interim final rule and are informed about the mechanism for providing their comments, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS Web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

References

The following sources are referred to in this document. All have been placed on display in the FSIS Docket Room (address above) and may be seen by interested persons between 8:30 a.m. and 4:30 p.m., Monday through Friday. Materials that are not copyright protected may also be accessed on the FSIS Web site as related documents to this interim final rule.

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10. Wells, G.A.H., *et al.*, Infectivity in the ileum of cattle challenged orally with bovine spongiform encephalopathy. Veterinary Record 135, 40–41 (1994).
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15. Analysis of 2002 FSIS Bovine AMR Products Survey Results, prepared by the United States Department of Agriculture, Food Safety and Inspection Service, February 2003. Available on the Internet at *http://www.fsis.usda.gov/oa/topics/AMRAnalysis.pdf.*
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17. Harvard Center for Risk Analysis, Harvard School of Public Health, and Center for Computational Epidemiology, College of Veterinary Medicine, Tuskegee University, November 26, 2001. Evaluation of the Potential for Bovine Spongiform Encephalopathy in the United States.
18. European Commission, 2003. ''Report on the Monitoring and Testing of Ruminants for the Presence of Transmissible Spongiform Encephalopathy (TSE) in 2002,'' p. 49.
19. Doherr, M.G., *et al.*, Targeted screening of high-risk cattle populations for BSE to augment mandatory reporting of clinical suspects. Preventive Veterinary Medicine 51:1–2, 3–16 (2001).

List of Subjects

9 CFR Part 309

Ante-mortem inspection, Disposition of carcasses.

9 CFR Part 310

Post-mortem inspection, Disposition of carcasses.

9 CFR Part 311

Post-mortem inspection, Disposition of carcasses.

9 CFR Part 318

Entry into official establishments, reinspection and preparation of products.

9 CFR Part 319

Food grades and standards, Food labeling, Meat inspection.

■ For the reasons discussed in the preamble, FSIS is amending 9 CFR Chapter III as follows:

PART 309—ANTE-MORTEM INSPECTION

■ 1. The authority citation for part 309 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

■ 2. Paragraph (b) of §309.2 is revised to read as follows:

§ 309.2 Livestock suspected of being diseased or affected with certain conditions; identifying suspects; disposition on post-mortem inspection or otherwise.

* * * * *

(b) All seriously crippled animals and non-ambulatory disabled livestock shall be identified as U.S. Suspects and disposed of as provided in § 311.1 of this subchapter unless they are required to be classed as condemned under § 309.3. Non-ambulatory disabled livestock are livestock that cannot rise from a recumbent position or that cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column, or metabolic conditions.

* * * * *

■ 3. Section 309.3 is revised by adding a new paragraph (e) to read as follows:

§ 309.3 Dead, dying, disabled, or diseased and similar livestock.

* * * * *

(e) Non-ambulatory disabled cattle shall be condemned and disposed of in accordance with § 309.13.

PART 310—POST-MORTEM INSPECTION

■ 4. The authority citation for part 310 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

■ 5. A new § 310.22 is added to read as follows:

§ 310.22 Specified risk materials from cattle and their handling and disposition.

(a) The following materials from cattle are specified risk materials:

(1) The brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia of cattle 30 months of age and older;

(2) The tonsils of all cattle; and

(3) The distal ileum of all cattle. To ensure effective removal of the distal ileum, the establishment shall remove the entire small intestine, and shall dispose of it in accordance with §§ 314.1 or 314.3 of this subchapter.

(b) Specified risk materials are inedible and shall not be used for human food.

(c) Specified risk materials shall be disposed of in accordance with §§ 314.1 or 314.3 of this subchapter.

(d) Procedures for the removal, segregation, and disposition of specified risk materials.

(1) Establishments that slaughter cattle and establishments that process the carcasses or parts of cattle shall develop, implement, and maintain written procedures for the removal, segregation, and disposition of specified risk materials. The establishment shall incorporate such procedures into its HACCP plan or in its Sanitation SOP or other prerequisite program.

(2) Establishments that slaughter cattle and establishments that process the carcasses or parts of cattle must take appropriate corrective action when either the establishment or FSIS determines that the establishment's procedures for the removal, segregation, and disposition of specified risk materials, or the implementation or maintenance of such procedures, have failed to ensure that such materials are adequately and effectively removed from the carcass of cattle, segregated from edible materials, and disposed of in accordance with paragraph (c) of this section.

(3) Establishments that slaughter cattle and establishments that process the carcasses or parts of cattle shall routinely evaluate the effectiveness of their procedures for the removal, segregation, and disposition of specified

risk materials in preventing the use of these materials for human food and shall revise the procedures as necessary whenever any changes occur that could affect the removal, segregation, and disposition of specified risk materials.

(4) *Recordkeeping requirements.* (i) Establishments that slaughter cattle and establishments that process the carcasses or parts of cattle shall maintain daily records sufficient to document the implementation and monitoring of the procedures for the removal, segregation, and disposition of the materials listed in paragraph (a) of this section, and any corrective actions taken.

(ii) Records required by this section may be maintained on computers provided that the establishment implements appropriate controls to ensure the integrity of the electronic data.

(iii) Records required by this section shall be retained for at least one year and shall be accessible to FSIS. All such records shall be maintained at the official establishment 48 hours following completion, after which they may be maintained off-site provided such records can be made available to FSIS within 24 hours of request.

(e) The materials listed in paragraph (a)(1) of this section will be deemed to be from cattle 30 months of age and older unless the establishment can demonstrate that the materials are from an animal that was younger than 30 months of age at the time of slaughter.

PART 311—DISPOSAL OF DISEASED OR OTHERWISE ADULTERATED CARCASSES AND PARTS

■ 6. The authority citation for part 311 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

§ 311.27 [Amended]

■ 7. Section 311.27 is amended as follows:

■ a. By inserting ''of all livestock except for cattle'' in the first sentence after ''the carcass and all parts'' and before ''shall be kept for inspection''.

■ b. By adding the following new sentence at the end of the paragraph: ''The parts and carcasses of cattle slaughtered in the absence of an inspector shall not be used for human food.''

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

■ 8. The authority citation for part 318 is revised to read as follows:

Authority: 7 U.S.C. 138f, 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

§ 318.6 [Amended]

■ 9. Section 318.6 is amended as follows:

■ a. Paragraph (b)(1) is amended by removing the word ''cattle'' and adding the following new sentence at the end of the paragraph: ''Casings from cattle may be used as containers of products provided the casings are not derived from the small intestine.''

■ b. Paragraph (b)(4) is amended by adding the following new sentence at the end of the paragraph: ''Detached spinal cords from cattle 30 months of age and older shall not be used as raw materials for edible rendering.''

■ c. Paragraph (b)(8) is amended by adding the following new sentence at the end of the paragraph: ''The small intestine of cattle shall not be used in any meat food products or for edible rendering.''

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

■ 10. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

■ 11. Section 319.5 is amended as follows:

■ a. A new paragraph (b) is added to read as follows:

§ 319.5 Mechanically Separated Species.

* * * * *

(b) Mechanically Separated (Beef) is inedible and prohibited for use as human food.

* * * * *

Done at Washington, DC, on January 7, 2004.

Garry L. McKee,

Administrator.

[FR Doc. 04–625 Filed 1–8–04; 1:43 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 301, 318, and 320

[Docket No. 03–038IF]

RIN 0583–AC51

Meat Produced by Advanced Meat/Bone Separation Machinery and Meat Recovery (AMR) Systems

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim final rule and request for comment.

SUMMARY: The Food Safety and Inspection Service (FSIS) is issuing this interim final rule on meat produced by advanced meat recovery (AMR) systems. This new regulation is a prophylactic measure designed, in part, to prevent human exposure to the Bovine Spongiform Encephalopathy (BSE) agent by ensuring that AMR systems are not a means of introducing central nervous system tissue into product labeled as ''meat.'' In addition to the measures related to BSE, FSIS is finalizing restrictions related to bone solids and bone marrow for livestock products. This rule articulates the criteria that FSIS will use to ensure that AMR products can be represented as ''meat'' and thus are not adulterated or misbranded. Finally, the Agency is requiring that Federally-inspected establishments that process the carcasses or parts of cattle develop, implement, and maintain written procedures for the removal, segregation, and disposition of specified risk materials (SRMs), including non-complying product from beef AMR systems. Establishments must incorporate these procedures into their HACCP plans or in their Sanitation SOPs or other prerequisite program. FSIS is issuing this document as an interim final rule because of the discovery of a BSE-positive cow in this country.

DATES: This interim final rule is effective January 12, 2004. Comments on this interim final rule must be received by April 12, 2004.

ADDRESSES: Submit written comments to: FSIS Docket Clerk, Docket #03–038IF, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. Reference materials cited in this document and any comments received will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 4:30 p.m., Monday through Friday. Reference materials that are not copyrighted will also be available on the FSIS Web site at *http://www.fsis.usda.gov.* All comments will be available for inspection in the FSIS Docket Room or on the FSIS Web site at *http://www.fsis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Ph.D., Executive Associate, Policy Analysis and Formulation, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Table of Contents

Background

BSE
Previous Rulemaking
Discussion of Public Comments on Docket 96–027P
Overview of this Interim Final Rule and Requests for Comment
Emergency Action
Codified Text

Background

The mission of the Food Safety and Inspection Service (FSIS) is to ensure that meat and meat food products are wholesome, not adulterated, and properly marked, labeled and packaged. Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), FSIS has the authority to determine that product is unfit for human food, *i.e.*, adulterated, within the meaning of section 1(m)(3) of the FMIA (21 U.S.C. 601(m)(3)). Furthermore, a meat or meat food product is misbranded under any of a number of circumstances, including if its labeling is false or misleading in any particular; if it is offered for sale under the name of another food; if it is an imitation of another food, unless its label bears (in type of uniform size and prominence) the word ''imitation'' and, immediately thereafter, the name of the food imitated; or if it purports to be or is represented as a food for which a definition and standard of identity or composition is prescribed by regulations, unless it conforms to the regulations and its label bears the name of the food specified in the definition and standard (21 U.S.C. 601(n)(1), (n)(2), (n)(3), and (n)(7)). This interim final rule addresses both the adulteration and misbranding provisions of the FMIA.

BSE

Bovine Spongiform Encephalopathy (BSE) is a slowly progressive degenerative disease that affects the central nervous system (CNS) of adult cattle and is a member of the family of diseases known as transmissible spongiform encephalopathies (TSEs). TSEs also include scrapie in sheep and goats, chronic wasting disease in elk and deer, and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

The typical incubation period (the time from when an animal becomes infected until it first shows signs of disease) is believed to be from two to eight years. BSE was first documented in the United Kingdom in 1986, and has since been identified and confirmed in a number of other European and non-European nations.

The agent that causes BSE and other TSEs has yet to be fully characterized. The theory that is most accepted in the scientific community is that the agent is a prion, which is an abnormal form of a normal protein known as cellular prion protein, although other types of agents have been implicated. FSIS has determined that this interim final rule is necessary to ensure that AMR systems are not a means of introducing CNS-type tissues (including brain, trigeminal ganglia, spinal cord, and dorsal root ganglia (DRG)), which have been identified as a potential source for the BSE infective agent into the food supply.

Animal Age and BSE Infectivity

Age-of-onset was known and recorded for approximately 135,000 cattle with confirmed clinical BSE in the United Kingdom between 1988 and August 2003. The age distribution data show that, of the cattle that developed clinical BSE in the field, only 0.01 percent were less than 30 months of age. Therefore, cattle younger than 30 months of age are less likely to be in the later stages of BSE incubation than older BSE-infected cattle and are less likely to contain high levels of BSE infectivity. For additional information about the onset of clinical BSE, see the interim final rule ''Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disable Cattle,'' Docket No. 03–025IF, also in this issue of the **Federal Register**.

FSIS is providing a method for its inspection program personnel in slaughter establishments to use to determine the age of cattle when supporting documentation is not provided by the establishment. This is relevant to this rulemaking on advanced meat/bone separation machinery and meat recovery (AMR) systems because AMR systems generally are operated separate from slaughter operations. Thus, establishments will need to process skulls and vertebral columns under control programs (*i.e.*, Hazard Analysis Critical Control Point (HACCP) plans, Sanitation Standard Operation Procedures (Sanitation SOPs), or prerequisite programs) separate from their slaughter operation controls. To ensure that the skulls and vertebral columns are appropriately handled, the slaughter establishment will need to provide documentation associated with the age of the skulls and vertebral columns to the receiving processing operation. Establishments using AMR systems will need to ensure that the skulls and vertebral columns are not from cattle 30 months of age and older.

Infective Tissue

In 2001, the European Commission's Scientific Steering Committee (SSC), an advisory committee for the European Union, considered the amount and distribution of BSE infectivity in a typical case of BSE and estimated that, in an animal with clinical disease, the brain contains 64.1 percent of the total infectivity in the animal, and the spinal cord contains 25.6 percent. According to the SSC, the highest remaining proportion of infectivity in a typical animal with clinical BSE is found in the DRG (3.8 percent). In experimentally infected cattle with clinical BSE, infectivity has been demonstrated in the brain, spinal cord, DRG, trigeminal ganglia, and the distal ileum of the small intestine. For additional information about BSE infectivity, see Docket No. 03–025IF.

The Harvard BSE Risk Assessment

In 1998, USDA commissioned the Harvard Center for Risk Analysis to conduct an analysis and evaluation of the current measures implemented by the government to prevent the introduction and spread of BSE in the United States and to reduce the potential exposure of consumers to the BSE agent.

Using a probabilistic simulation model to characterize the consequences of introducing BSE into the country through a variety of pathways, the Harvard study concluded that the risk to consumers in the United States was low, and that the country is highly resistant to the spread of the disease, if introduced.[1]

In evaluating the potential risk mitigation actions that could be taken to further reduce the likelihood that BSE could spread to cattle or humans, the risk assessment recommended three courses of action. The first is to prevent infected or potentially infected animals or contaminated feed from entering the country. The second is to ensure compliance with Food and Drug Administration's (FDA's) ruminant feed ban. The third is to prohibit the infective materials of BSE-infected animals from entering both the human food and animal feed chains.

The Harvard study divided potential sources of human exposure to BSE infectivity into two categories: Specific high-risk tissues and contamination of low-risk tissues. The former include, in order of infectivity, brain, spinal cord, DRG, distal ileum, trigeminal ganglia, and other tissues found in the head (*e.g.*, eyes and tonsils). As for the latter, the Harvard study indicated that the most important means by which low-risk tissue can become contaminated is through the use of AMR systems that can leave spinal cord and DRG in the recovered meat product.

The AMR Process

AMR systems are newer models of systems that have been used since the 1960s. The new systems emulate the physical action of hand-held high-speed knives for the removal of skeletal muscle tissue from bone through the use of hydraulic pressure. AMR systems apply pressure to detach the meat (skeletal muscle) tissue from the bones in a ''hard separation'' process. Desinewers that typically use belt pressure against a rotating perforated steel drum then separate meat from connective tissue, sinews, and other non-meat components in a ''soft separation'' process. In addition to vertebrae, typical bones processed by piston-driven AMR systems are brisket bones (breast or lower chest), rib bones, flat bones (scapulas), and hip bones (pelvis).

AMR product is an intermediate product that is typically blended at about 5 to 12 percent of the formulation of ground products derived from manufacturing trimmings. Descriptive labeling for the product of AMR includes ''(species) trimmings, finely textured,'' ''finely ground (species),'' or any other term that accurately reflects its form.

AMR technology enables processors to remove attached skeletal muscle tissue from livestock bones without incorporating significant amounts of bone and bone products into the final meat product. When produced properly, product from AMR systems is comparable to meat derived by hand deboning and can be labeled as ''meat'' (9 CFR 301.2). Under the FSIS regulations, spinal cord is not a component of meat, and therefore, product from AMR systems identified as ''meat'' that contains spinal cord is misbranded. Until today, FSIS has not taken regulatory action against ''meat'' containing DRG and other CNS-type tissues.

From January through August 2002, FSIS conducted a survey of AMR products derived from the vertebral column of cattle to establish a baseline for the prevalence of spinal cord and DRG in beef AMR products (referred to as the 2002 Beef AMR Survey). In the 2002 Beef AMR Survey, the Agency found that while some establishments were able to consistently produce beef AMR product that was free of spinal cord and DRG, a majority of the establishments had difficulty keeping spinal cord and DRG out of their AMR products. Overall, FSIS found that that approximately 76% (25 of 34) of the establishments whose AMR product was tested had positive laboratory results for spinal cord, DRG, or both in their final beef AMR products. The survey also found that approximately 35% (89 of 256) of all final AMR product samples that were tested had positive laboratory results for spinal cord, DRG, or both.

In March 2003, after completion of the 2002 Beef AMR Survey, FSIS implemented a routine regulatory sampling program of beef products from AMR systems as an additional measure to prevent misbranding of beef AMR products. Prior to the implementation of this regulatory sampling program, FSIS inspection program personnel collected AMR product samples for analysis for the presence of spinal cord tissue only if they believed that the establishment was not completely removing spinal cord from the vertebral column before the vertebral bones entered the AMR system (FSIS Directive 7160.2, April 14, 1997). Under the revised regulatory sampling program, FSIS inspection program personnel take samples of beef AMR product on a routine basis to verify that spinal cord tissue is not present in such product (FSIS Directive 7160.03, Revision 1, August 25, 2003). If spinal cord tissue is detected in beef AMR product, FSIS inspection program personnel take regulatory control action against the AMR product and equipment to prevent misbranded product from entering commerce. If the establishment has distributed misbranded beef AMR product, FSIS requests a voluntary recall.

Removal of the spinal cord before the vertebral columns enter the AMR system does not always ensure that spinal cord or DRG will not be incorporated into the final product. The Harvard study (discussed below) found that, if a beef carcass is mis-split when the spinal cord is removed, a portion of the spinal cord may remain encapsulated in the spinal canal of the vertebral column, and, if it is not removed before the vertebral bones enter the AMR system, the spinal cord could contaminate the final AMR product. Even when the spinal cord is completely removed from the vertebral column, the DRG of cattle are firmly attached to the bones of the vertebral column and are not removed along with the spinal cord. Thus, removing the spinal cord from the vertebral column does not prevent the DRG from entering an AMR system and becoming incorporated into the final AMR product.

Although FSIS and the regulated industry have recently taken actions to prevent the incorporation of spinal cord and, in some instances, DRG, in beef AMR products, FSIS continues to detect spinal cord and DRG in its routine regulatory sampling of beef AMR products, although to a lesser extent than it did in the 2002 Beef AMR Survey. In its routine regulatory sampling conducted from March to December in 2003, FSIS found spinal cord in 23 of 340 randomly scheduled samples, an estimated prevalence of 6.8 percent. In addition, the prevalence in follow-up samples was 13.6 percent, indicating that establishments with an initial positive continued to have some problems controlling for spinal cord in beef AMR systems. While FSIS was testing samples for spinal cord, FSIS also recorded the results for DRG. The prevalence for DRG was found in 10.9 percent of the samples in which DRG was recorded.[2]

Under the current regulations, AMR product that contains DRG, or any other CNS tissue except spinal cord, is not misbranded and can be identified as meat. However, given the nature of DRG and other CNS tissue except spinal cord, and the fact that BSE has been confirmed in a cow in the United States, FSIS has reconsidered its approach to the presence of all CNS tissues, particularly from cattle, as further discussed below. In addition, for a more complete explanation as to why skulls and vertebral columns of cattle 30 months of age and older are designated as specified risk materials (SRMs) and cannot be used in AMR systems, *see* Docket No. 03–025IF in this issue of the **Federal Register**.

In addition to the measures identified to address BSE through restrictions associated with SRMs, FSIS also is identifying additional measures to restrict the use of beef product and spent bone materials associated with CNS-type tissues from cattle younger than 30 months of age, as described below. Finally, FSIS is finalizing new bone solids and bone marrow restrictions that are slightly modified from those previously proposed for livestock product labeled as ''meat.''

Previous Rulemaking

In 1994, the Agency published a final rule (59 FR 62551) to amend the definition of ''meat'' to include product resulting from AMR systems. The 1994 rule reflected the Agency's position that calcium limits and the physical conformation of the bones exiting the system were sufficient to ensure that the production process was in control, and that the characteristics and composition of the resulting product were those of meat.

The rule required that product resulting from the bone separation process not exceed a calcium content of 0.15 percent or 150 milligrams/100

grams of product (150 mg/100 g) within a tolerance of 0.03 percent or 30 mg/100 g of product for each sample analyzed. The rule also required that the bones emerging from the AMR machinery be comparable to those resulting from hand deboning; that is, they must be essentially intact and in their natural physical conformation, such that they are recognizable as, for example, loin bones and rib bones, when they emerge from the machinery.

Shortly after FSIS issued the 1994 rule, consumer groups expressed concern that the regulatory requirements for meat produced by AMR systems were not being met consistently. Consumer groups alleged that, in certain AMR operations, the starting materials and machinery were being manipulated to produce a product that conformed to the requirements for Mechanically Separated (Species) (MS(Species)), a finely comminuted meat food product that may include spinal cord and dorsal root ganglia (DRG), but not to the requirements for meat. (At the time, FSIS considered spinal cord to be central nervous system (CNS) tissue. However, FSIS did not include DRG within the meaning of CNS tissue. Rather, it considered DRG to be more a part of the peripheral nervous system instead of a CNS-type tissue because it was contained within the nexus between the spinal cord and the muscle tissue.)

In 1995, FSIS conducted a survey of federally inspected meat establishments using AMR systems. Inspection program personnel in 13 of the 48 surveyed establishments reported results that were not in compliance with the requirements for AMR established in the 1994 rule.[3]

To determine whether the product that was being produced by AMR systems was compositionally consistent with hand-deboned meat, in 1996, FSIS began conducting a survey to profile the chemical and histological composition of meat derived from beef neck bones. Beef neck bones from the upper vertebral column are split during the slaughter dressing process, as opposed to long bones which generally are not split, and thus are inherently likely to contribute bone content (*e.g.*, marrow) to the product resulting from the AMR system. Samples were found to contain spinal cord and fragments of other CNS-type tissue. FSIS concluded that the AMR product produced was likely not comparable to corresponding hand-deboned product, even when the calcium criterion of the 1994 rule was for the most part met.

The results of the 1996 survey demonstrated that the provisions of the 1994 rule, if met, were not sufficient to ensure that AMR product would be comparable to hand-deboned meat in composition. A final report on the 1996 survey results is available in the Docket Room and on the FSIS web site.[4]

After considering information from consumer groups about compliance concerns, reviewing the 1995 field survey and the response to a 1996 notice soliciting public comment on that survey, and studying the results of the 1996 neck bone survey, FSIS concluded that it was necessary to propose amending its regulations and to issue a directive to inspection personnel to ensure that manufacturers were not incorporating spinal cord into AMR product labeled as meat. In 1997, FSIS published Directive 7160.2 to instruct inspection program personnel that establishments must completely remove spinal cord from any neck or back bones before the bones enter the AMR system. The directive emphasized that the definition of ''meat'' in 9 CFR 301.2 does not apply when the use of AMR systems results in product that contains spinal cord. FSIS did not address DRG in the directive because, at that time, FSIS did not have validated methodology to identify DRG, and DRG was not yet identified as a potential risk material.

On April 13, 1998, FSIS issued a proposed rule (63 FR 17959), in which it stated that provisions in the 1994 final rule needed revision to prevent misbranding and economic adulteration of AMR product labeled as ''meat.'' Specifically the Agency proposed to: (1) Adopt performance standards for bone solids and bone marrow; (2) adopt a zero tolerance for the presence of spinal cord; and (3) delete the provision that focused upon the condition of the bones emerging from the AMR systems to determine whether or not the production process was in control. The Agency's objective was to ensure that the regulations provided clear standards for industry to meet.

Prior to December 23, 2003, FSIS had not addressed AMR systems in the context of BSE, although FSIS had taken numerous steps to limit the presence of spinal cord in product derived from AMR systems. In particular, in March 2003, FSIS announced the results of the 2002 Beef AMR Survey and stated that FSIS soon would clarify its intent by rulemaking on AMR to ensure that DRG was excluded from the definition of product labeled as ''meat.''

By 2002, FSIS had a validated methodology to detect and discern DRG, there was widespread agreement within the scientific community that DRG was included within the meaning of CNS-type tissue, and there was scientific evidence that DRG carried the BSE infective agent. FSIS did not contemplate addressing tissues of brain and trigeminal ganglia in product from AMR systems because FSIS was not aware of any establishments using bone material, such as skulls, that would contain these tissues in the production of meat. Brain and trigeminal ganglia, along with spinal cord and DRG, all fit within the meaning of CNS-type tissues for purposes of further discussion in this document. Currently, FSIS does not analyze meat for tissues of brain and trigeminal ganglia. However, since skulls may in the future be used in AMR systems, FSIS is reassessing whether it should validate its testing methodology to detect and discern brain and trigeminal ganglia in product recovered from AMR systems.

FSIS has concluded that the 1994 rule, the 1998 proposed rule, and the FSIS Directives will not keep spinal cord and other CNS-type tissue out of product derived from livestock, particularly cattle, that is labeled as ''meat.'' FSIS concludes that restrictions for CNS-type tissues need to be explicitly stated in the regulations, along with a requirement to have written process control procedures and testing by the establishment, to ensure that the process control procedures are effective in producing product labeled as ''meat.''

Furthermore, FSIS has initiated a survey on pork AMR products and believes that the lack of process control regarding the presence of CNS-type tissues in pork product recovered from AMR systems also may be a concern. The new requirements in this interim final rule are applicable, for the most part, to products derived from pork bones.

FSIS has decided to publish this new AMR regulation as an interim final rule and to address both CNS-type tissues and the restrictions related to bone solids and bone marrow. The presence of spinal cord or other CNS-type tissue in AMR product, that is, in meat, particularly from cattle, represents a potential threat to the public health of the United States. The Administrator thus finds that there is good cause to make this new AMR regulation effective immediately. It is especially designed to prevent the occurrence of spinal cord and other CNS-type tissues in ''meat'' and meat food products derived from cattle, and to prevent the occurrence of spinal cord and other CNS-type tissues in ''meat'' derived from livestock other than cattle.

Before explaining in more detail the provisions of this interim final rule, a

brief discussion of the comments received on the proposal and FSIS' responses follows.

Discussion of Public Comments on Docket 96–027P

The 60-day comment period on the 1998 proposed AMR rule ended on June 12, 1998. Forty-five comments were received from food and equipment manufacturers, professional and industrial trade associations, consumers and consumer advocacy organizations, academia, and consultants.

On December 16, 1999, FSIS issued a notice (64 FR 70200) reopening the comment period for an additional 30 days to give the public an opportunity to review and comment on the methods and results used by Agricultural Research Service (ARS) scientists to derive new iron-to-protein values. The Agency also sought comment on a report submitted by a meat industry group regarding economic and worker safety issues relevant to the proposed rule. The reopened comment period closed on January 18, 2000. Twenty-six additional comments were received in response to the notice. The two sets of comments and FSIS' responses are merged in this ''Comment'' section.

Bone Solids

Comment: Many commenters disagreed with the proposed calcium requirement that was established as a measure of the bone solids content of AMR product, to ensure that AMR product is meat. One commenter stated that the limit was too high, and another suggested that the limit should be lowered to approximate the calcium level in hand-deboned meat, with a reasonable allowance for variation. Another commenter pointed out that FSIS asserted in the 1994 final rule that its purpose was to ensure that the characteristics and composition of AMR are consistent with those of meat. Another commenter claimed that the proposed reduction in the calcium level was arbitrary and determined on the basis of a limited data set and not based on actual process data. Another commenter requested that the calcium performance standard account for differences among meat species.

Response: FSIS does not agree that the calcium standard should be based only on actual process data and does not agree that the calcium level for AMR products needs to approximate that of hand-deboned products. The calcium level in hand-deboned products is nearly negligible. The increased amount in the AMR product that the Agency proposed to allow represented a small amount of calcium that would not in any appreciable way affect the safety or quality of the product. When the vertebrae are split, increased bone dust (*i.e.*, material high in calcium) is created and may accumulate in the AMR product. In hand-deboning, such material is less likely to be incorporated into the product. The calcium limit that FSIS proposed was based on the results of its 1996 survey and the data that were submitted to FSIS by industry. FSIS believes that this calcium limit can be consistently achieved by industry and represents a more appropriate level than that in the 1994 rule.

Regarding the comment about different calcium levels for beef and pork, FSIS considered data for different species that were submitted by industry groups as well as the data gathered by FSIS in the 1996 survey. A summary of the data is presented in the technical addendum, which is available in the Docket Room and on the FSIS web page. The data show that average calcium levels for AMR pork and beef products are approximately 100 mg/100 g. FSIS believes that these data suggest that with regard to bone solids, there would not be any significant difference between pork and beef. Therefore, the required calcium targets for pork and beef AMR products are the same in this interim final rule.

As mentioned above, in 1994, FSIS believed that the performance standards it established regarding calcium as a measure of bone solids content, and the physical conformation of the bones exiting the system were sufficient to ensure that the AMR production process was in control, and that the characteristics and composition of the resulting AMR product would be comparable to those of meat. However, based on the results of the 1996 AMR survey, FSIS concluded that the established performance standards, even if met, were not sufficient to ensure that AMR product would be comparable to meat and as a consequence proposed different standards in 1998. In particular, regarding compositional parameters, the 1996 results showed that the AMR products produced at the time were not comparable to hand-deboned product with respect to a number of measures, even when the calcium limit designed to measure bone solids content was met.

The 1998 proposed rule identified a calcium limit of 130 mg/100 g product. This level was premised on a target average level of approximately 100 mg/100 g product but did not specify whether the 130 mg/100 g was an average or an absolute level. Data collected by the Agency and submitted by industry indicated that the average calcium level obtained for AMR pork and beef products is approximately 100 mg/100 g, but that there was wide variation in individual establishment results. Furthermore, the average of the calcium results in the 2002 Beef AMR Survey was below 100 mg/100 g, but again, there was wide variation in individual results.

FSIS is clarifying in this interim final rule that no analysis can exceed the regulatory maximum of 130 mg/100 g sample. This level of calcium in the product does not affect the appearance, texture, or other quality aspects of the product and is a small amount of calcium when compared to the calcium content generally contained in MS(Species).

In deciding on a calcium level, FSIS understands that it is virtually impossible for calcium levels in AMR product to be equal to those of hand-deboned product, which is essentially 0 mg/100 g. The presence of small amounts of calcium does not affect the qualitative characteristics of the product and only trivially affect its compositional aspects. Thus the standard will ensure that AMR product is ''meat.'' In addition, this standard creates a clear distinction between AMR product and MS(Species) product, which generally has more than triple the calcium of AMR. At the same time, FSIS has tried not to set such a low level for calcium that it would not be economically feasible to produce AMR product.

Comment: A commenter thought that calcium samples should be taken at the intermediate stage of the AMR process, because at this stage the calcium samples would indicate whether bones are being broken or crushed.

Response: FSIS is only concerned about the levels of calcium in the final AMR product as a means of ensuring that an excess amount of bone solids is not introduced into the product. It is not using a calcium measurement level to determine if bones are broken or crushed. Thus, FSIS is not including a standard to measure calcium at an intermediate stage in the AMR process in this interim final rule.

Bone Marrow

Comment: Commenters stated that the methodology and data used to derive the iron criterion that was proposed as a measure for noncomplying product were incorrect, and that, therefore, the proposed values were not appropriate. Specifically, it was pointed out that the analytical procedures used in the FSIS 1996 survey were based on procedures that understated iron values. Further, a commenter disagreed with the Agency's

approach of correlating histological data and the bone marrow cell assessment, with iron content. The commenter claimed that the correlation was not high, and thus was not accurate.

A commenter agreed that a measurement of total iron is a good indicator of the presence of marrow in meat and further claimed that the amount of iron in beef is well established. However, there were many comments that questioned both using excess iron as a measure of bone marrow and the methodology used to establish the limit in the standard. A commenter suggested not using protein at all in adjusting the iron requirement but, rather, using a straight iron value level. A commenter suggested that FSIS needs to account for the fact that AMR procedures remove connective tissue that contains little or no iron, and that muscle adjacent to the bone is higher in iron than is hand-deboned muscle. Therefore, even if marrow components were absent, iron-to-protein ratios (IPRs) would be higher in AMR products than those in hand-deboned meat.

Another commenter claimed that the use of iron as proposed by the Agency would be biased against low fat, high protein products and suggested a simple IPR. Some commenters said that the iron levels established were too high and urged FSIS to make the target levels more consistent with hand-deboned product. These commenters suggested a 5 to 10 percent variation in the IPR between AMR and hand-deboned meat. Commenters also suggested that establishments should not be permitted to determine their own IPR values, as was proposed.

Response: FSIS will first address the measurement and methodology issue and then provide a justification for the excess iron measure it proposed. In the course of doing so, it will provide an explanation for the procedures that it used for deriving the iron performance standard contained in this interim final rule.

Excess iron is the iron in excess of that which would be expected given the protein value if the product was meat. The measure for excess iron for the 2002 survey was: excFe=Fe-kP, where P is the protein (%), Fe is the iron (mg per 100 g), and k is a constant equal to 1.1 times 0.138. The 0.138 is the assumed IPR for the corresponding hand-deboned meat product, and the 1.1 is an adjustment factor.

Measurement and methodology. While the measurement used by FSIS was accurate, the Agency agrees that the methodology and measurement procedures used in developing the standards for iron in the 1998 proposed rule were not consistent with common laboratory analyses for iron measurement. FSIS used a hydrochloric acid wet-ash digestion procedure to measure the iron levels of samples collected in the 1996 survey because this methodology was considered faster and less labor intensive than traditional dry-ash procedures (*i.e.*, dry-ash procedure for digestion). The wet-ash procedure predictably underestimates the true level of iron. In contrast, the method used by ARS scientists, which is based on a dry-ash procedure for digestion, dries the samples and obtains iron results approximately double those obtained by the FSIS procedure. Further, the results obtained by the ARS dry-ash procedure are more consistent with levels previously reported for hand-deboned product in Agricultural Handbook 8 (now called USDA Nutrient Database for Standard Reference, Release 12).

ARS analyzed split samples from the 1996 survey for FSIS, and FSIS used the ARS results along with more current FSIS data for deriving the standards for iron in this interim final rule. For samples in which there were no dry-ash procedure results, the FSIS wet-ash procedure results were multiplied by 2.11, which is the average ratio of the results from the dry-ash procedure to those that FSIS found using the hydrochloric acid wet-ash procedure (*See* the technical addendum for additional information in the FSIS docket room and on the web site).[5]

FSIS agrees with the commenter's concern about FSIS'' approach of correlating histological data and bone marrow cells with iron content and thus is not including a standard for bone marrow cells in this interim final rule. Although bone marrow cells are unique to bone marrow, they have been found in hand-deboned product probably as a consequence of contamination of the muscle tissue during the carcass splitting process during slaughter.

FSIS justification for using excess iron as a measure of bone marrow. FSIS has determined that there is no practical methodology to measure bone marrow using commercial practices. Bone marrow contains many of the same components as muscle tissue and blood. Therefore, FSIS sought to establish in the 1998 proposal a practical methodology that would predict whether the known composition of hand-deboned meat was sufficiently different from AMR as a consequence of the incorporation of bone content (other than calcium) in AMR. FSIS deemed this additional bone content to be an indication of the presence of bone marrow. Consequently, iron, which is contained in marrow and in blood tissue, was chosen as a practical surrogate for bone marrow.

To determine whether there were excess iron levels in AMR, and thus bone marrow in this product, the Agency proposed using an adjustment based on the protein value because an analysis of the data from a prior survey demonstrated that there was a correlation between iron and protein results. Protein levels will change with iron levels, everything else being equal. If bone marrow, which has a higher IPR value than meat, is added to product, the measured IPR value would be greater than the IPR for corresponding hand-deboned product without bone marrow. Accounting for measurement error, if this difference is large enough, it can then be concluded that bone marrow at more than a negligible amount is in the product.

One of the commenters pointed out that a problem with the above model is that the AMR process removes connective tissue that contains little or no iron. The Agency believes that the effect of this removal is not large and would not change the basic premise of the model presented above. From the 1996 FSIS survey, the Agency determined that the average difference in protein between pre- and post-desinewed AMR product was about 0.5 percent, based on a post-desinewed product average protein of about 16.5 percent. Therefore, as a percentage of protein, the amount of protein associated with connective tissue removed during the desinewing step averaged only about 3 percent and does not represent a large proportion of the protein that is in the final product.

In addition, it is possible that, during AMR processing, some unbound water is removed which would result in the removal of some water-soluble protein and dissolved solids.[6]

FSIS recognizes that these two factors, removal of connective tissue with low iron and protein and removal of unbound water, may result in an increase in the IPRs of AMR product. However, FSIS does not believe that such a possible increase renders the use of an excess iron measurement inaccurate for assessing AMR process control. Although FSIS does not believe that the effects of these factors would be substantial, it has taken them into consideration in this interim final rule and is using a 10 percent factor for adjusting the protein levels used for calculating levels of excess iron in AMR product.

Another issue raised by the commenters regarding the appropriateness of the excess iron

measurement was that meat close to the bone has higher IPRs than meat farther from the bone. FSIS agrees with the commenter. However, the IPRs would be expected to be higher in AMR product than in hand-deboned product, even though no bone marrow would be introduced.

FSIS has decided to allow alternative IPRs to be used in this interim final rule to reflect the inherent differences that exist among starting products.

Regarding the comment made that the use of the excessive iron measure as proposed would be biased against high protein and low fat products, FSIS believes that for practical purposes, the difference between the excessive iron and the IPR calculations is not great.

In this interim final rule, however, FSIS is adopting a different excess iron limit measurement than the one proposed in 1998. This new limit is based on a more current examination of excess iron measurements for hand-deboned product from the 2002 survey of AMR product. *See* footnote 1 in new § 318.24(c)(1)(ii) for a detailed explanation of the formula derived for the excess iron value measurement.

An assumption used by FSIS in the derivation of the excess iron value measurement for this interim final rule was that there would be duplicate measurements of iron and protein taken by establishments on an individual sample. Performing duplicate measurements on an individual sample is recommended because, on a few occasions in the 2002 survey, large differences for samples were found when duplicate measurements were made. Thus, to ensure that AMR product is consistent with meat, FSIS is adopting a measured 3.5 mg/100 g excess iron limit based on duplicate analyses of samples of AMR product.

Related Comments

Comment: Several commenters alleged that FSIS has singled out AMR technology for scrutiny while products derived from a low temperature rendering process (LTRP) were approved by FSIS for the school lunch program without any scientific basis or public input. The suggestion was made that FSIS withdraw the proposed rule on AMR products until comparable rules to regulate LTRP products have been developed and implemented.

Response: The Agency has focused on meat produced by AMR systems because it is the main product not produced by hand-deboning, and is a product in which constituents not expected in boneless meat can be incorporated as a result of the process used for its production. Other technologies, such as LTRP, generally involve the removal of components such as fat and muscle. The Agency intends to further evaluate how it regulates other types of operations that are used to manufacture meat and poultry trimmings from various starting materials. The Agency seeks more specific comment and data on the compositional characteristics of LTRP and similar products derived from non-AMR systems.

Comment: A commenter said the proposal was based on an antiquated regulatory foundation because the definition of meat is obsolete and is, in effect, an anatomical description. In addition, the commenter maintained that the proposal was an attempt to relate a chemical constituent of AMR-derived product to the former USDA Handbook 8 references for regulatory purposes and conflicted with Agency policies regarding constituents of other meat products.

Response: Meat is defined in anatomical terms, and not chemically, because it is directly obtained from livestock and not chemically derived from other elements. Therefore, the regulatory definition of meat refers to the parts of livestock that are edible (as opposed to inedible parts/organs). The former Handbook 8 details the composition of foods but does not represent a formula for making ''meat.'' FSIS is not relating a constituent of AMR product to former Handbook 8 data on the composition of meat. AMR product is meat unless it includes constituents such as spinal cord and DRG that are not expected constituents of boneless meat. In addition, FSIS has determined that AMR product is meat unless the process by which it is produced incorporates expected constituents, such as calcium and iron, at excessive levels.

Comment: A commenter asked about FSIS' response to the report on AMR technology and on worker safety issues related to AMR systems.[7]

Response: Regarding the report, which was produced by the Georgetown University Center for Food and Nutritional Policy, FSIS generally agrees with the historical and technical aspects of the report on AMR systems. The report addressed the disagreements that have characterized the regulated introduction of mechanical deboning in this country, and how these initiatives have attracted the attention of consumer advocacy groups. The 1999 report states that the presence of CNS tissue in meats of any kind should be avoided and cited FSIS' prohibition against spinal cord in AMR meat since 1997.

The report discussed the reduction in worker-related injuries as perhaps the greatest societal advantage of AMR systems. FSIS agrees that manual deboning and the use of motorized knives are dangerous because they are associated with direct injuries and cumulative trauma disorders (CTDs). The report noted that some studies have demonstrated a 38 percent increase in CTDs as a consequence of working in deboning operations.

FSIS agrees with the statements in the report about the efficiency of AMR systems that makes meat processing operations more safe and profitable. However, for the reasons presented in this interim final rule, the Agency disagrees with the Sparks report's assertion that further rulemaking to refine the 1994 final rule is unwarranted.

Comment: A commenter asked whether FSIS agreed with the cost estimates in the Sparks Companies, Inc., report, which provided an economic analysis of the 1998 proposed AMR rule.[8]

Response: FSIS does not agree with some of the conclusions in the Sparks report. For example, FSIS believes that it is unlikely that all AMR systems will be removed and replaced with tertiary hand-deboning procedures, as the report suggests. Not all of the AMR systems are used to process split vertebral columns with exposed and extruding bone marrow tissue. Some systems are used to process only brisket or sternum and rib bones. The expected continued use of non-vertebral bones in AMR systems would considerably reduce the capital cost loss of $40 million estimated in the report.

The report's discussion of capital costs also fails to take into account depreciation of the AMR systems since 1994, which would considerably reduce the capital cost loss. In addition, the cost of auto-knives may be somewhat over-estimated because the report assumes that the knives depreciate within a year. FSIS would suggest that the authors of the report should have used only the flow of services of the knives, not the depreciation of the entire capital stock of the knives within a year.

However, the report was helpful and provided the Agency with important data to gauge volume and yield data, for example, and to gain a greater understanding of the extent of the AMR beef and pork industry in this country.

These comments and all of the other public comments submitted in response to the 1998 proposal are available for review in the FSIS Docket Room and at the FSIS Web site.

Consumer Group Petition

Because of its concerns about the presence of spinal cord and DRG in AMR product, in 2001, a consumer group, the Center for Science in the Public Interest (CSPI) on behalf of other consumer and public health associations, petitioned USDA to institute regulatory actions to prohibit spinal cord and DRG in AMR beef products.[9] In addition, a consortium of 14 animal welfare, farmer, environmental, and public health groups voiced similar concerns and urged USDA and the FDA to take immediate regulatory action.[10]

2002 Survey of AMR Products

In order to assess the current industry practices associated with AMR systems, the petition submitted by CSPI, and the need for further Agency action with regard to AMR, the Agency determined that it needed to conduct a survey of AMR systems (*i.e.*, the 2002 Survey of AMR Products). Another purpose of this survey was to characterize the recovered product of AMR systems regarding texture and appearance, look at current production practices (*e.g.*, pressure settings and type of source materials) and yield data, and determine how those practices influence the calcium and iron levels of the final product.

In January 2002, FSIS began collecting random samples from the 42 piston-driven AMR systems in production at 34 establishments harvesting AMR product derived from beef vertebrae or beef vertebrae mixed with other types of beef bones. Several establishments had more than one operating AMR system processing beef vertebrae.

Over a 7-month period, samples from each AMR system that uses beef vertebrae as source material were randomly collected. An FSIS laboratory tested the products for the presence of spinal cord and DRG. At random times over the 7-month period, FSIS collected final (after the desinewer) product samples and intermediate (before the desinewer) samples from each of the active machines. In addition, the AMR system model and identification number, type of starter (input) product, and the maximum pressure applied and pressure hold or dwell time (at the maximum pressure) of the systems were noted. Most of the samples also were tested for the food chemistry constituents calcium, iron, and protein.

Although some of the establishments (4 of 34 or 12 percent) were able to produce final AMR product with no spinal cord or DRG on a consistent basis (based on all (six or more) samples being negative), other establishments consistently produced samples that tested positive for spinal cord and DRG. For the survey, approximately 35 percent of the final AMR product samples tested positive for spinal cord or DRG: 29 percent for spinal cord and 10 percent for DRG.

The occurrence of spinal cord and DRG was not considered to be significantly correlated; that is, the presence of one of these tissues in a sample did not significantly affect the likelihood of the presence of the other. This lack of significant correlation suggests that there may be different factors that determine the presence of these tissues in AMR product. On the other hand, estimated values of excess iron and calcium were positively correlated, suggesting that there is a common set of factors that influence their levels. See the final report on the 2002 survey results in the FSIS Docket Room or at the FSIS web site for additional details.[11]

FSIS Directive 7160.3

In August 2003, FSIS issued Directive 7160.3, Revision 1, to provide instructions to inspection program personnel for sampling boneless comminuted beef products from AMR systems in which vertebral columns are used and on actions to take if the product contains spinal cord.[12] The directive did not address the presence of DRG tissue in AMR product because the Agency had not included DRG in the 1998 proposed rule.

After doing follow-up verification sampling, the Agency was especially concerned that some establishments were not adequately addressing the problem of spinal cord in AMR product. The directive defined the range of follow-up actions available to the Agency when product from an AMR system is found to contain spinal cord tissue. FSIS withheld label approval for those establishments whose AMR system repeatedly failed to produce product that was free of spinal cord. Thus, these establishments effectively were not allowed to produce AMR meat from beef vertebrae.

Overview of This Interim Final Rule and Request for Comments

FSIS is amending the meat inspection regulations in Parts 301, 318, and 320 of the Code of Federal Regulations by modifying the definition of ''meat;'' adding or modifying non-compliance criteria for bone solids, bone marrow, brain, trigeminal ganglia, spinal cord, and DRG; requiring the development, implementation, and maintenance of a written program, including documentation and recordkeeping requirements, for ensuring process control; and declaring inedible the skulls and vertebral column bones from cattle that are 30 months of age and older. As indicated in a new Section 310.22, which is adopted in another interim final rule issued today (*see* Docket #03–025IF in this issue of the **Federal Register**), skulls and vertebral column bones from cattle 30 months of age and older are inedible and cannot be used for human food. Therefore, if skulls or vertebral column bones from cattle 30 months of age and older are used in AMR systems, the product exiting the AMR system is adulterated, and the product and the spent bone materials are inedible and cannot be use used for human food. For AMR product derived from the bones of cattle younger than 30 months, the presence of CNS-type tissues will render the product misbranded. Similarly, for AMR product derived from the bones of livestock other than cattle, the presence of CNS-type tissues will result in misbranding. For AMR product derived from the bones of all livestock, the restrictions associated with bone solids and bone marrow also relate to misbranding.

FSIS is amending § 301.2(b), the definition of ''meat'' to make it clear that boneless meat may not include significant portions of bone or related components, such as bone marrow, or any amount of CNS-type tissues. Therefore, product produced using an AMR system must not include significant amounts of bone or related components. It also must not include any brain, trigeminal ganglia, spinal cord, or DRG.

Section 318.24(a) provides that skulls and vertebral column bones of cattle 30 months of age and older, as provided for in a new section 310.22 which is adopted in another interim final rule issued today (*See* Docket #03–025IF in this issue of the **Federal Register**), cannot be used in AMR systems. In addition, the recovered meat product exiting the AMR system must not significantly incorporate bone solids or bone marrow, as measured by the presence of calcium and excess iron, and cannot contain any brain, trigeminal ganglia, spinal cord, or DRG.

Section 318.24(b) provides that establishments operating AMR systems are required to develop, implement, and maintain procedures that ensure that their production process is in control. The establishment must incorporate its production process procedures in a written program that is designed to ensure the ongoing effectiveness of the process control program. Because of the food safety concerns presented by SRMs, for establishments that process

cattle, the written program must be in the establishment's Hazard Analysis and Critical Control Point (HACCP) plan, or in its Sanitation Standard Operating Procedure (Sanitation SOP) or other prerequisite program.

By declaring SRMs inedible and prohibiting their use for human food, FSIS will ensure that materials that could present a significant risk to human health, but whose infectivity status cannot be readily ascertained, are excluded from the human food supply.

Because BSE was recently confirmed in a cow in the United States, FSIS has determined that the SRMs, adopted in another interim final rule issued today (*see* Docket #03–025IF in this issue of the **Federal Register**), are unfit for human food. Thus, the status of these materials has changed from edible to inedible. Such a change is likely to affect the underlying hazard analysis that must be conducted as prescribed by 9 CFR 417.4(a)(3). Therefore, in response to this change, FSIS expects that establishments that slaughter cattle or process carcasses or parts of cattle will reassess their HACCP plans in accordance with 9 CFR 417.4(a)(3) to address SRMs.

Under § 318.24(b), the written program must include the observation of bones entering the AMR system and the testing of the product exiting the AMR system. The establishment shall maintain records on a daily basis sufficient to document the implementation and verification of its production process. The establishment shall make the documentation available to inspection program personnel.

Section 318.24(b) makes clear that establishments will be expected to determine how and when they will test product for calcium, iron, spinal cord, and DRG. Based on the supporting documentation provided by the establishment, and FSIS's own verification, FSIS will make a determination whether the product is misbranded or adulterated. FSIS expects that the establishment will ensure that each production lot is in compliance with the provisions of this regulation.

Regarding the testing methodology for spinal cord and DRG, FSIS will continue to use its validated histological procedures. However, FSIS is aware that establishments have access to methodology that is not as specific or sensitive as the FSIS methodology and that is considerably less expensive to perform. FSIS encourages establishments to use any methodology that is effective. FSIS cautions establishments, however, that if the establishment's methodology is not adequate to discern complying product from non-complying product, FSIS will ensure that non-complying product is not allowed to enter commerce.

Because of the expense and time associated with highly sensitive and specific tests, such as the methodology used by FSIS, researchers have been working on quicker and less costly tests. One such research effort has employed ELISA technology. For the 2002 AMR beef survey, an ELISA procedure was examined by FSIS, but FSIS concluded that the test was not sufficiently specific or sensitive. Not only were there many false positive and negative results (when compared to the FSIS histological results), the rates of false positive and negative results were establishment dependent. This latter finding could imply that there was some other component in the product interfering with the test.

FSIS is aware that there are a number of research efforts underway to improve the sensitivity and specificity of the rapid tests that can be used in lieu of the normative histological tests for evaluating the presence of spinal cord and DRG. FSIS does not want to preclude the use of such tests by establishments. Therefore, FSIS is soliciting information during the comment period on alternative test methods and performance specificity and sensitivity. FSIS is interested in identifying a test for use by establishments that is as sensitive to the presence of spinal cord and DRG in product as the histological test employed by FSIS, but that is less expensive and less time consuming.

The production process is not in control if the skulls of livestock entering the AMR system contain any brain or trigeminal ganglia tissue, or the vertebral column entering the AMR system has any spinal cord. In addition, the process is not in control if the recovered product contains unacceptable levels of bone solids or bone marrow, or any level of spinal cord or DRG, as provided for in §318.24(c). In addition, the production process is not in control if the product is not properly labeled or spent bone materials are not properly handled.

Section 318.24(c)(1) describes the five criteria that define when recovered AMR product may not be used and labeled as ''meat.'' They include a measure for excess bone solids (calcium content above the stated level); a measure for excess bone marrow (iron in relation to protein above the stated level); the presence of brain or trigeminal ganglia; the presence of spinal cord; and the presence of DRG.

In §318.24(c)(2), if the recovered product derived from any livestock fails under any of these criteria, it cannot be labeled as ''meat.'' In addition, product derived from beef skulls or vertebral column bones from cattle younger than 30 months containing CNS-type tissues cannot be used as an ingredient of a meat food product. For example, this product, if it contained spinal cord, cannot be labeled as ''Beef with Spinal Cord'' or ''Beef with Spinal Cord Meat Food Product'' because detached spinal cord is prohibited from use in the preparation of edible product other than for edible rendering (9 CFR 318.6(b)(4)). It also cannot be labeled as MS(Beef) because FSIS has determined MS(Beef) to be inedible and prohibited its use as human food (*see* Docket #03–025IF in this issue of the **Federal Register**. Such product can be rendered to produce products identified as beef stock, beef extract, and beef flavoring without any identification of the source materials other than ''beef'' because the source materials are edible, not inedible. FSIS has determined that it is appropriate to now prohibit product that contains CNS-type tissues derived from cattle younger than 30 months of age for use in a meat food product, except for the sale of brain or the use of brain in which its presence is required to be reflected prominently and conspicuously in labeling. FSIS has established precedent for not allowing detached spinal cord for use in meat food products, but does allow its use for edible rendering. FSIS requests comment on whether product derived from the bones of cattle younger than 30 months (as well as product from livestock other than cattle) that may contain CNS-type tissues should continue to be allowed in edible rendering, or whether such product should be inedible and not allowed in edible rendering or allowed in descriptively labeled meat food product. FSIS requests comment on whether edible rendered products derived from bones of livestock in which the bones may contain CNS-type tissues should be required to bear a common or usual name that reflects the potential presence of CNS-tissue (*e.g.*, ''beef stock derived from materials that may contain spinal cord''). FSIS will be working with FDA on this issue.

As discussed above, skulls or vertebral column bones from cattle 30 months of age and older may not be used at all in AMR systems. Product derived from bones of cattle other than skulls or vertebral column bones may bear a name that is not false or misleading but cannot bear the name ''Mechanically Separated (Beef).'' In another interim final rule issued today (*see* Docket #03–025IF in this issue of

the **Federal Register**), FSIS has determined that MS(Beef) is inedible and prohibited its use as human food. Such product would not contain CNS-type tissues because only the skulls and vertebral column bones contain CNS-type tissues.

For purposes of this rule, bone marrow from cattle is not identified as an SRM. The scientific evidence to establish that cattle bone marrow is a tissue that demonstrates infectivity is inconclusive at this time (see Docket No. 03–025IF, also published in this issue of the **Federal Register** for additional information about bone marrow). Therefore, product from cattle of any age (*e.g.*, through the use of AMR systems using long bones rather than vertebral column bones) that fails to meet the bone marrow standard is misbranded. FSIS seeks comment on this issue.

Section 318.24(c)(3) provides that spent skulls and vertebral column bone materials from cattle eligible to enter an AMR system (*i.e.*, from cattle younger than 30 months of age) are eligible for edible rendering, as is the product derived from these bones that contains CNS-type tissues (*see* §318.24 (c)(2)(i) or (ii).

Although some non-complying AMR product derived from the vertebral column of pork and livestock other than cattle may be diverted to use as MS(Species), such a practice has not been customary in the past because MS(Species) rarely, if ever, is produced in the United States. FSIS is considering rulemaking on MS(Species) from species other than cattle regarding the presence of CNS-type tissue in this product and is seeking comment on this issue.

Section 320.1 is amended to extend the recordkeeping requirements to the entire AMR process control system. The current regulation applies only to the calcium criteria. This change is necessary to ensure that establishments maintain appropriate records documenting that they are controlling the entire process, including the appropriate identification and segregation of cattle and their derived products. The establishment may determine to incorporate the control procedures and recordkeeping into their HACCP plan or into their Sanitation SOP or other prerequisite program. Such control procedures may be based on the guidance prepared by the Canadian government for their industry.

Request for Comments

FSIS requests comments on the measures contained in this interim final rule, and specifically on whether the Agency has chosen measures that are most appropriate for preventing human exposure to the BSE agent in the United States.

Emergency Action

Given the fact that a cow in Washington State tested positive for BSE on December 23, 2003, it is necessary to issue this rule on an emergency basis. BSE infectivity has been confirmed in the brain, eyes, trigeminal ganglia, tonsils, spinal cord, DRG, and distal ileum. Furthermore, most of these tissues have demonstrated infectivity before experimentally infected animals developed clinical signs of disease. Thus, BSE infectivity in these tissues is not readily ascertainable. Therefore, FSIS has determined that it must take immediate action to ensure that materials that could present a significant risk to human health in beef derived from AMR systems and the spent bone materials derived from AMR systems are excluded from the human food supply.

Under these circumstances, the FSIS Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest, and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**. FSIS will consider comments received during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, the Agency will publish another document in the **Federal Register**. The document will include a discussion of any comments received in response to this interim rule and any amendments made as a result of those comments.

In an effort to ensure that establishments comply with this interim final rule upon publication in the **Federal Register**, FSIS will provide guidance to inspection program personnel regarding the implementation strategy. At a minimum, FSIS inspection program personnel will be directed to meet with management of each affected establishment to discuss how and when the establishment expects to complete its reassessment of its HAACP plan to ensure that SRMs and MS(Beef) do not adulterate product.

Executive Order 12866 and the Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. It has been determined to be economically significant for purposes of E.O. 12866.

The emergency situation surrounding this rulemaking makes timely compliance with Executive Order 12866 and the Regulatory Flexibility Act (5. U.S.C. 601 *et seq.*) impracticable.

FSIS is currently assessing the potential economic effects of this action. When this work is complete, the Agency will publish a notice of availability in the **Federal Register** and will provide an opportunity for public comment.

Executive Order 12988

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5. must be exhausted before any judicial challenge of the application of the provisions of this interim final rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or PPIA.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim final rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0583–XXXX to the information and recordkeeping requirements.

Title: Advanced Meat Recovery Systems.

Type of collection: New.

Abstract: FSIS has reviewed the paperwork and recordkeeping requirements in this interim final rule in accordance with the Paperwork Reduction Act. Under this interim final rule, FSIS is requiring a new information collection activity. FSIS is requiring establishments that produce meat from AMR systems to ensure that bones used for AMR systems do not contain brain, trigeminal ganglia, or spinal cord, to test for calcium (at a different level than previously required), iron, protein, spinal cord, and DRG, to document their testing protocols, to assess the age of cattle product used in the AMR system, and to document their procedures for handling product from cattle of any age in a manner that does not cause product to be misbranded or adulterated, and to maintain records of their documentation and test results.

Estimate of burden: FSIS estimates that it will take establishments on a daily basis 30 minutes to collect the

information such as for calcium and iron and 30 minutes to sample for spinal cord and DRG. The Agency estimates that it will take 2 minutes to do recordkeeping of test results. FSIS also estimates that it will take establishments 2 hours to develop their testing protocols.

Respondents: Establishments that produce livestock product (*e.g.*, beef and pork) from AMR systems.

Estimated Number of Respondents: 56.

Estimated Number of Responses per Respondent: 1,201.

Estimated Total Annual Burden on Respondents: 18,088 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, FSIS, USDA, 112 Annex, 300 12th Street, SW., Washington, DC 20250–3700.

Additional Public Notification

Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this interim final rule and informed about the mechanism for providing their comments, FSIS will announce it and make copies of this **Federal Register** publication through the FSIS Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available online through the FSIS web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents and stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other persons who have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information, contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the ''Constituent Update'' page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update.htm.* Click on the ''Subscribe to the Constituent Update Listserv'' link, then fill out and submit the form.

Footnotes

The following sources are referred to in this document and are available for review in the FSIS Docket Room (*See* **ADDRESSES** above) between 8:30 a.m. and 4 p.m., Monday through Friday.

1. Harvard Center for Risk Analysis, Harvard School of Public Health, and Center for Computations Epidemiology, College of Veterinary Medicine, Tuskegee University, November 2001. Evaluation of the Potential for Bovine Spongiform Encephalopathy in the United States.
2. Summary of Calendar Year 2003 AMR Testing, FSIS.
3. Hasiak, R.J. and H. Marks, The ''Advanced Meat Recovery System'' Survey Project Final Report, February 21, 1997.
4. FSIS Directive 7160.2, ''Meat'' Prepared Using Advanced Mechanical Meat/Bone Separation Machinery and Meat Recovery Systems, April 14, 1997.
5. FSIS technical paper, Derivation of excess iron limits for meat products produced by Advanced Recovery Systems, July 21, 1999.
6. Wyndom, W.R. and R.A. Field, Effect of method of analysis on iron content of beef from advanced meat recovery systems, May 2000.
7. Georgetown University Center for Food & Nutritional Policy, Advanced Meat Recovery Systems, 1999.
8. Sparks Companies, Inc., Advanced Meat Recovery Systems—An Economic Analysis of Proposed USDA Regulations, July 1999.
9. Letter to FDA and USDA, submitted by Public Citizen, and signed by the Animal Welfare Institute. Cancer Prevention Coalition, Center for Food Safety, Community Nutrition Institute, Family Farm Defenders, Farm Sanctuary, Global Resource Action Center for the Environment, Government Accountability Project, Project Humane Farming Association, Institute for Agriculture and Trade Policy, National Family Farm Coalition, Organic Consumers Association, Public Citizen, and the U.S. Public Interest Research Group, April 13, 2001.
10. Petition for Regulatory Action to Bar the Use of Spinal Cord and Columns and Other Potentially Infectious Tissue from Beef in the Human Food Supply, submitted by the Center for Science in the Public Interest, on behalf of the American Public Health Association, Consumer Federation of America, Government Accountability Project, National Consumers League, and Safe Tables Our Priority, August 9, 2001.
11. Analysis of 2002 FSIS Bovine AMR Survey Results, prepared by the USDA, FSIS, February 2003.
12. FSIS Directive 7160.3, Revision 1, Advanced Meat Recovery Using Beef Vertebral Raw Materials, August 25, 2003.

List of Subjects

9 CFR Part 301

Meat and meat products.

9 CFR Part 318

Meat inspection, Records.

9 CFR Part 320

Meat inspection, Records.

■ For the reasons set forth above, FSIS is amending 9 CFR, chapter III, as follows:

PART 301—TERMINOLOGY

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

■ 2. In § 301.2, the definition of ''Meat'' is revised to read as follows:

§ 301.2 Definitions.

* * * * *

Meat. (1) The part of the muscle of any cattle, sheep, swine, or goats which is skeletal or which is found in the tongue, diaphragm, heart, or esophagus, with or without the accompanying and overlying fat, and the portions of bone (in bone-in product such as T-bone or porterhouse steak), skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue and that are not separated from it in the process of dressing. As applied to products of equines, this term has a comparable meaning.

(i) Meat does not include the muscle found in the lips, snout, or ears.

(ii) Meat may not include significant portions of bone, including hard bone and related components, such as bone marrow, or any amount of brain, trigeminal ganglia, spinal cord, or dorsal root ganglia (DRG).

* * * * *

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

■ 3. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 138f, 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.7, 2.18, and 2.53.

■ 4. Section 318.24 is revised to read as follows:

§ 318.24 Product prepared using advanced meat/bone separation machinery; process control.

(a) *General.* Meat, as defined in § 301.2 of this subchapter, may be derived by mechanically separating skeletal muscle tissue from the bones of livestock, other than skulls or vertebral column bones of cattle 30 months of age and older as provided in § 310.22 of this subchapter, using advances in mechanical meat/bone separation machinery (*i.e.*, AMR systems) that, in accordance with this section, recover meat—

(1) Without significant incorporation of bone solids or bone marrow as measured by the presence of calcium and iron in excess of the requirements in this section, and

(2) Without the presence of any brain, trigeminal ganglia, spinal cord, or dorsal root ganglia (DRG).

(b) *Process control.* As a prerequisite to labeling or using product as meat derived by the mechanical separation of skeletal muscle tissue from livestock bones, the operator of an establishment must develop, implement, and maintain procedures that ensure that the establishment's production process is in control.

(1) The production process is not in control if the skulls entering the AMR system contain any brain or trigeminal ganglia tissue, if the vertebral column bones entering the AMR system contain any spinal cord, if the recovered product fails otherwise under any provision of paragraph (c)(1), if the product is not properly labeled under the provisions of paragraph (c)(2), or if the spent bone materials are not properly handled under the provisions of paragraph (c)(3) of this section.

(2) The establishment must document its production process controls in writing. The program must be designed to ensure the on-going effectiveness of the process controls. If the establishment processes cattle, the program must be in its HACCP plan, its Sanitation SOP, or other prerequisite program. The program shall describe the on-going verification activities that will be performed, including the observation of the bones entering the AMR system for brain, trigeminal ganglia, and spinal cord; the testing of the product exiting the AMR system for bone solids, bone marrow, spinal cord, and DRG as prescribed in paragraph (c)(1) of this section; the use of the product and spent bone materials exiting the AMR system; and the frequency with which these activities will be performed.

(3) The establishment shall maintain records on a daily basis sufficient to document the implementation and verification of its production process.

(4) The establishment shall make available to inspection program personnel the documentation described in paragraphs (b)(2) and (b)(3) of this section and any other data generated using these procedures.

(c) *Noncomplying product.* (1) Notwithstanding any other provision of this section, product that is recovered using advanced meat/bone separation machinery is not meat under any one or more of the following circumstances:

(i) *Bone solids.* The product's calcium content, measured by individual samples and rounded to the nearest 10th, is more than 130.0 mg per 100 g.

(ii) *Bone marrow.* The product's added iron content, measured by duplicate analyses on individual samples and rounded to the nearest 10th, is more than 3.5 mg per 100 g.[1]

(iii) *Brain or trigeminal ganglia.* Skulls that enter the AMR system have tissues of brain or trigeminal ganglia.

(iv) *Spinal cord.* Vertebral column bones that enter the AMR system have tissues of spinal cord, or the product that exits the AMR system contains spinal cord.

(v) *DRG.* The product that exits the AMR system contains DRG.

(2) If product that may not be labeled or used as ''meat'' under this section meets the requirements of § 319.5 of this subchapter, it may bear the name ''Mechanically Separated (Species)'' except as follows:

(i) If skulls or vertebral column bones of cattle younger than 30 months of age that enter the AMR system have tissues of brain, trigeminal ganglia, or spinal cord, the product that exits the AMR system shall not be used as an ingredient of a meat food product.

(ii) If product that exits the AMR system contains spinal cord or DRG from bones of cattle younger than 30 months of age, it shall not be used as an ingredient of a meat food product.

(iii) If product derived from any bones of cattle of any age does not comply with (c)(1)(i) or (ii), it may bear a common or usual name that is not false or misleading, except that the product may not bear the name ''Mechanically Separated (Beef).''

(3) Spent skulls or vertebral column bone materials from cattle younger than 30 months of age that exit the AMR system shall not be used as an ingredient of a meat food product.

[1] The excessive iron (ExcFe) measurement for an analyzed sample is equal to the obtained iron (Fe) result expressed in mg/100 g measured and rounded to the nearest 100th or more for that sample, minus the product of three factors: (1) The iron to protein ratio (IPR) factor associated with corresponding hand-deboned product; (2) the obtained protein (P) result (%) for that sample; and (3) a constant factor of 1.10. In formula, this can be written as: $ExcFe = mFe - IPR \times Protein \times 1.10$, where ExcFe represents the excess iron, expressed in units of mg/100 g; mFe represents the measured level of iron (Fe, mg/100 g), IPR is the iron to protein ratio for the appropriate hand-deboned product, and ''Protein'' is the measured level of protein rounded to the nearest 100th and expressed as a percentage of the total weight of the sample. In lieu of data demonstrating otherwise, the values of IPR to be used in the above formula are as follows: For beef products the value of IPR is equal to 0.104, except for any combination of bones that include any beef neckbone product, for which the value of 0.138 is to be used; for pork product, the IPR value is 0.052. Other IPR values can be used provided that the operator of an establishment has verified and documented the ratio of iron content to protein content in the skeletal muscle tissue attached to bones prior to their entering the AMR system, based on analyses of hand-deboned samples, and the documented value is to be substituted for the IPR value (as applicable) in the above formula with respect to product that the establishment mechanically separates from those bones.

PART 320—RECORDS, REGISTRATION AND REPORTING

■ 5. The authority citation for part 320 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.7, 2.18, and 2.53.

§ 320.1 [Amended]

■ 6. Section 320.1, paragraph (b)(10), is amended by removing ''of calcium content in meat derived from'' and adding, in its place, ''documenting the development, implementation, and maintenance of procedures for the control of the production process using.''

Done in Washington, DC, on: January 7, 2004.

Garry L. McKee,

Administrator.

[FR Doc. 04–626 Filed 1–8–04; 1:43 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 310 and 313

[Docket No. 01–033IF]

Prohibition of the Use of Certain Stunning Devices Used to Immobilize Cattle During Slaughter

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to prohibit the use of penetrative captive bolt stunning devices that deliberately inject air into the cranial cavity of cattle. This rulemaking responds to the findings of a risk assessment on bovine spongiform encephalopathy (BSE) conducted by the Harvard Center for Risk Analysis (referred to as the Harvard study) and is part of a series of actions that the USDA is taking to strengthen its BSE prevention programs.

The Harvard study found that, owing to already ongoing Federal programs, the U.S. is highly resistant to the introduction and spread of the disease. Even so, the USDA response to BSE has always been proactive and preventive.

Therefore, FSIS is taking this action to address the potential risk posed by stunning devices that may force visible pieces of brain, known as macro-emboli, into the circulatory system of stunned cattle.

DATES: Effective January 12, 2004; comments received on or before April 12, 2004 will be considered prior to issuance of a final rule.

ADDRESSES: Send an original and two copies of comments to: FSIS Docket Clerk, Docket #01–033IF, Room 102, Cotton Annex, 300 C Street, SW., Washington, DC 20250–3700. Reference materials cited in this document and any comments received will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel Engeljohn, Ph.D., Executive Associate, Policy Analysis and Formulation, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

BSE is a slowly progressing, fatal degenerative disease that affects the central nervous system (CNS) of cattle. BSE belongs to the family of diseases known as the transmissible spongiform encephalopathies (TSEs), which include scrapie in sheep and goats, chronic wasting disease (CWD) in deer and elk, and Creutzfeldt-Jakob Disease (CJD) in humans. In 1996, following outbreaks of BSE in cattle in the United Kingdom, scientists found a possible link between BSE and a new variant of CJD, commonly referred to as variant CJD (vCJD). While it is not certain how BSE may be spread to humans, evidence indicates that humans may acquire vCJD by consuming parts of cattle that contain the BSE agent.

The U.S government has taken a number of actions to prevent the spread of BSE into the U.S. Since 1989, the USDA's Animal and Plant Health Inspection Service (APHIS) has prohibited the importation of live cattle and certain animal products from cattle, including rendered protein products, from the United Kingdom and certain other countries where BSE is known to exist. In 1997, because of concerns about widespread risk factors and inadequate surveillance for BSE in many European countries, these importation restrictions were extended to include all of the countries in Europe. As of December 7, 2000, APHIS has prohibited all imports of rendered animal protein products, regardless of species, from BSE-restricted countries because of concerns that feed intended for cattle may have been cross-contaminated with the BSE agent.

APHIS leads an ongoing, comprehensive, interagency surveillance system for BSE in the U.S. and, in cooperation with FSIS, has drafted an emergency response plan to be used in the event that BSE is identified in the U.S. BSE was, in fact, identified in a cow in Washington State on December 23, 2003; as a result, the plan was immediately put into effect. Other Federal agencies also have contingency plans that work in concert with the USDA plan. In 1997, the Food and Drug Administration (FDA) issued a final rule prohibiting the use of most mammalian protein in animal feeds for cattle and other ruminants. Under the FDA's rule, animal feed manufacturers must keep records sufficient to track any material that contains prohibited protein (prohibited material) throughout its receipt, processing, and distribution, must have processes in place to prevent co-mingling between ruminant feed and non-ruminant feed containing prohibited materials, and must ensure that non-ruminant feed containing prohibited materials is labeled conspicuously with the statement ''Do not feed to cattle and other ruminants.'' These regulations are intended to prevent the spread of BSE in U.S. cattle through feed contaminated with the BSE agent. In addition, the Centers for Disease Control and Prevention (CDC) leads a surveillance program for vCJD in the U.S.

On November 30, 2001, the USDA released the results of a risk assessment on BSE conducted by the Harvard Center for Risk Analysis that evaluates the ways BSE could spread in the U.S. (Ref. 1, available for viewing by the public in the FSIS Docket room and on the Internet at *http://www.fsis.usda.gov/OA/topics/bse.htm).* The Harvard study also provides government agencies with a science-based approach to evaluate measures already in place to prevent the spread of BSE into the U.S. and to identify additional actions that should be taken to minimize the risk of BSE. The Harvard study shows that early prevention systems put into place by the USDA and the Department of Health and Human Services (HHS) would prevent BSE from spreading throughout the country.

Although the Harvard study found that the U.S. was highly resistant to the spread of BSE, as previously mentioned, the USDA response to BSE has always been proactive and preventive. Therefore, in response to the Harvard study, on November 30, 2001, the Secretary of Agriculture announced a series of actions that the Department would take to strengthen its BSE prevention programs and to maintain the government's vigilance against the spread of BSE. One of these actions was to issue a proposed rule to prohibit the use of certain stunning devices used to immobilize cattle during slaughter. This action was identified because certain methods used to stun cattle (*i.e.*, render them unconscious before they are slaughtered) have been found to force visible pieces of CNS tissue, known as macro-emboli, into the circulatory system of stunned cattle. Most of the infectivity in cattle that have BSE is found in the CNS tissue, *i.e.*, brain and spinal cord.

Stunning and the Humane Methods of Slaughter Act

Section 3(b) of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 603(b)) requires that any cattle or other livestock species slaughtered or handled in connection with slaughter under Federal inspection be handled in accordance with the provisions of the Humane Methods of Slaughter Act (HMSA) (7 U.S.C. 1901–1906). The HMSA states that ''* * * it is * * * the policy of the United States that the slaughtering of livestock and the handling of livestock in connection with slaughter shall be carried out only by humane methods'' (7 U.S.C. 1901). The HMSA requires that livestock be rendered insensible to pain before being shackled, hoisted, thrown, cast, or cut (unless they are slaughtered and handled in connection with slaughter in accordance with certain specified religious ritual requirements) (7 U.S.C. 1902, 1906). The HMSA also authorizes the Secretary of Agriculture (and FSIS by delegation) to designate methods of slaughter and handling in connection with slaughter that conform to the policy of the HMSA (7 U.S.C. 1904(b)).

Pursuant to the authority granted under the HMSA, FSIS promulgated regulations that prescribe requirements for the humane treatment of livestock. These regulations, which are codified at 9 CFR part 313, identify, among other things, humane methods of stunning for specified livestock species (*see* 9 CFR 313.5, 9 CFR 313.15, 9 CFR 313.30). 9 CFR 313.15 sets forth the requirements for the use of captive bolt stunning for livestock. There are two types of captive bolt stunners, penetrative and non-penetrative. Both are permitted to be used to stun cattle prior to bleeding. In addition, the FSIS post-mortem inspection regulations, at 9 CFR 310.13, specifically list air-injection captive bolt stunning as an approved method for injecting air into the carcasses or parts of carcasses of livestock (9 CFR 310.13(a)(2)(iv)(C)).

Most slaughter establishments use penetrative captive bolt stun guns to render cattle unconscious, quickly and painlessly prior to slaughter. Penetrative captive bolt stun guns have steel bolts, powered by either compressed air or a blank cartridge. The bolt is driven into the animal's brain. In the past, captive bolt stun guns were often built or modified to inject compressed air into the cranium of cattle, so as to disrupt the brain structures and induce total and prolonged unconsciousness, to ensure that cattle were slaughtered in a humane manner. Studies have shown that penetrative captive bolt stunners that incorporate air-injection can force visible pieces of brain and other CNS tissue into the circulatory system of stunned cattle. These studies are discussed in greater detail below.

The regulations in 9 CFR 313.15 do not distinguish among the different types of penetrative captive bolt stunners, such as those that inject air into the cranium of the animal and those that do not. Both methods of stunning are considered to be humane, and both are permitted to be used on cattle. Thus, under the regulations, captive bolt stunners that do not inject air can be used to slaughter cattle humanely.

Summary of Studies on Stunning Methods

The frequency with which CNS tissue enters the circulatory system of stunned cattle and the size of the CNS tissue emboli depend on the method of stunning used. Fragments of CNS tissue that can be detected visually are referred to as CNS macro-emboli, while pieces of CNS tissue that can only be detected microscopically or with the use of CNS tissue markers are referred to as micro-emboli. Studies have found that when air-injection pneumatic stunners are used, CNS tissue emboli can be identified visually in the pulmonary artery and in the right ventricle of the heart and microscopically in the jugular venous blood (Refs. 2–4, available for viewing by the public in the FSIS Docket Room). Air-injection pneumatic stunning has also been found to result in a high incidence of visually observed blood clots in the right ventricle of the heart (Ref. 3, available for viewing by the public in the FSIS Docket Room).

Other types of penetrative captive bolt stunners besides those that use air injection include pneumatically operated stunners that do not inject air and standard cartridge-fired captive bolt stunners. One study found that both pneumatically operated stunners that do not inject air and cartridge fired captive bolt stunners resulted in visually detectable blood clots in the right ventricle of the heart, although only a small number of blood clots were observed when a cartridge fired captive bolt was used (Ref. 3, available for viewing by the public in the FSIS Docket Room). The observation of visible blood clots cannot be used as direct evidence of the presence of CNS tissue; however, the presence of visible blood clots does indicate some type of interference with blood flow through the heart. The blood clots observed in the study were not analyzed for the presence of CNS tissue. More studies are needed to determine whether, and if so, the degree to which, CNS tissue may be present in blood clots observed in the heart of stunned cattle.

In general, studies have not demonstrated that penetrative captive bolt stunning without air injection results in CNS tissue macro-emboli in the blood or other tissues of stunned cattle. One study detected no visible or microscopic fragments of brain tissue in jugular venous blood of cattle when a penetrative captive bolt without air injection was used (Ref. 4, available for viewing by the public in the FSIS Docket Room). This same study found no evidence of CNS tissue in jugular venous blood using assays for CNS markers. Another study did not detect CNS tissue in the lungs of cattle by gross examination or by histopathology of selected areas of the lung when captive bolt stunning without air-injection was used (Ref. 5, available for viewing by the public in the FSIS docket room). However, there is one study in which the presence of CNS tissue markers was weakly detected by assay of emboli found in the lungs after cattle were stunned using a penetrative captive bolt without air injection (Ref. 6, available for viewing by the public in the FSIS docket room). The authors of this study concluded that the results suggest that the contamination of the lung with CNS tissue after using a conventional cartridge-fired captive bolt stunner can not be excluded; however, the incidence appears to be very low. The authors also concluded that the presumed CNS tissue emboli, if present at all, are microscopically small.

Although not documented in the published studies, in addition to the heart and lungs, FSIS inspection program personnel have reported observing CNS tissue macro-emboli in the liver and kidney of cattle stunned with pneumatic powered air-injection stunners. The Agency has photographs and histopathology reports documenting the presence of CNS tissue macro-emboli when hearts, lungs, livers, and kidneys from cattle stunned using air-injection devices are dissected.[1]

Risk Considerations

1. European Scientific Steering Committee Opinion

The European Commission's (EC) Scientific Steering Committee (SSC) adopted an opinion on Stunning Methods and BSE Risks at its January 10–11, 2002, meeting that, among other things, describes the tissues and organs that are at risk of being contaminated with CNS material when certain stunning methods are used on certain ruminants (Ref. 7, available for viewing by the public in the FSIS Docket Room). In the opinion, the SSC ranks these stunning methods according to the risk and possible level of CNS tissue contamination. The opinion was based on a scientific report prepared by the EC's TSE/BSE ad hoc Group (Ref. 8, available for viewing by the public in the FSIS Docket Room). The stunning methods addressed in the SSC report include: pneumatic stunner that injects air, pneumatic stunner that does not inject air, captive bolt stunner with pithing, captive bolt stunner without pithing, non-penetrative stunner, and electro-narcosis. Pithing is the insertion of an elongated rod-shaped instrument into the cranial cavity of a stunned animal to further lacerate the CNS tissue. This stunning method is banned by the E.U. and has never been used in the U.S.

The SSC concluded that if brain damage occurs during any type of penetrative stunning, and CNS particles are disseminated into the blood, the tissues and organs likely to be contaminated with CNS tissue are, in decreasing order of risk, the blood, pulmonary arteries and lung, and right atrium and ventricles of the heart. The SSC also concluded that the risk of CNS tissue contamination of any other tissue as a result of penetrative stunning was absent or negligible. However, in its report, the EC's TSE/BSE ad hoc committee noted that little data is available to determine whether CNS tissue emboli can occur in a homogenized form or just as structured tissue fragments.

As stated in the report, it could be that homogenized CNS tissue may be able to enter arterial circulation and spread to other tissues, including spleen and muscle. There is one study in which marker bacteria placed on a captive bolt pistol was recovered from the spleen, and marker bacteria placed on a pithing rod was found in both

[1] These are available for viewing by the public in the FSIS docket room.

spleen and muscle (Ref. 9, available for viewing by the public in the FSIS Docket Room).

In its opinion on stunning methods, the SSC ranked the various stunning methods used at slaughter in the E.U. according to the risk for contamination of other tissues with CNS tissue and the possible level of contamination. Of the stunning methods evaluated, the SSC concluded that pneumatic stunners that inject air present the highest risk of brain damage and dissemination of CNS tissue to other tissues and organs, followed by pneumatic stunning without air injection, captive bolt stunning with pithing, and captive bolt stunning without pithing. The SSC found that non-penetrative stunning methods and electro-narcosis present a negligible risk of causing CNS tissue emboli.

According to the TSE/BSE ad hoc committee report, there is no accurate estimate of the size range of CNS emboli that occurs as a result of certain stunning methods or of the level of the BSE agent in the CNS tissues of animals incubating the disease. However, the report does state that '' * * * it is clearly evident that if visible CNS material is found * * * it is clear that if this tissue was TSE-infected the organ in which it resides presents a TSE risk.'' Thus, based on the conclusions of the TSE/BSE ad hoc committee, FSIS has determined that methods of stunning that cause contamination of tissues and organs with visible CNS tissue macro-emboli are the methods most likely to present a risk of exposing humans to the agent that causes BSE if used on an animal that has BSE.

The SSC noted that any risk to consumers from contamination of tissues and organs with CNS tissue depends on the level of BSE infectivity in the brain of the stunned animal. Thus, the importance of the stunning methods used becomes irrelevant if cattle brains can be assumed to be free of the BSE agent, which, according to the SSC, would be the case for all cattle under one year of age regardless of the country or origin. Furthermore, the SSC determined that when applied to cattle below 30 months of age from any country, stunning methods other than stunning with a pneumatic gun that injects air under pressure, or any stunning methods accompanied by pithing, are likely to result in a much lower or no significant risk of contamination with the BSE agent.

2. The Harvard Risk Assessment's Evaluation of Stunning Methods

The Harvard risk assessment model has two stunning methods built in, standard captive bolt stunning and captive bolt stunning with air-injection (Ref. 1, available for viewing by the public in the FSIS docket room and on the Internet at *http://www.fsis.usda.gov/OA/topics/bse.htm*). The Harvard study does not differentiate between pneumatic powered captive bolt stunners without air-injection and cartridge fired captive bolt stunners without air-injection. In the risk assessment, Harvard estimates the probability that each method will result in CNS tissue emboli contamination of certain bovine tissues and organs, and the degree to which contamination might occur. In its model, Harvard assumes that if a stunning method results in CNS tissue emboli, the blood, heart, lungs, and liver may be contaminated.

Harvard estimates that for each BSE-infected animal stunned with a standard captive bolt stunner (without air injection) there is a 50 percent probability that a very small fraction of the BSE agent will be transferred to the blood. This small fraction of the BSE agent is what would be contained within micro-emboli that might occur. Harvard also estimates that for each BSE-infected animal stunned with a captive bolt stunner that uses air-injection, there is a 31 percent, 16 percent, 3 percent, and 0.6 percent probability that a fraction of the BSE agent will transfer to the blood, heart, lung, and liver, respectively. The probability and amount of the BSE agent transferred varies, with the greatest fraction in the blood, a lower fraction in the heart and lungs, and the lowest in the liver.

Harvard found that stunners that use air-injection have a potential to fail on occasion, which results in an increase in CNS tissue emboli formation. Thus, in its risk assessment model, Harvard estimates that when a BSE infected animal is stunned with a malfunctioning captive bolt stunner that uses air-injection, the probability of BSE agent transfer occurring can be approximately 10 times higher for the lung and liver, twice as high for the heart, and 50 percent higher for the blood. Harvard estimated that the amount of BSE agent transferred to these tissues would be approximately ten times higher than the amount transferred with a working air-injection stunner.

When evaluating the potential impact that stunning methods may have on the introduction and spread of BSE in the U.S., for its ''base case'' scenario Harvard assumes that air-injection stunning is not used in the U.S., and for its ''worst case'' scenario Harvard assumes that air-injection stunning is used 15 percent of the time. The base case is based upon the present state of the U.S. cattle population, and the existing government regulations and prevailing agricultural practices. When the base case scenario is compared with the worst case scenario, and it is assumed that ten BSE-infected cattle have been introduced into the U.S. system, the number of cattle ID50s that would be potentially available for human exposure increases from 35 to 41 or approximately 17 percent. A cattle oral ID50 is the amount of BSE infectious tissue that would on average cause 50 percent of cattle exposed to develop BSE. Although the Harvard study found that the stunning method used is not a major potential source of human exposure to cattle ID50s, it still found that the number of cattle ID50s available for human exposure would increase with greater use of air-injection stunning.

Prohibition of Air-Injection Stunning

When developing this rule, FSIS reviewed the published studies on stunning methods and CNS tissue emboli to determine which stunning methods that have been used on cattle in the U.S. are likely to result in CNS tissue macro-emboli. The collective findings of the studies indicate that the only stunning technique that has been used in the U.S. that conclusively results in CNS tissue macro-emboli when used to stun cattle is pneumatic-powered captive bolt stunning with air injection. Furthermore, the findings of the Harvard study on BSE and the SSC Opinion on Stunning Methods and BSE Risks, indicate that, of all the stunning devices used on cattle in the U.S., pneumatic-powered captive bolt stunners that inject air present the highest risk of exposing humans to the BSE agent.

Prohibiting the use of air-injection stunning for cattle in the U.S. is consistent with many international stunning requirements for cattle. For example, the E.U. prohibits the use of air-injection stunning for cattle for its member countries.[2] The E.U. also prohibits the importation of meat products from cattle from the U.S., as well as many other countries, that have been stunned using air-injection.[3] Canada also prohibits the use of air-injection stunning for cattle.[4] Thus,

[2] Council Directive 93/119/EC, 22 December, 1993 (Official Journal L 340, 31/12/1993., p. 21).

[3] Commission Regulation (EC) No. 999/2001, 22 May 2001, as amended by Regulation (EC) No. 270/2002 14 February 2002 (Official Journal L. 045, 15/02/2002. p. 13–14).

[4] Meat Hygiene Directive 2002–21, April 8, 2002.

prohibiting the use of air-injection stunning for cattle in the U.S. would help to ensure that U.S. establishments that export beef products to foreign countries are not using air injection stunning, which could promote trade with certain countries.

Meat products exported from another country to the U.S. must meet all safety standards applied to meat food products produced in the U.S. Once this rule is in effect, foreign establishments that use air-injection stunning for cattle would be prohibited from importing beef products into the U.S. Thus, prohibiting the use of air-injection stunning in the U.S. would also address the potential risk associated with imported beef products produced from cattle stunned using air-injection.

As noted in the E.U. SSC report on Stunning Methods and BSE Risks, there are relatively few studies on stunning techniques and CNS tissue emboli, and the methods used in the studies that have been done are inconsistent. Thus, if further studies indicate that stunning techniques used in the U.S. other than air-injection stunning result in CNS tissue macro-emboli, the Agency will consider prohibiting the use of other stunning techniques as well.

FSIS' authority to prohibit the use of captive bolt stunning devices that inject air into the cranium of cattle derives from the FMIA (21 U.S.C. 601(m), 621). When air-injection stunners cause CNS tissue to become dislodged from the brains of cattle, the circulatory systems of the stunned cattle become contaminated with visible CNS macro-emboli. As noted in the E.U. SSC report and the Harvard study, this condition could promote the spread of the BSE agent in the carcass if the animal were infected with BSE because CNS tissue macro-emboli that contain the BSE agent could become lodged in other, edible tissues or organs. FSIS believes that it should not wait until BSE is detected in this country before putting in place appropriate prophylactic measures. By prohibiting the use of air-injection stunning for cattle, FSIS seeks to eliminate a foreseeable source of risk. This action is necessary to strengthen the U.S. Government's BSE prevention efforts.

Emergency Action

Given the fact that a cow in Washington State tested as positive for BSE on December 23, 2003, it is necessary to issue this rule on an emergency basis. BSE infectivity has been confirmed in the brain, eyes, trigeminal ganglia, tonsils, spinal cord, dorsal root ganglia, and distal ileum. Furthermore, most of these tissues have demonstrated infectivity before experimentally infected animals developed clinical signs of disease. Thus, BSE infectivity in these tissues is not readily ascertainable. Therefore, FSIS has determined that it must take immediate action to ensure that materials that could present a significant risk to human health in beef, as a consequence of stunning practices, are prohibited.

Under these circumstances, the FSIS Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest, and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**. FSIS will consider comments received during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, the Agency will publish another document in the **Federal Register**. The document will include a discussion of any comments received in response to this interim rule and any amendments made as a result of those comments.

Executive Order 12866 and Regulatory Flexibility Act

This interim final rule has been determined to be significant as defined in Executive Order 12866, and therefore, it has been reviewed by the Office of Management and Budget.

FSIS is not aware of any cattle slaughter establishments that use air-injection stunning. Therefore, there appear to be no immediate quantifiable costs or benefits associated with this action. However, since research has shown that the practice poses a risk of exposing humans to materials that could contain the BSE agent, and because the technology was used in the U.S. as recently as the 1990's, FSIS believes that this prohibition is a necessary action to help strengthen the U.S. Government's BSE prevention programs.

FSIS has conducted two separate surveys on the use of air injection stunning in official U.S. cattle slaughter establishments. The first survey was conducted from late 1999 to early 2000 and was limited to 72 cattle slaughter establishments located in two FSIS Districts. The second survey was conducted from May 2002 to October, 2002 and involved 270 establishments that slaughter cattle nationwide. Neither of these surveys detected the use of air-injection stunning devices on cattle in official U.S. cattle slaughter establishments. In addition, in July 2002, the seventeen veterinarians in charge of verifying humane slaughter practices in U.S. slaughter plants reported to FSIS headquarters that that they knew of no beef slaughter establishments that use air-injection stunning.

Under section 301 of the FMIA, States are permitted to operate their own meat inspection programs provided that State requirements are at least equal to those imposed by the Federal government (21 U.S.C. 661). Meat products produced under State inspection may only be sold within the State. Thus, when it becomes effective, this rule could impact state-inspected establishments that still use air-injection stunning on cattle. However, FSIS is not aware of any state-inspected plants that use this method of stunning. In November 2002, FSIS conducted an informal survey of State officials on the use of air-injection stunners in state-inspected cattle slaughter establishments. The survey detected no state-inspected establishments that were using air-injection stunning on cattle.

FSIS is aware of only two companies that have sold air-injection stunning equipment to cattle slaughter establishments in the U.S. One of these companies informed the Agency that it no longer manufactures air-injection stunners, and that in the U.S. it had replaced existing stunners with ones that do not use air injection, at its own cost in the late 1990's. The other manufacturer told FSIS that, although it still produces air-injection stunners, it does not sell any in the U.S. and is in the process of phasing out production of these devices.

The E.U. and Canada ban air-injection stunning of cattle and prohibit the importation of beef made from cattle stunned in this manner. Thus, U.S. cattle slaughter establishments that export beef products to these countries already can not use air-injection stunners on those cattle whose products are intended for export.

Meat products exported from another country to the U.S. must meet all safety standards applied to food produced in the U.S. Thus, any foreign establishments that export meat products to the U.S. that use air-injection stunning on cattle may incur costs to replace or modify air-injection stunners or be prohibited from exporting beef products to the U.S. In 2000, approximately 87 percent of the beef and veal imported into the U.S. (fresh and frozen) came from Australia, New Zealand, and Canada; approximately 10 percent from Argentina, Brazil, and Uruguay; and approximately 3 percent from Costa Rica, Honduras, Mexico, and Nicaragua (Ref 10, available for viewing by the public in the FSIS Docket Room).

As previously mentioned, Canada already prohibits the use of air injection stunners on cattle. Therefore, this rule would have no impact on Canadian establishments that export beef to the U.S. Although Australian law does not ban the use of air-injection stunning, to be used in Australia, any new stunning system must be approved by the Australian Quarantine and Inspection Service (AQUIS). There have been trials of low pressure air injection stunning in Australia. However, AQUIS has not approved any of these devices for general use. Furthermore, an AQUIS official informed FSIS that there is a high degree of awareness among both the regulators and the industry in Australia about the potential problems with this type of stunning. It is unlikely that its introduction in Australia will be sought. New Zealand food safety laws do not allow for the use of air-injection stunning.

Both stunning manufacturers that have reported selling air-injection stunning equipment in the U.S. in the past, also have reported that they have sold air-injection stunning equipment to cattle slaughter establishments in South America, and one of them still sells air-injection stunning equipment to cattle slaughter establishments in Mexico, South America, and Eastern Europe. However, FSIS international auditors have not detected the use of air-injection stunners during audits of cattle slaughter establishments in Mexico and South America over the past three years, and the U.S. imports very little, if any, beef products from Eastern Europe. The Agency is continuing to gather data on the international use of air-injection stunning.

For those establishments, if any, that are using air-injection stunning, based on conversations with stunning equipment manufacturers, FSIS estimates that the cost of modifying or replacing an individual piece of equipment could range from $1,500.00 to $2,000.00.

Regulatory Flexibility Act

The Administrator, FSIS, has determined that this rule will not have a significant economic impact, as defined by the Regulatory Flexibility Act (5 U.S.C. 601), on a substantial number of small entities.

As discussed above, FSIS is not aware of any cattle slaughter establishments that use air-injection stunning, regardless of the size of the establishment. Thus, it is likely that this rule will have no economic impact on entities of any size. Any small firms that are using air-injection stunning on cattle would incur costs to replace or modify the equipment, which, as stated above, are estimated to range from $1,500.00 to $2,000.00 per piece of equipment.

Alternatives Considered

FSIS announced its plan to prohibit the use of air-injection stunning of cattle in its current thinking paper on BSE, made available to the public on January 17, 2002 (67 FR 2399, Ref. 11 available for viewing by the public in the FSIS docket room and on the Internet at *http://www.fsis.usda.gov/OA/topics/BSE_thinking.htm*). Thus, although generally the Agency neither promotes nor bans specific types of technology used for meat and poultry slaughter, the regulatory approach adopted with this action of prohibiting air-injection stunners is consistent with earlier statements made by the Agency. In its BSE current thinking paper, FSIS requested comments on the policy options discussed in the document and received no comments that opposed banning the use of air-injection stunners on cattle.

In addition to the approach that was adopted, the Agency considered the alternative of establishing a performance standard that stunning equipment would be required to meet to be used on cattle, and the alternative of no rulemaking.

Under the first option, the Agency would have developed a CNS tissue emboli performance standard that stunners would be required to meet to be permitted to be used on cattle. The benefits of this option are that it is more consistent with FSIS regulatory policy than banning a specific technology, and that it would prevent all methods of stunning that do not comply with the performance standard from being used on cattle, not just air-injection stunning. Thus, this option would prevent the need to regulate individual pieces of equipment.

A potential problem with this option is that there are relatively few studies on stunning methods and CNS tissue emboli. Thus, the Agency was concerned that if it were to establish a CNS tissue emboli performance standard for cattle stunning devices at this time, further studies could reveal that the performance standard selected does not achieve the result intended by the Agency. Therefore, FSIS decided to prohibit the use of the stunning method that all available studies do conclude result in CNS tissue macro-emboli, *i.e.*, stunning that uses air-injection.

Establishing a CNS tissue emboli performance standard would also be more difficult to enforce than the option that was chosen because inspectors would be required to verify that the performance standard was being met. Ensuring compliance with a CNS tissue emboli performance standard could involve analysis of blood or tissue samples for CNS tissue, either by the Agency or the establishment. On the other hand, enforcing a ban on air-injection stunners would simply involve visual verification that a certain piece of equipment is not being used. Thus, enforcement of a performance standard would require more resources than enforcement of an outright ban on air-injection stunners.

FSIS rejected the option of no rulemaking because, as previously mentioned, USDA action with regard to BSE has been, and should continue to be, proactive and preventive. Thus, the Agency is taking this action to strengthen its BSE prevention programs. Furthermore, the Agency has already publicized its intention to prohibit the use of air-injection stunning on cattle. There have been no developments with regard to this issue that justify a change in this position.

FSIS chose the option of prohibiting the use of air-injection stunning for cattle because the Harvard risk assessment and other recent studies indicate that of all the stunning devices that have been used on cattle in the U.S., pneumatic-powered captive bolt stunners that inject compressed air present the highest risk of exposing humans to bovine CNS tissue. Furthermore, unlike a performance standard, this option also clearly establishes which stunning methods would be prohibited, and it is easy to enforce. In addition, an outright prohibition on air-injection stunning is consistent with international laws and policies that did not allow the use of specific stunning technologies, such as air-injection.

Executive Order 12988

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This interim final rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule: (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5 must be exhausted before any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA.

Paperwork Requirements

There are no paperwork or recordkeeping requirements associated with this direct final rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Public Notification and Request for Data

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this direct final, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS Web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience. For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv), go to the ''Constituent Update'' page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the ''Subscribe to the Constituent Update Listserv'' link, then fill out and submit the form.

References

The following sources are referred to in this document. All have been placed on display in the FSIS Docket Room (address above) and may be seen by interested persons between 8:30 a.m. and 4:30 p.m., Monday through Friday.

1. Harvard Center for Risk Analysis, Harvard School of Public Health, and Center for Computational Epidemiology, College of Veterinary Medicine, Tuskegee University, November 26, 2001. Evaluation of the Potential for Bovine Spongiform Encephalopathy in the United States.

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4. Anil, M.H., Love, S., Williams, S., Shand, A., McKinstry, J.L., Helps, C.R., Waterman-Pearson, A., Seghatchian, J., and Harbour, D.A., 1999. Potential contamination of beef carcasses with brain tissue at slaughter. Vet. Rec., 145: 460–462.

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7. E.C. (European Commission), 2002. Opinion of 10–11 January 2002 of the Scientific Steering Committee on Stunning Methods and BSE Risks (The Risk of Dissemination of Brain Particles into the Blood and Carcass When Applying Certain Stunning Methods).

8. E.C. (European Commission), 2001. Report on Stunning Methods and BSE Risks (The Risk of Dissemination of Brain Particles into the Blood and Carcass When Applying Certain Stunning Methods). Prepared by the TSE BSE Ad Hoc Group at its meeting of 13 December 2001.

9. Mackey, B.M, and Derrick, C.M., 1979. Contamination of the deep tissues of carcasses by bacteria present on the slaughter instruments on in the gut. J. Appl. Bact., 46:355–366.

10. USDA Agricultural Statistics, 2002, VII–44, Table 7–70.

11. Food Safety and Inspection Service (FSIS), Current Thinking On Measures That Could Be Implemented To Minimize Human Exposure To Materials That Could Potentially Contain the Bovine Spongiform Encephalopathy Agent, January 15, 2002. Available on the internet at *http://www.fsis.usda.gov/OA/topics/BSE_thinking.htm*.

List of Subjects

9 CFR Part 310

Animal diseases, Meat inspection.

9 CFR Part 313

Animal welfare, Livestock, Meat inspection.

■ For the reasons discussed in the preamble, FSIS amends 9 CFR chapter III as follows:

PART 310—POST-MORTEM INSPECTION

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

§ 310.13 [Amended]

■ 2. Section 310.13 is amended as follows: Paragraph (a)(2)(iv)(C) is amended by adding the phrase ''of all livestock except cattle'' after ''into the skull'' and before ''in conjunction with''.

PART 313—HUMANE SLAUGHTER OF LIVESTOCK

■ 1. The authority citation for part 313 continues to read as follows:

Authority: 7 U.S.C. 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

§ 313.15 [Amended]

■ 2. Section 313.15 is amended as follows:

Paragraph (b)(2) is amended by revising the paragraph heading, designating the text as paragraph (b)(2)(i), and by adding a new paragraph (b)(2)(ii). The added and revised text reads as follows:

§ 313.15 Mechanical; captive bolt.

* * * * *

(b) * * *

(2) Special requirements and prohibitions.

* * * * *

(ii) Captive bolt stunners that deliberately inject compressed air into the cranium at the end of the penetration cycle shall not be used to stun cattle.

Done at Washington, DC, on: January 7, 2004.

Garry L. McKee,

Administrator.

[FR Doc. 04–624 Filed 1–8–04; 1:43 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–048N]

Bovine Spongiform Encephalopathy Surveillance Program

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it will no longer pass and apply the mark of inspection to the carcasses and parts from cattle that are selected for testing by USDA's Animal and Plant Health Inspection Service (APHIS) for Bovine Spongiform Encephalopathy (BSE) until the sample is determined to be negative.

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Ph.D., Executive Associate, Office of Policy and Program Development, Food Safety and Inspection Service, 1400 Independence Avenue SW., Washington, DC 20250–3700; (202) 205–0495.

SUPPLEMENTARY INFORMATION: The mission of the U.S. Department of Agriculture (USDA) is to enhance the quality of life for the American people by ensuring a safe, affordable, nutritious, and accessible food supply. APHIS is responsible for ensuring animals and plant health. FSIS is responsible for protecting the Nation's meat, poultry, and egg products supply, making sure it is safe, wholesome, not adulterated, and properly labeled and packaged. These two agencies lead USDA's program activities for prevention, monitoring, and control of bovine spongiform encephalopathy (BSE) in cattle and in the U.S. food supply. BSE, widely referred to as ''mad cow disease,'' is a chronic degenerative disease affecting the central nervous system (CNS) of cattle.

To prevent the entry into commerce of meat and meat food products that are adulterated, FSIS inspection program personnel perform ante- and post-mortem inspection of cattle that are slaughtered in the United States. As part of the ante-mortem inspection, FSIS inspection program personnel look for symptoms of disease, including signs of CNS impairment. Cattle showing symptoms of certain diseases, including those exhibiting signs of neurologic impairment, are condemned, and the meat from these animals is not permitted for use as human food. The brains from cattle exhibiting signs of neurologic impairment are submitted to USDA's National Veterinary Services Laboratories for analysis.

APHIS veterinarians also randomly collect brain samples from cattle that are believed to be at higher risk of BSE, including cattle older than 30 months and non-ambulatory cattle, as well as from other cattle that do not exhibit signs of neurologic impairment to be tested for BSE. Until recently, unless otherwise prohibited by an FSIS Veterinary Medical Officer, the meat from these animals was allowed to be processed for human food before the BSE sample results were received by FSIS and the establishment. FSIS recommended, but did not require, that slaughter establishments hold these carcasses until the sample results had been received.

On December 23, 2003, APHIS diagnosed a presumptive-positive case of BSE in the brain of an adult Holstein cow in the State of Washington. This brain had been sampled by APHIS as part of its surveillance sampling program. On December 25, 2003, the International Reference Laboratory in Weybridge, England confirmed the diagnosis of BSE.

In light of this finding, FSIS has concluded that, when APHIS takes a surveillance sample, it would be prudent for FSIS inspection program personnel not to apply the mark of inspection until the result from the APHIS testing is received by FSIS and the establishment, and the result is negative. Accordingly, FSIS will no longer allow these carcasses to be marked ''Inspected and passed'' until the sample testing has been completed, and the result is negative.

FSIS is issuing a Directive to its inspection program personnel that sets out this course of action.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the ''Constituent Update'' page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the ''Subscribe to the Constituent Update Listserv'' link, then fill out and submit the form.

Done at Washington, DC on January 7, 2004.

Garry L. McKee,

Administrator.

[FR Doc. 04–627 Filed 1–8–04; 1:43 pm]

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Federal Register

Vol. 69, No. 7

Monday, January 12, 2004

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General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
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FEDERAL REGISTER PAGES AND DATE, JANUARY

1–242 2
243–484 5
485–848 6
849–1268 7
1269–1502 8
1503–1646 9
1647–1892 12

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7748 227
Executive Orders:
12543 (See Notice of January 5, 2004 847
13322 231
13323 241
Administrative Orders:
Notice of January 5, 2004 847
Memorandums:
Memorandum of May 6, 2003 (Amended by Memorandum of December 5, 2003) 1645

7 CFR

55 1647
301 .....243, 245, 247
718 249
905 485
944 485
981 1269
1124 1654
1480 249
Proposed Rules:
981 551
1469 194

8 CFR

214 468
215 468
235 468

9 CFR

300 250
301 .....250, 1874
306 250
309 1862
310 .....1862, 1885
311 1862
313 1885
318 .....250, 1862, 1874
319 1862
320 .....250, 1874
381 250
592 1647
Proposed Rules:
381 1547

10 CFR

72 849
Proposed Rules:
50 879

12 CFR

229 1655
Proposed Rules:
5 .....1, 892
229 1470

14 CFR

1 1620
23 488
25 490
39 .....492, 494, 859, 861, 864, 867, 869, 871, 1503, 1504, 1505, 1507, 1509, 1511, 1513, 1515, 1516, 1519, 1521, 1657, 1659
71 .....495, 497, 1661, 1662, 1663, 1664, 1666, 1667, 1668, 1669, 1670, 1671, 1672, 1783
91 1620
97 1674
121 .....1620, 1840
125 1620
135 1620
255 976
Proposed Rules:
1 551
21 .....282, 551
25 551
33 551
39 .....282, 284, 287, 289, 291, 293, 895, 897, 900, 1274, 1275, 1547, 1549, 1551
73 552
121 .....282, 551
135 551

15 CFR

Proposed Rules:
740 1685
742 1685
748 1685
754 1685
772 1685

20 CFR

404 497
422 497
Proposed Rules:
416 554

21 CFR

1 1675
201 .....255, 1320
510 1522
520 499
522 500
524 500
558 1522
610 .....255, 1320

22 CFR

121 873

24 CFR

203 4

26 CFR
1 .....5, 12, 22, 436, 502
20 12
25 12
26 12
301 506
602 .....22, 436
Proposed Rules:
1 .....42, 43, 47
301 47

28 CFR
302 1524

29 CFR
102 1675
Proposed Rules:
1926 1277

30 CFR
Proposed Rules:
780 1036
816 1036
817 1036

32 CFR
806b 507, 954
1665 1524

33 CFR
17 267
117 1525
148 724
149 724
150 724
165 .....268, 1527, 1618
334 271
Proposed Rules:
117 1554
151 1078
165 1556

36 CFR
215 1529
218 1529
223 29
Proposed Rules:
1254 295
1256 295

38 CFR
17 1060

40 CFR
52 .....34, 1271, 1537, 1677, 1682
60 1786
63 .....130, 394
90 1824
Proposed Rules:
52 .....302, 558, 1685
81 558
90 1836
122 1558
123 1558
148 1319
261 1319
268 1319
271 1319
302 1319
404 307
416 307

42 CFR
52h 272
405 1084
414 1084
419 820
447 508
Proposed Rules:
447 565

43 CFR
Proposed Rules:
4100 569

44 CFR
64 40
65 .....514, 516, 518
67 .....521, 522, 524
Proposed Rules:
67 .....570, 584, 586, 609

46 CFR
12 526
401 .....128, 533
404 .....128, 533

47 CFR
73 .....534, 535, 536, 537, 874
Proposed Rules:
73 .....611, 612, 613

48 CFR
Ch. 1 .....1050, 1057
1 1050
5 1051
12 1051
13 1051
14 1051
17 1051
19 1051
22 1051
25 1051
36 1050
52 .....1051, 1618
53 1050
202 128
204 128
211 128
212 128
243 128
252 128

49 CFR
195 537
571 279
Proposed Rules:
571 307

50 CFR
622 1538
660 1322
679 875
Proposed Rules:
17 1560
92 1686
622 .....309, 310, 1278
648 1561
660 .....1380, 1563
679 614

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JANUARY 12, 2004

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Egg products inspection; voluntary inspections; published 1-12-04

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Egg products inspection; voluntary inspections; published 1-12-04

Meat and poultry inspection:

Bovine spongiform encephalopathy policies—

Advanced meat/bone separation machinery and meat recovery systems; use criteria; published 1-12-04

Specified risk materials use for human food, prohibition; and non-ambulatory disabled cattle, disposition requirements; published 1-12-04

Stunning devices used to immobilize cattle during slaughter; prohibition; published 1-12-04

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Magnuson-Stevens Act provisions—

Bering Sea and Aleutian Islands king and tanner crabs; published 12-12-03

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Architect-engineer contractors selection; new consolidated form; published 12-11-03

Competitive acquisition; debriefing; published 12-11-03

Debarement and suspension; order placement and option exercise; published 12-11-03

Depreciation cost principle; published 12-11-03

Insurance and pension costs; published 12-11-03

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:

Monitoring requirements; published 1-12-04

Air quality implementation plans; approval and promulgation; various States:

Kentucky; published 1-12-04

FEDERAL COMMUNICATIONS COMMISSION

Radio broadcasting:

Broadcast auxiliary service; wireless video assist devices; revision; published 12-12-03

Radio stations; table of assignments:

Texas; published 12-12-03

Various States; published 12-12-03

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Architect-engineer contractors selection; new consolidated form; published 12-11-03

Competitive acquisition; debriefing; published 12-11-03

Debarement and suspension; order placement and option exercise; published 12-11-03

Depreciation cost principle; published 12-11-03

Insurance and pension costs; published 12-11-03

HOMELAND SECURITY DEPARTMENT

Coast Guard

Great Lakes pilotage regulations:

Partial rate adjustment; published 12-12-03

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Community development block grants:

Metropolitan city definition and other conforming amendments; published 12-12-03

INTERIOR DEPARTMENT

Minerals Management Service

Outer Continental Shelf; oil, gas, and sulphur operations:

OCS rights-of-use and easement and pipeline rights-of-way; requirements revision; published 12-12-03

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Architect-engineer contractors selection; new consolidated form; published 12-11-03

Competitive acquisition; debriefing; published 12-11-03

Debarement and suspension; order placement and option exercise; published 12-11-03

Depreciation cost principle; published 12-11-03

Insurance and pension costs; published 12-11-03

NATIONAL LABOR RELATIONS BOARD

Practice and procedure:

Summary and default judgments; applicability of rules governing motions; published 1-12-04

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Cessna; published 11-13-03

Standard instrument approach procedures; published 1-12-04

RULES GOING INTO EFFECT JANUARY 12, 2004

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Walnuts grown in—

California; comments due by 1-20-04; published 11-21-03 [FR 03-29061]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, foreign:

Ports of entry—

Atlanta, GA and Agana, GU; designated as plant inspection stations; comments due by 1-20-04; published 12-18-03 [FR 03-31203]

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase programs:

Warehouses for interest commodity storage; approval standards; comments due by 1-20-04; published 11-20-03 [FR 03-28989]

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

Fees:

Official Inspection and weighing services; comments due by 1-20-04; published 11-19-03 [FR 03-28831]

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Emergency Water Protection Program; implementation; comments due by 1-20-04; published 11-19-03 [FR 03-28793]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Caribbean, Gulf, and South Atlantic fisheries—

Gulf of Mexico reef fish; comments due by 1-20-04; published 12-30-03 [FR 03-32034]

Marine mammals:

Incidental taking—

Transient killer whales; AT1 group designation; comments due by 1-22-04; published 10-24-03 [FR 03-26931]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Civilian health and medical program of uniformed services (CHAMPUS):

TRICARE program—

National Defense Authorization Act for 2003 FY; implementation; inpatient mental health

care preauthorization eliminated and dental program expanded; comments due by 1-20-04; published 11-19-03 [FR 03-28756]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Hazardous air pollutants; source category list—

Ethylene glycol monobutyl ether; delisting; comments due by 1-20-04; published 11-21-03 [FR 03-28787]

Air programs; State authority delegations:

California; comments due by 1-20-04; published 12-19-03 [FR 03-31348]

Air quality implementation plans; approval and promulgation; various States:

Connecticut; comments due by 1-20-04; published 12-18-03 [FR 03-31233]

Disadvantaged Business Enterprise Program; participation by businesses in procurement under financial assistance agreements; comments due by 1-20-04; published 7-24-03 [FR 03-18002]

Environmental statements; availability, etc.:

Coastal nonpoint pollution control program—

Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

FARM CREDIT ADMINISTRATION

Farm credit system:

Loan policies and operations, etc.—

Young, beginning, and small farmers and ranchers, and aquatic products producers or harvesters; comments due by 1-20-04; published 11-20-03 [FR 03-28969]

FEDERAL DEPOSIT INSURANCE CORPORATION

Disabled persons' access to programs, activities, facilities, and electronic and information technology; comments due by 1-23-04; published 11-24-03 [FR 03-29090]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Disease Control and Prevention

Communicable diseases control:

African rodents, prairie dogs, and certain other animals; restrictions; comments due by 1-20-04; published 11-4-03 [FR 03-27557]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Communicable diseases control:

African rodents, prairie dogs, and certain other animals; restrictions; comments due by 1-20-04; published 11-4-03 [FR 03-27557]

Human drugs:

Laxative products (OTC); reopening of administrative record; comments due by 1-20-04; published 10-22-03 [FR 03-26570]

Reports and guidance documents; availability, etc.:

Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety:

New York Marine Inspection and Captain of Port Zones, NY; safety and security zones; comments due by 1-20-04; published 11-20-03 [FR 03-29026]

Regattas and marine parades:

Nanticoke River, Sharptown, MD; marine events; comments due by 1-22-04; published 10-24-03 [FR 03-26868]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Mortgage and loan insurance programs:

Single family mortgage insurance—

FHA Technology Open To Approved Lenders (TOTAL) mortgage scorecard use; requirements and procedures; comments due by 1-20-04; published 11-21-03 [FR 03-29055]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Critical habitat designations—

Mussels in Mobile River Basin, AL; comments due by 1-23-04; published 1-13-04 [FR 04-00514]

Migratory bird hunting:

Tungsten-bronze-iron shot approval as nontoxic for waterfowl hunting; comments due by 1-20-04; published 11-18-03 [FR 03-28688]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

New Mexico; comments due by 1-20-04; published 12-19-03 [FR 03-31343]

INTERNATIONAL TRADE COMMISSION

Practice and procedure:

Investigations relating to global and bilateral safeguard actions, market disruption, and relief actions review; comments due by 1-20-04; published 11-19-03 [FR 03-28879]

NUCLEAR REGULATORY COMMISSION

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list; comments due by 1-20-04; published 12-18-03 [FR 03-31207]

PEACE CORPS

Organization, functions, and authority delegations; comments due by 1-21-04; published 12-22-03 [FR 03-31396]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:

National air tour safety standards; comments due by 1-20-04; published 10-22-03 [FR 03-26104]

Airworthiness directives:

Airbus; comments due by 1-20-04; published 12-18-03 [FR 03-31179]

BAE Systems (Operations) Ltd.; comments due by 1-23-04; published 12-24-03 [FR 03-31441]

Boeing; comments due by 1-20-04; published 11-18-03 [FR 03-28738]

Bombardier; comments due by 1-20-04; published 12-18-03 [FR 03-31183]

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 1-20-04; published 12-18-03 [FR 03-31181]

Eurocopter France; comments due by 1-23-04; published 11-24-03 [FR 03-29221]

General Electric Co.; comments due by 1-20-04; published 11-18-03 [FR 03-28739]

McDonnell Douglas; comments due by 1-20-04; published 12-3-03 [FR 03-30114]

Sikorsky; comments due by 1-23-04; published 11-24-03 [FR 03-29219]

Special conditions—

Boeing Model 747-100/200B/200F/200F/200C/SR/SP/100B SUD/400/400D/400F series airplanes; comments due by 1-23-04; published 12-9-03 [FR 03-30449]

Class B airspace; comments due by 1-23-04; published 11-24-03 [FR 03-29202]

Class E airspace; comments due by 1-20-04; published 12-19-03 [FR 03-31246]

Federal airways; comments due by 1-23-04; published 12-9-03 [FR 03-30450]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Motorcycle controls and displays; comments due by 1-20-04; published 11-21-03 [FR 03-28943]

TREASURY DEPARTMENT

Foreign Assets Control Office

Iraqi sanctions regulations:

Claims against the government of Iraq; U. S. financial institutions transfer authorization; comments due by 1-23-

04; published 11-24-03 [FR 03-29237]

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 108th Congress has been completed. It will resume when bills are enacted into public law during the next session of Congress. A cumulative List of Public Laws for the first session of the 108th Congress will appear in the issue of January 30, 2004.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–050–00001–6)	9.00	[4] Jan. 1, 2003
3 (2002 Compilation and Parts 100 and 101)	(869–050–00002–4)	32.00	[1] Jan. 1, 2003
4	(869–050–00003–2)	9.50	Jan. 1, 2003
5 Parts:			
1–699	(869–050–00004–1)	57.00	Jan. 1, 2003
700–1199	(869–050–00005–9)	46.00	Jan. 1, 2003
1200–End, 6 (6 Reserved)	(869–050–00006–7)	58.00	Jan. 1, 2003
7 Parts:			
1–26	(869–050–00007–5)	40.00	Jan. 1, 2003
27–52	(869–050–00008–3)	47.00	Jan. 1, 2003
53–209	(869–050–00009–1)	36.00	Jan. 1, 2003
210–299	(869–050–00010–5)	59.00	Jan. 1, 2003
300–399	(869–050–00011–3)	43.00	Jan. 1, 2003
400–699	(869–050–00012–1)	39.00	Jan. 1, 2003
700–899	(869–050–00013–0)	42.00	Jan. 1, 2003
900–999	(869–050–00014–8)	57.00	Jan. 1, 2003
1000–1199	(869–050–00015–6)	23.00	Jan. 1, 2003
1200–1599	(869–050–00016–4)	58.00	Jan. 1, 2003
1600–1899	(869–050–00017–2)	61.00	Jan. 1, 2003
1900–1939	(869–050–00018–1)	29.00	[4] Jan. 1, 2003
1940–1949	(869–050–00019–9)	47.00	Jan. 1, 2003
1950–1999	(869–050–00020–2)	45.00	Jan. 1, 2003
2000–End	(869–050–00021–1)	46.00	Jan. 1, 2003
8	(869–050–00022–9)	58.00	Jan. 1, 2003
9 Parts:			
1–199	(869–050–00023–7)	58.00	Jan. 1, 2003
200–End	(869–050–00024–5)	56.00	Jan. 1, 2003
10 Parts:			
1–50	(869–050–00025–3)	58.00	Jan. 1, 2003
51–199	(869–050–00026–1)	56.00	Jan. 1, 2003
200–499	(869–050–00027–0)	44.00	Jan. 1, 2003
500–End	(869–050–00028–8)	58.00	Jan. 1, 2003
11	(869–050–00029–6)	38.00	Feb. 3, 2003
12 Parts:			
1–199	(869–050–00030–0)	30.00	Jan. 1, 2003
200–219	(869–050–00031–8)	38.00	Jan. 1, 2003
220–299	(869–050–00032–6)	58.00	Jan. 1, 2003
300–499	(869–050–00033–4)	43.00	Jan. 1, 2003
500–599	(869–050–00034–2)	38.00	Jan. 1, 2003
600–899	(869–050–00035–1)	54.00	Jan. 1, 2003
900–End	(869–050–00036–9)	47.00	Jan. 1, 2003
13	(869–050–00037–7)	47.00	Jan. 1, 2003
14 Parts:			
1–59	(869–050–00038–5)	60.00	Jan. 1, 2003
60–139	(869–050–00039–3)	58.00	Jan. 1, 2003
140–199	(869–050–00040–7)	28.00	Jan. 1, 2003
200–1199	(869–050–00041–5)	47.00	Jan. 1, 2003
1200–End	(869–050–00042–3)	43.00	Jan. 1, 2003
15 Parts:			
0–299	(869–050–00043–1)	37.00	Jan. 1, 2003
300–799	(869–050–00044–0)	57.00	Jan. 1, 2003
800–End	(869–050–00045–8)	40.00	Jan. 1, 2003
16 Parts:			
0–999	(869–050–00046–6)	47.00	Jan. 1, 2003
1000–End	(869–050–00047–4)	57.00	Jan. 1, 2003
17 Parts:			
1–199	(869–050–00049–1)	50.00	Apr. 1, 2003
200–239	(869–050–00050–4)	58.00	Apr. 1, 2003
240–End	(869–050–00051–2)	62.00	Apr. 1, 2003
18 Parts:			
1–399	(869–050–00052–1)	62.00	Apr. 1, 2003
400–End	(869–050–00053–9)	25.00	Apr. 1, 2003
19 Parts:			
1–140	(869–050–00054–7)	60.00	Apr. 1, 2003
141–199	(869–050–00055–5)	58.00	Apr. 1, 2003
200–End	(869–050–00056–3)	30.00	Apr. 1, 2003
20 Parts:			
1–399	(869–050–00057–1)	50.00	Apr. 1, 2003
400–499	(869–050–00058–0)	63.00	Apr. 1, 2003
500–End	(869–050–00059–8)	63.00	Apr. 1, 2003
21 Parts:			
1–99	(869–050–00060–1)	40.00	Apr. 1, 2003
100–169	(869–050–00061–0)	47.00	Apr. 1, 2003
170–199	(869–050–00062–8)	50.00	Apr. 1, 2003
200–299	(869–050–00063–6)	17.00	Apr. 1, 2003
300–499	(869–050–00064–4)	29.00	Apr. 1, 2003
500–599	(869–050–00065–2)	47.00	Apr. 1, 2003
600–799	(869–050–00066–1)	15.00	Apr. 1, 2003
800–1299	(869–050–00067–9)	58.00	Apr. 1, 2003
1300–End	(869–050–00068–7)	22.00	Apr. 1, 2003
22 Parts:			
1–299	(869–050–00069–5)	62.00	Apr. 1, 2003
300–End	(869–050–00070–9)	44.00	Apr. 1, 2003
23	(869–050–00071–7)	44.00	Apr. 1, 2003
24 Parts:			
0–199	(869–050–00072–5)	58.00	Apr. 1, 2003
200–499	(869–050–00073–3)	50.00	Apr. 1, 2003
500–699	(869–050–00074–1)	30.00	Apr. 1, 2003
700–1699	(869–050–00075–0)	61.00	Apr. 1, 2003
1700–End	(869–050–00076–8)	30.00	Apr. 1, 2003
25	(869–050–00077–6)	63.00	Apr. 1, 2003
26 Parts:			
§§ 1.0–1–1.60	(869–050–00078–4)	49.00	Apr. 1, 2003
§§ 1.61–1.169	(869–050–00079–2)	63.00	Apr. 1, 2003
§§ 1.170–1.300	(869–050–00080–6)	57.00	Apr. 1, 2003
§§ 1.301–1.400	(869–050–00081–4)	46.00	Apr. 1, 2003
§§ 1.401–1.440	(869–050–00082–2)	61.00	Apr. 1, 2003
§§ 1.441–1.500	(869–050–00083–1)	50.00	Apr. 1, 2003
§§ 1.501–1.640	(869–050–00084–9)	49.00	Apr. 1, 2003
§§ 1.641–1.850	(869–050–00085–7)	60.00	Apr. 1, 2003
§§ 1.851–1.907	(869–050–00086–5)	60.00	Apr. 1, 2003
§§ 1.908–1.1000	(869–050–00087–3)	60.00	Apr. 1, 2003
§§ 1.1001–1.1400	(869–050–00088–1)	61.00	Apr. 1, 2003
§§ 1.1401–1.1503–2A	(869–050–00089–0)	50.00	Apr. 1, 2003
§§ 1.1551–End	(869–050–00090–3)	50.00	Apr. 1, 2003
2–29	(869–050–00091–1)	60.00	Apr. 1, 2003
30–39	(869–050–00092–0)	41.00	Apr. 1, 2003
40–49	(869–050–00093–8)	26.00	Apr. 1, 2003
50–299	(869–050–00094–6)	41.00	Apr. 1, 2003
300–499	(869–050–00095–4)	61.00	Apr. 1, 2003
500–599	(869–050–00096–2)	12.00	[5] Apr. 1, 2003
600–End	(869–050–00097–1)	17.00	Apr. 1, 2003

Title	Stock Number	Price	Revision Date
27 Parts:			
1–199	(869–050–00098–9)	63.00	Apr. 1, 2003
200–End	(869–050–00099–7)	25.00	Apr. 1, 2003
28 Parts:			
0–42	(869–050–00100–4)	61.00	July 1, 2003
43–End	(869–050–00101–2)	58.00	July 1, 2003
29 Parts:			
0–99	(869–050–00102–1)	50.00	July 1, 2003
100–499	(869–050–00103–9)	22.00	July 1, 2003
500–899	(869–050–00104–7)	61.00	July 1, 2003
900–1899	(869–050–00105–5)	35.00	July 1, 2003
1900–1910 (§§ 1900 to 1910.999)	(869–050–00106–3)	61.00	July 1, 2003
1910 (§§ 1910.1000 to end)	(869–050–00107–1)	46.00	July 1, 2003
1911–1925	(869–050–00108–0)	30.00	July 1, 2003
1926	(869–050–00109–8)	50.00	July 1, 2003
1927–End	(869–050–00110–1)	62.00	July 1, 2003
30 Parts:			
1–199	(869–050–00111–0)	57.00	July 1, 2003
200–699	(869–050–00112–8)	50.00	July 1, 2003
700–End	(869–050–00113–6)	57.00	July 1, 2003
31 Parts:			
0–199	(869–050–00114–4)	40.00	July 1, 2003
200–End	(869–050–00115–2)	64.00	July 1, 2003
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–050–00116–1)	60.00	July 1, 2003
191–399	(869–050–00117–9)	63.00	July 1, 2003
400–629	(869–050–00118–7)	50.00	July 1, 2003
630–699	(869–050–00119–5)	37.00	[7] July 1, 2003
700–799	(869–050–00120–9)	46.00	July 1, 2003
800–End	(869–050–00121–7)	47.00	July 1, 2003
33 Parts:			
1–124	(869–050–00122–5)	55.00	July 1, 2003
125–199	(869–050–00123–3)	61.00	July 1, 2003
200–End	(869–050–00124–1)	50.00	July 1, 2003
34 Parts:			
1–299	(869–050–00125–0)	49.00	July 1, 2003
300–399	(869–050–00126–8)	43.00	[7] July 1, 2003
400–End	(869–050–00127–6)	61.00	July 1, 2003
35	(869–050–00128–4)	10.00	[6] July 1, 2003
36 Parts			
1–199	(869–050–00129–2)	37.00	July 1, 2003
200–299	(869–050–00130–6)	37.00	July 1, 2003
300–End	(869–050–00131–4)	61.00	July 1, 2003
37	(869–050–00132–2)	50.00	July 1, 2003
38 Parts:			
0–17	(869–050–00133–1)	58.00	July 1, 2003
18–End	(869–050–00134–9)	62.00	July 1, 2003
39	(869–050–00135–7)	41.00	July 1, 2003
40 Parts:			
1–49	(869–050–00136–5)	60.00	July 1, 2003
50–51	(869–050–00137–3)	44.00	July 1, 2003
52 (52.01–52.1018)	(869–050–00138–1)	58.00	July 1, 2003
52 (52.1019–End)	(869–050–00139–0)	61.00	July 1, 2003
53–59	(869–050–00140–3)	31.00	July 1, 2003
60 (60.1–End)	(869–050–00141–1)	58.00	July 1, 2003
60 (Apps)	(869–050–00142–0)	51.00	[8] July 1, 2003
61–62	(869–050–00143–8)	43.00	July 1, 2003
63 (63.1–63.599)	(869–050–00144–6)	58.00	July 1, 2003
63 (63.600–63.1199)	(869–050–00145–4)	50.00	July 1, 2003
63 (63.1200–63.1439)	(869–050–00146–2)	50.00	July 1, 2003
63 (63.1440–End)	(869–050–00147–1)	64.00	July 1, 2003
64–71	(869–050–00148–9)	29.00	July 1, 2003
72–80	(869–050–00149–7)	61.00	July 1, 2003
81–85	(869–050–00150–1)	50.00	July 1, 2003
86 (86.1–86.599–99)	(869–050–00151–9)	57.00	July 1, 2003
86 (86.600–1–End)	(869–050–00152–7)	50.00	July 1, 2003
87–99	(869–050–00153–5)	60.00	July 1, 2003
100–135	(869–050–00154–3)	43.00	July 1, 2003
136–149	(869–150–00155–1)	61.00	July 1, 2003
150–189	(869–050–00156–0)	49.00	July 1, 2003
190–259	(869–050–00157–8)	39.00	July 1, 2003
260–265	(869–050–00158–6)	50.00	July 1, 2003
266–299	(869–048–00156–5)	47.00	July 1, 2002
300–399	(869–050–00160–8)	42.00	July 1, 2003
400–424	(869–050–00161–6)	56.00	July 1, 2003
425–699	(869–050–00162–4)	61.00	July 1, 2003
700–789	(869–050–00163–2)	61.00	July 1, 2003
790–End	(869–050–00164–1)	58.00	July 1, 2003
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–048–00162–0)	23.00	July 1, 2002
101	(869–050–00166–7)	24.00	July 1, 2003
102–200	(869–050–00167–5)	50.00	July 1, 2003
201–End	(869–050–00168–3)	22.00	July 1, 2003
42 Parts:			
1–399	(869–048–00166–2)	56.00	Oct. 1, 2002
400–429	(869–048–00167–1)	59.00	Oct. 1, 2002
430–End	(869–050–00171–3)	64.00	Oct. 1, 2003
43 Parts:			
1–999	(869–050–00172–1)	55.00	Oct. 1, 2003
1000–end	(869–048–00170–1)	59.00	Oct. 1, 2002
44	(869–050–00174–8)	50.00	Oct. 1, 2003
45 Parts:			
1–199	(869–050–00175–6)	60.00	Oct. 1, 2003
200–499	(869–050–00176–4)	33.00	[9] Oct. 1, 2003
500–1199	(869–050–00177–2)	50.00	Oct. 1, 2003
1200–End	(869–050–00178–1)	60.00	Oct. 1, 2003
46 Parts:			
1–40	(869–050–00179–9)	46.00	Oct. 1, 2003
41–69	(869–048–00177–8)	37.00	Oct. 1, 2002
70–89	(869–050–00181–1)	14.00	Oct. 1, 2003
90–139	(869–050–00182–9)	44.00	Oct. 1, 2003
140–155	(869–050–00183–7)	25.00	[9] Oct. 1, 2003
156–165	(869–050–00184–5)	34.00	[9] Oct. 1, 2003
166–199	(869–048–00182–4)	44.00	Oct. 1, 2002
200–499	(869–050–00186–1)	39.00	Oct. 1, 2003
500–End	(869–050–00187–0)	25.00	Oct. 1, 2003
47 Parts:			
0–19	(869–048–00185–9)	57.00	Oct. 1, 2002
20–39	(869–048–00186–7)	45.00	Oct. 1, 2002
40–69	(869–048–00187–5)	36.00	Oct. 1, 2002
70–79	(869–048–00188–3)	58.00	Oct. 1, 2002
80–End	(869–048–00189–1)	57.00	Oct. 1, 2002
48 Chapters:			
1 (Parts 1–51)	(869–050–00193–4)	63.00	Oct. 1, 2003
1 (Parts 52–99)	(869–048–00191–3)	47.00	Oct. 1, 2002
*2 (Parts 201–299)	(869–050–00195–1)	55.00	Oct. 1, 2003
3–6	(869–050–00196–9)	33.00	Oct. 1, 2003
7–14	(869–048–00194–8)	47.00	Oct. 1, 2002
15–28	(869–048–00195–6)	55.00	Oct. 1, 2002
29–End	(869–050–00199–3)	38.00	[9] Oct. 1, 2003
49 Parts:			
*1–99	(869–050–00200–1)	60.00	Oct. 1, 2003
100–185	(869–048–00198–1)	60.00	Oct. 1, 2002
186–199	(869–050–00202–7)	20.00	Oct. 1, 2003

Title	Stock Number	Price	Revision Date
200–399	(869–048–00200–6)	61.00	Oct. 1, 2002
400–999	(869–048–00201–4)	61.00	Oct. 1, 2002
600–999	(869–050–00205–1)	22.00	Oct. 1, 2003
*1000–1199	(869–050–00206–0)	26.00	Oct. 1, 2003
1200–End	(869–048–00207–8)	33.00	Oct. 1, 2003
50 Parts:			
1–16	(869–050–00208–6)	11.00	Oct. 1, 2003
18–199	(869–050–00212–4)	42.00	Oct. 1, 2003
*200–599	(869–050–00213–2)	44.00	Oct. 1, 2003
600–End	(869–048–00207–3)	58.00	Oct. 1, 2002
CFR Index and Findings Aids	(869–050–00048–2)	59.00	Jan. 1, 2003
Complete 2003 CFR set		1,195.00	2003
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2003
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Complete set (one-time mailing)		290.00	2001

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2003. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2003. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2003. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2003. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2003. The CFR volume issued as of October 1, 2001 should be retained.