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Rules and Regulations

Federal Register

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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.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–NM–10–AD; Amendment 39–13447; AD 2004–03–03]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Fokker Model F.28 Mark 0070 and 0100 series airplanes. This action requires revising the applicable airplane flight manual to provide the flightcrew with more restrictive procedures for operating in icing conditions. This action is necessary to ensure that the flightcrew is aware of the procedures required to prevent ice from contacting the ice impact panels on the engine fan case. Such contact could result in a panel coming loose during flight and blocking the bypass flow through the engine outlet guide vanes, and consequent reduction of the engine thrust, resulting in insufficient thrust to maintain flight. This action is intended to address the identified unsafe condition.

DATES: Effective February 18, 2004. Comments for inclusion in the Rules Docket must be received on or before March 4, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2004–NM–10–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via the Internet must contain ''Docket No. 2004–NM–10–AD'' in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

Information pertaining to this AD may be examined at the FAA, Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker Model F.28 Mark 0070 and 0100 series airplanes. The CAA–NL advises that it has received reports of two incidents of separation of ice impact panels from the engine fan case during flight. One incident involved a Model F.28 Mark 0070 airplane and the other incident involved a Model F.28 Mark 0100 airplane. The affected airplanes were operating in severe icing conditions; ice released from the engine inlet or wing and ingested into the engine has not been excluded as a factor contributing to the separation of the ice impact panels. The CAA–NL has determined that such incidents warrant temporary measures and that the applicable airplane flight manual (AFM) should be revised to provide the flightcrew with the procedures they must follow to prevent ice from contacting the ice impact panels on the engine fan case. Such contact could result in a panel coming loose during flight and blocking the bypass flow through the engine outlet guide vanes, and consequent reduction of the engine thrust, resulting in insufficient thrust to maintain flight.

The CAA–NL issued Dutch airworthiness directive 2004–004, dated January 15, 2004, to ensure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

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

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to ensure that the flightcrew is aware of the actions they must take to prevent ice from contacting the ice impact panels on the engine fan case. Such contact could result in a panel coming loose during flight and blocking the bypass flow through the engine outlet guide vanes, and consequent reduction of the engine thrust, resulting in insufficient thrust to maintain flight. This AD requires revising the Normal Procedures Section, ''Operation in Icing Conditions,'' and the Limitations Section, ''Weather Limitations,'' of the applicable airplane flight manual to provide the flightcrew with more restrictive procedures for operating in icing conditions.

Interim Action

We consider this AD interim action. If final action is later identified, we may consider further rulemaking at that time.

Difference Between Dutch Airworthiness Directive and This Rule

The Dutch airworthiness directive mandates doing the AFM revision before the next flight of the airplane. This AD allows operators 7 days after the effective date of this AD to complete the required AFM revision. In

developing an appropriate compliance time for this AD, we considered the CAA–NL's recommendation, as well as the degree of urgency associated with the subject unsafe condition. In light of these factors, we find that a 7-day compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

The Dutch airworthiness directive also specifies that the AFM revision be placed in the Normal Procedures Section of the applicable AFM. This AD requires placement of the AFM revision in both the Normal Procedures Section and the Limitations Section of the applicable AFM. It is our intention that operators be required to follow the procedures specified in the AFM revision and the Limitations Section is the only section of the AFM that is mandatory, per section 91.9 of the Code of Federal Regulations (14 CFR part 91.9).

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: *"Comments to Docket Number 2004–NM–10–AD."* The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

2004–03–03 Fokker Services B.V.: Amendment 39–13447. Docket 2004–NM–10–AD.

Applicability: Model F.28 Mark 0070 and 0100 series airplanes; certificated in any category; equipped with Rolls-Royce Tay620 or Tay650 series engines and having incorporated Rolls-Royce Service Bulletin Tay 72–1326, Revision 1, dated January 16, 1998.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew is aware of the procedures required to prevent ice from contacting the ice impact panels on the engine fan case, which could result in a panel coming loose during flight and blocking the bypass flow through the engine outlet guide vanes, and consequent reduction of the engine thrust, resulting in insufficient thrust to maintain flight, accomplish the following:

Airplane Flight Manual (AFM) Revision

(a) Within 7 days after the effective date of this AD: Revise the Normal Procedures Section, "Operation in Icing Conditions," and the Limitations Section, "Weather Limitations," by inserting the procedures specified in Appendix 1 of this AD into the applicable AFM. Thereafter, operate the airplane per the procedures specified in the AFM revision.

Note 1: When procedures identical to those in Appendix 1 of this AD have been incorporated into the general revisions of the AFM, the general revisions may be incorporated into the AFM, and Appendix 1 of this AD may be removed from the AFM.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in Dutch airworthiness directive 2004–004, dated January 15, 2004.

Effective Date

(c) This amendment becomes effective on February 18, 2004.

APPENDIX 1.

"(a) Engine anti-icing must be switched ON during all ground or flight operations when the Total Air Temperature (TAT) is below +6 degrees C (+42 degrees F) down to and including −25 degrees C (−13 degrees F), irrespective of the presence of visible moisture; and

(b) Airframe anti-icing system must be switched ON during flight operations whenever any of the following conditions is valid:

(1) Icing conditions are anticipated or present; In-flight, icing conditions are present when TAT is below +6 degrees C (+42 degrees F) down to an including −25 degrees C (−13 degrees F) and visible moisture is present.

(2) Ice buildup is observed;

(3) The ICING alert comes on.''

Issued in Renton, Washington, on January 28, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2106 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–257–AD; Amendment 39–13446; AD 2004–03–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Airbus Model A321 series airplanes. This action requires revising the Limitations section of the airplane flight manual to include an instruction to use Flap 3 for landing when performing an approach in conditions of moderate to severe icing, significant crosswind (*i.e.*, crosswinds greater than 20 knots, gust included), or moderate to severe turbulence. This action is necessary to prevent roll oscillations during approach and landing in certain icing, crosswind, and turbulent conditions, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 18, 2004. Comments for inclusion in the Rules Docket must be received on or before March 4, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–257–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via the Internet must contain ''Docket No. 2003–NM–257–AD'' in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

Information pertaining to this AD may be examined at the FAA, Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A321 series airplanes. The DGAC advises that pilots of two separate Model A321 series airplanes encountered some lateral handling difficulties, which led to roll oscillations. These difficulties occurred when the pilots were performing manual approaches using flaps full in moderate icing conditions. External inspections of the affected airplanes revealed ice on the parts of the wing and horizontal stabilizer that do not have thermal anti-ice capability. The DGAC also advises that some operators reported roll oscillations during manual approach in crosswind or in moderate to severe turbulence. Roll oscillations during approach and landing in certain icing, crosswind, and turbulent conditions, could result in reduced controllability of the airplane.

The DGAC issued French airworthiness directive 2003–388(B), dated October 15, 2003, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent roll oscillations, which could result in reduced controllability of the airplane. This AD requires revising the Limitations section of the airplane flight manual (AFM) to include an instruction to use Flap 3 for landing when performing a manual approach in conditions of moderate to severe icing, significant crosswind (*i.e.*, crosswinds greater than 20 knots, gust included), or moderate to severe turbulence.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–257–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

2004–03–02 Airbus: Amendment 39–13446. Docket 2003–NM–257–AD.

Applicability: All Model A321 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent roll oscillations during approach and landing in certain icing, crosswind, and turbulent conditions, which could result in reduced controllability of the airplane, accomplish the following:

Airplane Flight Manual Revision

(a) Within 10 days after the effective date of this AD, revise the Limitations Section of the airplane flight manual (AFM) to include the following statement. This may be done by inserting a copy of this AD in the AFM.

''*A321 Approach and Landing* (Roll Control)

When moderate to severe icing conditions, or significant cross wind (*i.e.*, crosswinds greater than 20 knots, gust included), or moderate to severe turbulence are anticipated:

Use FLAP 3 for landing.''

Note 1: When a statement identical to that in paragraph (a) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in French airworthiness directive 2003–388(B), dated October 15, 2003.

Effective Date

(c) This amendment becomes effective on February 18, 2004.

Issued in Renton, Washington, on January 28, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2107 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16359; Airspace Docket No. 03–ASO–18]

Establishment of Class D Airspace; Hilton Head Island, SC; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the final rule (FAA–2003–16359; 03–ASO–18), which was published in the **Federal Register** on December 24, 2003, (68 FR 74471), establishing Class D airspace at Hilton Head Island, SC. This action corrects an error in the description of the Class D airspace in the Summary paragraph.

EFFECTIVE DATE: February 3, 2004.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Background

Federal Register Document 03–31743, Docket No. FAA–2003–16359; Airspace Docket 03–ASO–18, published on December 24, 2003 (68 FR 74471), establishes Class D airspace at Hilton Head Airport, Hilton Head Island, SC. An error was discovered in the Summary paragraph, describing the Class D airspace area. The description of the Class D airspace should be changed from airspace extending upward from the surface to and including 2,800 feet MSL within a 4.1-mile radius of the airport to airspace extending upward from the surface to and including 2,000 feet MSL within a 3.9-mile radius of the airport. This action corrects the error.

Designations for Class D airspace are published in Paragraph 5000 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

Need for Correction

As published, the final rule contains an error that incorrectly describes the size of the Class D airspace area. Accordingly, pursuant to the authority delegated to me, the Summary paragraph for the Class D airspace at Hilton Head Island, SC, incorporated by reference at § 71.1, 14 CFR 71.1, and

published in the **Federal Register** on December 24, 2003, (68 FR 74471), is corrected by correcting the **SUMMARY.**

* * * * *

SUMMARY: This action establishes Class D airspace at Hilton Head Island, SC. A federal contract tower with a weather reporting system has been constructed at the Hilton Head Airport. Therefore, the airport meets criteria for Class D airspace. Class D surface area airspace is required when the control tower is open to contain Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to and including 2,000 feet MSL within a 3.9-mile radius of the airport.

* * * * *

Issued in College Park, Georgia January 9, 2004.

Jeffrey U. Vincent,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 04–2188 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16534; Airspace Docket No. 03–ASO–19]

Establishment of Class D and E Airspace; Olive Branch, MS and Amendment of Class E Airspace; Memphis, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D and E4 airspace at Olive Branch, MS. A federal contract tower with a weather reporting system has been constructed at the Olive Branch Airport. Therefore, the airport meets criteria for Class D and E4 airspace. Class D surface area airspace and Class E4 airspace designated as an extension to Class D airspace is required when the control tower is open to contain Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to but not including 2,900 feet MSL, within a 4-mile radius of the Olive Branch Airport and Class E4 airspace extensions that are 5 miles wide and extend 7 miles northeast and south of the airport. This action also amends the Class E5 airspace area for Memphis, TN, which includes the Olive Branch Airport, to contain the Nondirectional Radio Beacon (NDB) or Global Positioning System (GPS) Runway (RWY) 18 and RWY 36 SIAPs. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the procedure turn airspace area.

EFFECTIVE DATE: 0901 UTC, April 15, 2004.

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

SUPPLEMENTARY INFORMATION:

History

On December 9, 2003, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D and E4 airspace at Olive Branch, MS, and amending Class E5 airspace at Memphis, TN (68 FR 68573). This action provides adequate Class D and E4 airspace for IFR operations at Olive Branch Airport and adequate Class E5 airspace at Memphis, TN to contain SIAPs. Class D airspace designations for airspace areas extending upward from the surface of the earth, Class E4 airspace areas designated as an extension to a Class D surface area, and Class E5 airspace designations for airspace extending upward from 700 feet or more above the surface of the earth are published in Paragraphs 5000, 6004, and 6005 respectively, of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class D, E4, and E5 designations listed in this document will be published subsequently in the Order.

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

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D and E4 airspace at Olive Branch, MS, and amends Class E5 at Memphis, TN.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace

* * * * *

ASO MS D Olive Branch, MS [NEW]

Olive Branch Airport, MS
(Lat. 34°58′44″ N, long. 89°47′13″ W)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 4-mile radius of Olive Branch Airport; excluding that airspace within the Memphis Class B airspace area. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ASO MS E4 Olive Branch, MS [NEW]

Olive Branch Airport, MS
(Lat. 34°58′44″ N, long. 89°47′13″ W)

Olive Branch NDB
(Lat. 34°58′47″ N, long. 89°47′20″ W)

That airspace extending upward from the surface within 2.5 miles each side of the Olive Branch NDB 017° and 170° bearings, extending from the 4-mile radius to 7 miles northeast and south of the NDB. This Class E4 airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth

* * * * *

ASO TN E5 Memphis, TN [REVISED]

Memphis International Airport, TN
Lat. 35°02′33″ N, long. 89°58′36″ W
Olive Branch Airport
Lat. 34°58′44″ N, long. 89°47′13″ W
West Memphis Municipal Airport
Lat. 35°08′06″ N, long. 90°14′04″ W
General DeWitt Spain Airport
Lat. 35°12′02″ N, long. 90°03′14″ W
Elvis NDB
Lat. 35°03′41″ N, long. 90°04′18″ W
West Memphis NDB
Lat. 35°08′22″ N, long. 90°13′57″ W

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Memphis International Airport, and within 4 miles north and 8 miles south of the 271° bearing from the Elvis NDB extending from the 8-mile radius to 16 miles west of the Elvis NDB, and within a 7.5-mile radius of Olive Branch Airport, and within 4 miles west and 8 miles east of the 017° bearing and 4 miles west and 8 miles east of the 170° bearing from the Olive Branch NDB extending from the 7.5-mile radius to 16 miles northeast and south of the airport, and within a 6.5-mile radius of West Memphis Municipal Airport, and within 4 miles east and 8 west of the 197° from the West Memphis NDB extending from the 6.5-mile radius to 16 miles south of the West Memphis NDB, and within 4 miles east and 8 miles west of the 353° bearing from the West Memphis NDB extending from the 6.5-mile radius to 16 miles north of the West Memphis NDB, and within a 6.4-mile radius of General DeWitt Spain Airport; excluding that airspace within the Millington, TN, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on January 21, 2004.

Jeffrey U. Vincent,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 04–2191 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16207; Airspace Docket No. 03–ANM–10]

Modification of Class E Airspace; Polson, MT

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule will modify the Class E airspace at Polson, MT. New Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) have been developed at Polson Airport making it necessary to increase the area of controlled airspace. This additional Class E airspace extending upward from 700 feet or more above the surface of the earth is necessary for the safety of Instrument Flight Rules (IFR) aircraft executing these new SIAPs and when transitioning to/from the en route environment.

EFFECTIVE DATE: 0901 UTC, April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Air Traffic Division, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On November 26, 2003, the FAA proposed to amend Federal Aviation Regulations 14 CFR part 71 to modify Class E airspace at Polson, MT, (68 FR pages 66387–66388). This proposal was to modify Class E airspace extending upward from 700 or more above the surface of the earth to contain IFR operations within controlled airspace during the terminal phase and when transitioning to/from the en route environments.

Interested parties were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No comments were received. 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 02, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that order.

The Rule

This amendment to 14 CFR part 71 will modify Class E airspace at Polson, MT, to accommodate aircraft executing newly developed RNAV GPS SIAPs. The new procedures make it necessary to increase the area of controlled airspace. Additional Class E airspace extending upward from 700 feet or more above the surface of the earth is necessary to provide adequate controlled airspace for the safety of IFR aircraft executing these new RNAV GPS SIAPs and during transition to/from the en route environment.

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 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

■ Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR 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 the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 02, 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.

* * * * *

ANM MT E5 Polson, MT [Revised]

Polson Airport, Polson, MT (Lat. 47°41′44″ N., long. 114°11′07″ W.)

That airspace extending upward from 700 feet above the surface of the earth bounded by a line beginning at lat. 47°49′55″ N., long. 114°13′30″ W.; to lat. 47°47′00″ N., long. 114°01′00″ W.; to lat. 47°31′45″ N., long. 114°10′10″ W.; to lat 47°35′35″ N., long. 114°22′35″ W.; thence to point of origin; excluding that airspace within Federal airways.

* * * * *

Issued in Seattle, Washington, on January 22, 2004.

Raul C. Treviño,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 04–2180 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16499; Airspace Docket No. 03–ACE–83]

Modification of Class E Airspace; Osceola, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Osceola, IA.

EFFECTIVE DATE: 0901 UTC, April 15, 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: The FAA published this direct final rule with a request for comments in the **Federal Register** on December 2, 2003 (68 FR 67359). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 15, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on January 15, 2004.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–2181 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16501; Airspace Docket No. 03–ACE–85]

Modification of Class E Airspace; Tipton, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Tipton, IA.

EFFECTIVE DATE: 0901 UTC, April 15, 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: The FAA published this direct final rule with a request for comments in the **Federal Register** on December 2, 2003 (68 FR 67361). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 15, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on January 16, 2004.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 04–2182 Filed 2–2–04; 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; correction.

SUMMARY: This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Monday, January 12, 2004 (69 FR 1663) (FR Doc. 04–485). It corrects an error in the Marysville, KS Class E airspace area legal description.

DATES: This direct final rule is effective on 0901 UTC, April 15, 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

Federal Register Document 04–485, published on Monday, January 12, 2004 (69 FR 1663), modified Class E airspace at Marysville, KS. The modification enlarged the controlled airspace area around Marysville Municipal Airport to provide proper protection of diverse departures, corrected discrepancies in the Marysville Municipal Airport airport reference point, redefined the extension of controlled airspace and brought the Marysville, KS Class E airspace area legal description into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. However, the Marysville, KS Class E airspace area legal description was published incorrectly.

■ Accordingly, pursuant to the authority delegated to me, the Marysville, KS Class E airspace, as published in the **Federal Register** on Monday, January 12, 2004, (69 FR 1663) (FR Doc. 04–485) is corrected as follows:

§ 71.1 [Corrected]

■ On page 1664, Column 3, paragraph headed ''ACE KS E5 Marysville, KS,'' first line, change ''Marysville Municipal Airport, IA'' to read ''Marysville Municipal Airport, KS.'' In the next to the last line of the same paragraph, change ''6.6-mile radius'' to read ''6.5-mile radius.''

Issued in Kansas City, MO, on January 13, 2004.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–2183 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

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

Modification of Class E Airspace; Greenfield, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Tuesday, December 9, 2003 (68 FR 68507) (FR Doc. 03–30456). It corrects an error in the Greenfield, IA Class E airspace area legal description.

DATES: This direct final rule is effective on 0901 UTC, April 15, 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

Federal Register document 03–30456, published on Tuesday, December 9, 2003 (68 FR 68507), modified Class E airspace at Greenfield, IA. The modification enlarged the controlled airspace area around Greenfield Municipal Airport to provide proper protection of diverse departures, corrected a discrepancy in the extension of controlled airspace and brought the Greenfield, IA Class E airspace area legal description into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. However, the Greenfield, IA Class E airspace area legal description was published incorrectly.

■ Accordingly, pursuant to the authority delegated to me, the Greenfield, IA Class E airspace, as published in the **Federal Register** on Tuesday, December 9, 2003 (68 FR 68507) (FR Doc. 03–30456), is corrected as follows:

§ 71.1 [Corrected]

■ On page 68508, Column 2, paragraph headed ''ACE IA E5 Greenfield, IA,'' next to the last line, change ''northwest'' to read ''southeast.''

Issued in Kansas City, MO, on January 14, 2004.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–2184 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

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

Modification of Class E Airspace; Kingman, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Kingman, KS.

EFFECTIVE DATE: 0901 UTC, April 15, 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: The FAA published this direct final rule with a request for comments in the **Federal Register** on December 9, 2003 (68 FR 68506). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 15, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on January 15, 2004.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–2185 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–M

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; correction.

SUMMARY: This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Monday, January 12, 2004 (69 FR 1661) [FR Doc. 04–483]. It corrects an error in the Beloit, KS Class E airspace area legal description.

DATES: This direct final rule is effective on 0901 UTC, April 15, 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

Federal Register Document 04–483, published on Monday, January 12, 2004 (69 FR 1661) modified Class E airspace at Beloit, KS. The modification was to change the name of the airport at Beloit, KS from Beloit Municipal Airport to Moritz Memorial Airport, to enlarge the controlled airspace area around Moritz Memorial Airport for proper protection of diverse departures and to bring the Beloit, KS Class E airspace area legal description into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. However, the Beloit, KS Class E airspace area legal description was published incorrectly.

■ Accordingly, pursuant to the authority delegated to me, the Beloit, KS Class E airspace, as published in the **Federal Register** on Monday, January 12, 2004

(69 FR 1661) (FR Doc. 04–483) is corrected as follows:

§ 71.1 [Corrected]

■ On page 1662, Column 2, paragraph headed ''ACE E5 Beloit, KS,'' first line, change ''Moritz Memorial Airport, IA'' to read ''Beloit, Moritz Memorial Airport, KS.''

Issued in Kansas City, MO, on January 13, 2004.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–2186 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

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

Modification of Class E Airspace; Great Bend, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Great Bend, KS.

EFFECTIVE DATE: 0901 UTC, April 15, 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: The FAA published this direct final rule with a request for comments in the **Federal Register** on December 9, 2003 (68 FR 68505). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 15, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on January 13, 2004.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–2187 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16623; Airspace Docket No. 03–ASO–22]

Removal of Class E Airspace; New Port Richey, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes the Class E5 Airspace at New Port Richey, FL, as there is no longer a Standard Instrument Approach Procedure (SIAP) for New Port Richey Tampa Bay Executive Airport requiring Class E5 airspace.

EFFECTIVE DATE: 0901 UTC, April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On April 23, 1998, the Global Positioning System (GPS) Runway (RWY) 8 SIAP for Tampa Bay Executive Airport was canceled.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) removes Class E5 airspace at New Port Richey, FL, as the SIAP to Tampa Bay Executive Airport was canceled. Therefore, the Class E5 airspace areas must be removed. The rule will become effective on the date specified in the **DATE** section. Since this action eliminates the impact of controlled airspace on users of the airspace in the vicinity of the Tampa Bay Executive Airport, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Class E airspace designations for 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 designation 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. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO FL E5 New Port Richey, FL [REMOVE]

* * * * *

Issued in College Park, Georgia, January 9, 2004.

Jeffrey U. Vincent,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 04–2189 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15979; Airspace Docket No. 03–AEA–10]

Establishment of Class E Airspace; Lawrenceville, VA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Lawrenceville, VA. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft operating into Lawrenceville/Brunswick Municipal Airport, Lawrenceville, VA under Instrument Flight Rules (IFR).

EFFECTIVE DATE: 0901 UTC June 10, 2004.

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

SUPPLEMENTARY INFORMATION:

History

On December 19, 2003, a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace extending upward from 700 feet above the surface within a 6-mile radius of Lawrenceville/Brunswick Municipal Airport, Lawrenceville, VA was published in the **Federal Register** (68 FR 70746–70747). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before January 20, 2004. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published in the Order.

The Rule

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

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 will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 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—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

AEA VA E5, Lawrenceville, VA [NEW]

Lawrenceville/Brunswick Municipal Airport, VA

(Lat. 36°42′22″ N., long. 77°47′39″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Lawrenceville/Brunswick Municipal Airport.

* * * * *

Issued in Jamaica, New York, on January 27, 2004.

John G. McCartney,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 04–2192 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16282; Airspace Docket No. 03–AEA–06]

Amendment of Class E Airspace; Philadelphia, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Philadelphia, PA. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft operating into Spitfire Aerodrome, Pedricktown, NJ under Instrument Flight Rules (IFR).

EFFECTIVE DATE: 0901 UTC June 10, 2004.

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

SUPPLEMENTARY INFORMATION:

History

On December 22, 2003, a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace extending upward from 700 feet above the surface within an area overlying the spitfire Aerodrome, Pedricktown, NJ was published in the **Federal Register** (68 FR 71053–71054). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before January 21, 2004. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14

CFR 71.1. The Class E airspace designation listed in this document will be published in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting IFR operations into Spitfire Aerodrome, Pedricktown, NJ.

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 will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 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—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

AEA PA E5 Philadelphia, PA (Revised)

Philadelphia International Airport
(lat. 39°52′19″N., long. 75°14′28″W.)
Chester County G. O. Carlson Airport, PA
(lat. 39°58′44″N., long. 75°51′56″W.)
New Castle County Airport, DE
(lat. 39°40′43″N., long. 75°36′24″W.)
Summit Airpark, DE
(lat. 39°31′13″N., long. 75°43′14″W.)
Millville Municipal Airport, NJ
(lat. 39°22′04″N., long. 75°04′20″W.)

That airspace extending upward from 700 feet above the surface within a 31-mile radius of Philadelphia International Airport extending clockwise from a 225° bearing to a 307° bearing from the airport and within a 37-mile radius of Philadelphia International Airport extending from a 307° bearing to a 053° bearing from the airport and within a 33-mile radius of Philadelphia International Airport extending from a 053° bearing to a 713° bearing from the airport and within a 16-mile radius of Philadelphia International Airport extending from a 173° bearing from the airport to a 225° bearing from the airport and within a 7-mile radius of Chester County G. O. Carlson Airport and within a 6.7-mile radius of New Castle County Airport and within an 8-mile radius of Summit Airpark and within a 6.5-mile radius of Millville Municipal Airport, excluding the airspace that coincides with the Elkton, MD; Wrightstown, NJ; Pittstown, NJ; Reading, PA; and Allentown, PA Class E airspace areas.

* * * * *

Issued in Jamaica, New York on January 27, 2004.

John G. McCartney,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 04–2193 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

RIN 2700–AC93

NASA Grant and Cooperative Agreement Handbook—Synopses Requirements

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule amends the NASA Grant and Cooperative Agreement Handbook (Handbook) by requiring that all NASA announcements of grant and cooperative agreement funding opportunities be electronically posted to: *http://www.Fedgrants.gov*, using a standard set of data elements, no later than three business days after release of the full announcement. This change implements Office of Management and Budget (OMB) policy directive: ''Use of Grants.Gov FIND.''

EFFECTIVE DATE: February 3, 2004.

FOR FURTHER INFORMATION CONTACT: Suzan P. Moody, NASA Headquarters, Code HK, Washington, DC, (202) 358–0503, e-mail: *Suzan.P.Moody@nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

On October 8, 2003, the Office of Management and Budget (OMB) issued policy directive: ''Use of Grants.Gov FIND'', requiring Federal agencies to use the Grants.gov FIND module of the Grants.gov program to electronically post synopses of grant and cooperative agreement funding opportunities. This policy directive includes a government-wide standard set of data elements to be used by Federal agencies when posting synopses to *http://www.Grants.gov*. The purpose of the Grants.gov FIND module is to provide potential applicants with (1) enough information about any opportunity to decide whether they are interested in viewing the full announcement; (2) information on one or more ways to obtain the full announcements; and (3) one common Web site for all Federal grant opportunities searchable by key word, date, Catalog of Federal Domestic Assistance (CFDA) number or specific agency name. This final rule implements the synopses requirements of the OMB policy directive.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the changes do not impose requirements on these entities. The changes only apply to field personnel within NASA.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose any new recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et. seq.*

List of Subjects in 14 CFR Part 1260

Grant Programs—Science and Technology.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 14 CFR part 1260 is amended as follows:

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

■ 1. The authority citation for 14 CFR part 1260 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1), and Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301, *et seq.*).

■ 2. Add section 1260.9 to read as follows:

§ 1260.9 Synopses requirements.

(a) All announcements of grant and cooperative agreement funding opportunities shall be synopsized. Synopses shall be prepared in the NASA Acquisition Internet Service (NAIS), located at: *http://prod.nais.nasa.gov/cgi-bin/nais/index.cgi*; by using the Electronic Posting System (EPS), and transmitted to *http://www.Fedgrants.gov*. Synopses shall be electronically posted to: *http://www.Fedgrants.gov* no later than three business days after release of the full announcement. All synopses shall include instructions regarding where to obtain the full announcement for the opportunity.

(b) This requirement applies to all announcements of grant and cooperative agreement funding opportunities with the following exceptions:

(1) Announcements of opportunities for awards less than $25,000 for which 100 percent of eligible applicants live outside of the United States.

(2) Single source announcements of opportunities that are specifically directed to a known recipient.

[FR Doc. 04–2071 Filed 2–2–04; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Parts 1260 and 1274

RIN 2700–AC79

NASA Grant and Cooperative Agreement Handbook—Property Reporting

AGENCY: National Aeronautics and Space Administration.

ACTION: Interim rule.

SUMMARY: This interim rule amends the NASA Grant and Cooperative Agreement Handbook to require earlier submission of annual property inventory reports. This will allow NASA to meet the revised Agency financial statement completion date.

DATES: Effective Date: This interim rule is effective February 3, 2004.

Comment Date: Comments should be submitted to NASA at the address below on or before April 5, 2004.

ADDRESSES: Interested parties should submit written comments to Paul Brundage, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Paul Brundage, Code HK, (202) 358–0481, e-mail: *paul.d.brundage@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The Office of Management and Budget has required NASA to complete its annual financial statements sooner. Since recipients maintain NASA's official records for its assets in their possession, NASA uses the data contained in recipients' reports for annual financial statements and property management. As a result, NASA is changing the date for submission of annual Inventory Reports from October 31st to October 15th of each year.

B. Regulatory Flexibility Act

NASA certifies that this interim rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it requires no additional work.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not impose any new recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management (OMB) and Budget under 44 U.S.C. 3501, *et. seq.*

D. Determination to Issue an Interim Rule

In accordance with 41 U.S.C. 418(d), NASA has determined that urgent and compelling reasons exist to promulgate this interim rule. The basis for this determination is that this change incorporates into the Handbook NASA's class deviation issued on September 4, 2003, in NASA's Grant Information Circular (GIC) 03–01 for accelerated property reporting. Public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in CFR Parts 1260 and 1274

Grant programs—Science and technology.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 14 CFR parts 1260 and 1274 are amended as follows:

■ 1. The authority citation for 14 CFR part 1260 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1), and Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301, *et seq.*).

PART 1260—GRANTS AND COOPERATIVE AGREEMENT

■ 2. In section 1260.27, revise the date in the introductory text and revise the introductory text of paragraph (b) to read as follows:

§ 1260.27 Equipment and other property.

Equipment and Other Property (February 2004)

* * * * *

(b) The Recipient shall submit an annual Inventory Report, to be received no later than October 15 of each year, which lists all reportable (non-exempt equipment and/or Federally owned property) in its custody as of September 30. Negative responses for annual Inventory Reports (when there is no reportable equipment) are not required. A Final Inventory Report of Federally Owned Property, including equipment where title was taken by the Government, will be submitted by the Recipient no later than 60 days after the expiration date of the grant. Negative responses for Final Inventory Reports are required.

* * * * *

■ 3. In section 1260.67, revise the introductory text and paragraph (g) to read as follows:

§ 1260.67 Equipment and other property under grants with commercial firms.

Equipment and Other Property Under Grants with Commercial Firms (February 2004)

* * * * *

(g) Recipients shall submit annually a NASA Form 1018, NASA Property in the Custody of Contractors, in accordance with the instructions on the form, the provisions of 48 CFR (NFS) 1845.71 and any supplemental instructions that may be issued by NASA for the current reporting period. The original NF 1018 shall be submitted to the center Deputy Chief Financial Officer (Finance) with three copies sent concurrently to the center Industrial Property Officer. The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 15. Negative reports (*i.e.* no reportable property) are required. The information contained in the reports is entered into the NASA accounting system to reflect current

asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 15. A final report is required within 30 days after expiration of the agreement.

* * * * *

■ 4. The authority citation for 14 CFR part 1274 continues to read as follows:

Authority: 42 U.S.C. 2451 *et seq.*, and 31 U.S.C. 6301 to 6308.

PART 1274—COOPERATIVE AGREEMENTS WITH COMMERCIAL FIRMS

■ 5. In section 1274.923, revise the date in the introductory text and paragraph (f) to read as follows:

§ 1274.923 Equipment and Other Property.

Equipment and Other Property (February 2004)

* * * * *

(f) Recipients shall submit annually a NASA Form 1018, NASA Property in the Custody of Contractors, in accordance with the instructions on the form, the provisions of 48 CFR (NFS) 1845.71 and any supplemental instructions that may be issued by NASA for the current reporting period. The original NF 1018 shall be submitted to the center Deputy Chief Financial Officer, Finance, with three copies sent concurrently to the center Industrial Property Officer. The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 15. Negative reports (*i.e.* no reportable property) are required. The information contained in the reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 15. A final report is required within 30 days after expiration of the agreement.

* * * * *

[FR Doc. 04–2073 Filed 2–2–04; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301 and 602

[TD 9100]

RIN 1545–BC62

Guidance Necessary to Facilitate Business Electronic Filing; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains corrections to final regulations (TD 9100), which were published in the **Federal Register** on Friday, December 19, 2003 (68 FR 70701), relating to the elimination of regulatory impediments to the electronic filing of certain business income tax returns and other forms.

DATES: These corrections are effective December 19, 2003.

FOR FURTHER INFORMATION CONTACT: Nathan Rosen at (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under section 170A of the Internal Revenue Code.

Need for Correction

As published, final regulation (TD 9100), contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

■ Accordingly, the publication of final regulation (TD 9100), which was the subject of FR Doc. 03–31238, is corrected as follows:

PART 1—INCOME TAXES

■ 1. On page 70701, column 1, in the preamble under the caption **DATES:**, line 5 of section titled, Applicability Date:, the language ''2T 1.565–1T, 1.936–7T, 1.1017–1T,'' is corrected to read ''2T, 1.565–1T, 1.936–7T, 1.1017–1T,''.

§ 1.556–2T [Corrected]

■ 2. On page 70705, column 1, paragraph (e)(2)(viii) through (xi), line 2, the language ''further guidance see § 1.556–2(e)(2)(viii)'' is corrected to read ''further guidance, see § 1.556–2(e)(2)(viii)''.

§ 1.1017–1 [Corrected]

■ 3. On page 70706, column 1, paragraph (B), line 1, the language ''[Reserved] For further guidance,'' is corrected to read ''[Reserved]. For further guidance,''.

§ 1.1377–1T [Corrected]

■ 4. On page 70706, column 3, instructional paragraph Par. 16., line 2, the language ''by revising paragraphs (b)(2)(iii), (b)(3)(i)'' is corrected to read ''by revising paragraphs (b)(3)(i)''.

§ 1.1502–21 [Corrected]

■ 5. On page 70706, column 3, § 1.1502–21 is corrected by removing paragraphs (2) and (iii), and the five asterisks following paragraph (iii).

■ 6. On page 70706, column 3, instructional paragraph Par. 17., line 3, the language ''(b)(2)(iii) and (b)(3) through (b)(3)(ii)(B)'' is corrected to read ''(b)(3) through (b)(3)(ii)(B)''.

§ 1.1502–21T [Corrected]

■ 7. On page 70706, column 3, § 1.1502–21T is corrected by removing paragraph (b)(2)(iii) and the five asterisks following the paragraph.

§ 1.6038B–1T [Corrected]

■ 8. On page 70708, column 3, paragraph (b)(1)(i), line 3 from the top of the paragraph, the language ''information to Form 926, ''Return by'' is corrected to read ''information to Form 926, ''Return by a U.S.''.

PART 301—PROCEDURE AND ADMINISTRATION

■ 9. On page 70709, column 1, instructional paragraph Par. 24., line 2, the language ''301 continues to read as follows:'' is corrected to read ''301 continues to read in part as follows:''.

■ 10. On page 70709, column 1, instructional paragraph Par. 24., the Authority citation, the language ''Authority: 26 U.S.C. 7805.'' is corrected to read ''Authority: 26 U.S.C. 7805 * * *.''

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ 11. On page 70709, column 2, instructional paragraph Par. 27., line 2, the language ''602 continues to read in part as follows:'' is corrected to read ''602 continues to read as follows:''.

■ 12. On page 70709, column 2, instructional paragraph Par. 27., the Authority citation, the language ''Authority: 26 U.S.C. 7805 * * *'' is corrected to read ''Authority: 26 U.S.C. 7805.''.

Cynthia E. Grigsby,

Acting Chief, Publications & Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures & Administration).

[FR Doc. 04–2078 Filed 2–2–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–04–003]

Drawbridge Operation Regulations; Berwick Bay, Morgan City, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Burlington Northern Railway Vertical Lift Span Railroad Bridge across Berwick Bay, mile 17.5 (Gulf Intracoastal Waterway (Morgan City to Port Allen Alternate Route), mile 0.4), at Morgan City, St. Mary Parish, Louisiana. This deviation provides for three (3) six-hour bridge closures to conduct scheduled maintenance to the railroad on the drawbridge.

DATES: This deviation is effective from 8 a.m. on Wednesday, February 18, 2004 until 2 p.m. on Friday, February 20, 2004.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Burlington Northern Railway Company has requested a temporary deviation in order to repair and replace damaged rails on the lift span of the bridge across Berwick Bay, mile 17.5, at Morgan City, St. Mary Parish, Louisiana. This maintenance is essential for the continued safe operation of the railroad bridge. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 8 a.m. until 2 p.m., Wednesday through Friday from February 18, 2004 through February 20, 2004.

The vertical lift span bridge has a vertical clearance of 4 feet above National Geodetic Vertical Datum (NGVD) in the closed-to-navigation position and 73 feet above NGVD in the open-to-navigation position. Navigation at the site of the bridge consists of tugs with tows transporting petroleum products, chemicals and construction equipment, commercial fishing vessels, oil industry related work boats and crew boats and some recreational craft. Since the lift span of the bridge will only be closed to navigation six hours per day for three days, ample time will be allowed for commercial and recreational vessels to schedule transits. Accordingly, it has been determined that this closure will not have a significant effect on vessel traffic. The bridge normally remains in the open-to-navigation position until a train enters the signal block, requiring it to close. An average number of openings for the passage of vessels is, therefore, not available. During the repair period, the bridge may open for emergencies; however, delays should be expected to remove all equipment from the bridge. The Intracoastal Waterway—Morgan City to Port Allen Landside Route is an alternate route for vessels with less than a 12-foot draft.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 23, 2004.

Marcus Redford,

Bridge Administrator.

[FR Doc. 04–2086 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AI89

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D–2004–05 Subsistence Taking of Fish and Shellfish Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes regulations for seasons, harvest limits, methods, and means related to taking of fish and shellfish for subsistence uses during the 2004–05 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. This rulemaking replaces the fish and shellfish taking regulations included in the ''Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D–2003 Subsistence Taking of Fish and Wildlife Regulations,'' which expire on February 29, 2004. This rule also amends the Customary and Traditional Use Determinations of the Federal Subsistence Board (Section ___ .24 of Subpart C).

DATES: Sections ___ .24(a)(2) and (3) are effective March 1, 2004. Sections ___ .27 and ___ .28 are effective March 1, 2004, through March 31, 2005.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114). On January 8, 1999 (64 FR 1276), the Departments extended jurisdiction to include waters in which there exists a Federal reserved water right. This amended rule conformed the Federal Subsistence Management

Program to the Ninth Circuit's ruling in *Alaska* v. *Babbitt.* Consistent with Subparts A, B, and C of these regulations as revised May 7, 2002 (67 FR 30559), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participated in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

All Board members have reviewed this rule and agree with its substance. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 apply to regulations found in this subpart.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 and 242.22 (2002) and 50 CFR 100.11 and 100.22 (2002), and for the purposes identified therein, we divide Alaska into 10 subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Regional Council). The Regional Councils provide a forum for rural residents, with personal knowledge of local conditions and resource requirements, to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils had a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, presented their Council's recommendations at the Board meeting of December 9–11, 2003.

Summary of Changes

Section ___ .24 (Customary and traditional use determinations) was originally published in the **Federal Register** (57 FR 22940) on May 29, 1992. Since that time, the Board has made a number of Customary and Traditional Use Determinations at the request of impacted subsistence users. Those modifications, along with some administrative corrections, were last published in the **Federal Register** on February 12, 2003 (68 FR 7276). During its December 9–11, 2003, meeting, the Board made additional determinations in addition to various annual season and harvest limit changes. The public has had extensive opportunity to review and comment on all changes. Additional details on the recent Board modifications are contained below in Analysis of Proposals Adopted by the Board.

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Customary and traditional use determinations are also subject to an annual review process providing for modification each year. We published proposed Subpart D regulations for the 2004–05 seasons, harvest limits, and methods and means on February 12, 2003, in the **Federal Register** (68 FR 7294). A 45-day comment period providing for public review of the proposed rule and calling for proposals was advertised by mail, radio, and newspaper. During that period, the Regional Councils met and, in addition to other Regional Council business, received suggestions for proposals from the public. The Board received a total of 45 proposals for changes to Customary and Traditional Use Determinations or to Subpart D. This number included some proposals deferred from previous years. Subsequent to the review period, the Board prepared a booklet describing the proposals and distributed it to the public. The public had an additional 30 days in which to comment on the proposals for changes to the regulations. The 10 Regional Councils met again, received public comments, and formulated their recommendations to the Board on proposals for their respective regions. Six of the proposals were not considered, being withdrawn before Board consideration. Two proposals were deferred pending resolution of jurisdictional issues or completion of research studies relative to the specific proposal. These final regulations reflect Board review and consideration of Regional Council recommendations and public comments on the remaining proposals.

Analysis of Proposals Rejected by the Board

The Board rejected or took no action on 20 proposals. All of these actions were based on recommendations from at least one Regional Council.

The Board rejected three proposals requesting significant restrictions on the exercise of customary trade. The Board rejected these proposals as unnecessary restrictions on subsistence users.

One proposal requested expanding the use of gillnets in the Yukon River, and one proposal wanted us to allow larger nets on the Kuskokwim River. These proposals were rejected because of conservation concerns for salmon in the Yukon and Kuskokwim Rivers.

The Board rejected two proposals requesting closure of commercial fishing in Federal waters on the Yukon River. The Board rejected these proposals as unnecessary restrictions on nonsubsistence users.

The Board rejected two proposals requesting revisions to the subsistence fishing schedule for the Yukon River. The Board rejected these proposals because the current fishing schedules are a result of a coordinated effort by users and government bodies to rebuild depressed salmon stocks and are for the long-term benefit of all users.

The Board took no action on four proposals that would have revised the customary and traditional use determination for the Prince of Wales archipelago because of their positive action on another proposal addressing similar issues.

The Board deferred action on two proposals in order to resolve jurisdictional issues or to assemble additional fisheries data, harvest information, or to allow communities or Regional Councils additional time to review the issues and provide additional information.

Two proposals, rejected by the Board, related to the description of a ''spear.'' These were rejected because evidence was presented that subsistence users traditionally utilized an additional spear-like object that would have been excluded with the new definition.

The Board rejected six proposals that would have placed additional harvest restrictions or additional reporting or marking requirements on steelhead, trout, or char in southeast Alaska. These

proposals were rejected because there is no immediate conservation concern and they would have placed unnecessary restrictions or regulatory burdens on subsistence users.

Analysis of Proposals Adopted by the Board

The Board adopted 13 proposals. A number of proposals dealing with the same issue were dealt with as a package. Some proposals were adopted as submitted and others were adopted with modifications suggested by the respective Regional Council or developed during the Board's public deliberations.

All of the adopted proposals were recommended for adoption by at least one of the Regional Councils and were based on meeting customary and traditional uses, harvest practices, or protecting fish populations. Detailed information relating to justification for the action on each proposal may be found in the Board meeting transcripts, available for review at the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska, or on the Office of Subsistence Management Web site (*http://alaska.fws.gov/asm/home.html*). Additional technical clarifications and removal of excess or duplicative text have been made, which result in a more readable document.

In the final rule we clarified that limited entry and crew permit holders are not prohibited from participating in customary trade. We also deleted text that pertained to waters not under Federal jurisdiction. In addition, we revised the regulations pertaining to specific management areas as follows:

Yukon-Northern Fishery Management Area

The Board adopted two proposals affecting residents of the Yukon-Northern Fishery Management Area resulting in the following changes to the regulations found in § ___.27.

- Revised the regulations to allow the use of red colored buoys and kegs for marking subsistence fishing gear.
- Allowed the use of gillnets larger than 3-inch mesh in Birch Creek for a portion of the year.

Kuskokwim Fishery Management Area

The Board adopted one proposal affecting residents of the Kuskokwim Fishery Management Area resulting in the following changes to the regulations found in § ___.27.

- Revised the regulations to allow the use of red colored buoys and kegs for marking subsistence fishing gear.

Bristol Bay Fishery Management Area

The Board adopted two proposals affecting residents of the Bristol Bay Fishery Management Area resulting in the following changes to the regulations found in §§ ___.24 and ___.27.

- Revised the customary and traditional use determination for the Egegik and Ugashik Districts.
- Set dollar limits on sale of salmon in customary trade in the Bristol Bay Area.

Prince William Sound Fishery Management Area

The Board adopted four proposals affecting residents of the Prince William Sound Fishery Management Area resulting in the following changes to the regulations found in §§ ___.24 and ___.27.

- Revised the customary and traditional use determinations for salmon and for freshwater fish in a portion of the fishery management area.
- Allowed the accumulation of salmon subsistence harvest limits with sport harvest limits in the upper Copper River.
- Removed the requirement for the submission of a harvest management plan for community fish wheels.

Southeastern Alaska Fishery Management Area

The Board adopted five proposals affecting residents of the Southeastern Alaska Fishery Management Area resulting in the following changes to the regulations found in §§ ___.24 and ___.27

- Revised the customary and traditional use determinations in the Prince of Wales Island area.
- Included Kosciusko Island in regulations for the Prince of Wales steelhead fishery.
- Revised the customary and traditional use determinations for Districts 6, 7, and 8.
- Established a salmon fishery on the Stikine River with implementation delayed pending coordination with the Pacific Salmon Commission.

Additionally, these regulations will be effective for 13 months, from March 1, 2004, through March 31, 2005. This will allow the annual fishery regulations to become effective on April 1 in future years. This change was recommended after a thorough review of the overall regulatory cycles for both fish and wildlife. The additional month following the winter Regional Council meetings will allow the production of necessary materials for the Board meeting and then production of the public booklets in a timely manner.

Administrative Procedure Act Compliance

The Board finds that additional public notice under the Administrative Procedure Act (APA) for this final rule is unnecessary, and contrary to the public interest. The Board has provided extensive opportunity for public input and involvement in excess of standard APA requirements, including participation in multiple Regional Council meetings, additional public review and comment on all proposals for regulatory change, and opportunity for additional public comment during the Board meeting prior to deliberation. Additionally, an administrative mechanism exists (and has been used by the public) to request reconsideration of the Board's decision on any particular proposal for regulatory change. Over the 12 years the Program has been operating, no benefit to the public has been demonstrated by delaying the effective date of regulations. A lapse in regulatory control could seriously affect the continued viability of fish and shellfish populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553 (d) to make this rule effective less than 30 days after publication.

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis and examined the environmental consequences of four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence

Policy Group, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture–Forest Service, implemented Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940, published May 29, 1992; amended January 8, 1999, 64 FR 1276; June 12, 2001, 66 FR 31533; and May 7, 2002, 67 FR 30559) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available by contacting the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior with the concurrence of the Secretary of Agriculture determined that the expansion of Federal jurisdiction did not constitute a major Federal action, significantly affecting the human environment and has, therefore, signed a Finding of No Significant Impact.

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995(44 U.S.C. 3501 *et seq.*) and assigned OMB control number 1018–0075, which expires August 31, 2006. We may not conduct or sponsor, and you are not required to respond to, a collection of information request unless it displays a currently valid OMB control number.

Other Requirements

Regulatory Planning and Review (Executive Order 12866)—In accordance with the criteria in Executive Order 12866 this rule is not a significant regulatory action subject to OMB review. OMB makes this determination. This action will not have an annual economic effect of $100 million or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. Therefore, a cost-benefit and economic analysis is not required. This action will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. This action will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This action will not raise novel legal or policy issues.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant economic effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as tackle, boat, and gasoline dealers. The number of small entities affected is unknown; however, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that the effects will not be significant.

In general, the resources harvested under this rule will be consumed by the local harvester and do not result in a dollar benefit to the economy. However, we estimate that 24 million pounds of fish (including 8.3 million pounds of salmon) are harvested by the local subsistence users annually and, if given a dollar value of $3.00 per pound for salmon [Note: $3.00 per pound is much higher than the current commercial value for salmon] and $ 0.58 per pound for other fish, would equate to about $34 million in food value Statewide.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that these final regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988 on Civil Justice Reform.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), 512 DM 2, and E.O. 13175, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

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

Drafting Information

William Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska

Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, USDA–Forest Service, provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

■ For the reasons set out in the preamble, the Federal Subsistence Board amends Title 36, part 242, and Title 50, part 100, of the Code of Federal Regulations, as set forth below.

PART __SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

■ 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart C—Board Determinations

■ 2. In Subpart C of 36 CFR part 242 and 50 CFR part 100, ___.24(a)(2) and (3) are revised to read as follows:

§ ___.24 Customary and traditional use determinations.

(a) * * *

(2) *Fish determinations.* The following communities and areas have been found to have a positive customary and traditional use determination in the listed area for the indicated species:

Area	Species	Determination
KOTZEBUE AREA	All fish	Residents of the Kotzebue Area.
NORTON SOUND—PORT CLARENCE AREA: Norton Sound—Port Clarence Area, waters draining into Norton Sound between Point Romanof and Canal Point.	All fish	Residents of Stebbins, St. Michael, and Kotlik.
Norton Sound—Port Clarence Area, remainder.	All fish	Residents of the Norton Sound—Port Clarence Area.
YUKON-NORTHERN AREA: Yukon River drainage.	Salmon, other than fall chum salmon.	Residents of the Yukon River drainage and the community of Stebbins.
Yukon River drainage	Fall chum salmon	Residents of the Yukon River drainage and the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak.
Yukon River drainage	Freshwater fish (other than salmon).	Residents of the Yukon-Northern Area.
Remainder of the Yukon-Northern Area.	All fish	Residents of the Yukon-Northern Area, excluding the residents of the Yukon River drainage and excluding those domiciled in Unit 26–B.
KUSKOKWIM AREA	Salmon	Residents of the Kuskokwim Area, except those persons residing on the United States military installations located on Cape Newenham, Sparevohn USAFB, and Tatalina USAFB.
	Rainbow trout	Residents of the communities of Quinhagak, Goodnews Bay, Kwethluk, Eek, Akiachak, Akiak, and Platinum.
	Pacific cod	Residents of the communities of Chevak, Newtok, Tununak, Toksook Bay, Nightmute, Chefornak, Kipnuk, Mekoryuk, Kwigillingok, Kongiganak, Eek, and Tuntutuliak.
	All other fish other than herring.	Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparevohn USAFB, and Tatalina USAFB.
Waters around Nunivak Island	Herring and herring roe	Residents within 20 miles of the coast between the westernmost tip of the Naskonat Peninsula and the terminus of the Ishowik River and on Nunivak Island.
BRISTOL BAY AREA—Nushagak District, including drainages flowing into the district.	Salmon and freshwater fish	Residents of the Nushagak District and freshwater drainages flowing into the district.
Naknek-Kvichak District—Naknek River drainage.	Salmon and freshwater fish	Residents of the Naknek and Kvichak River drainages.
Naknek-Kvichak District—Kvichak/Iliamna-Lake Clark drainage.	Salmon and freshwater fish	Residents of the Kvichak/Iliamna-Lake Clark drainage.
Togiak District, including drainages flowing into the district.	Salmon and freshwater fish	Residents of the Togiak District, freshwater fish drainages flowing into the district and the community of Manokotak.
Egegik District, including drainages flowing into the District.	Salmon and freshwater fish	Residents of South Naknek, the Egegik district and freshwater drainages flowing into the district.
Ugashik District, including drainages flowing into the district.	Salmon and freshwater fish	Residents of the Ugashik District, and freshwater drainages flowing into the district.
Togiak District	Herring spawn on kelp	Residents of the Togiak District and freshwater drainages flowing into the district.
Remainder of the Bristol Bay Area	All fish	Residents of the Bristol Bay Area
ALEUTIAN ISLANDS AREA	All fish	Residents of the Aleutian Islands Area and the Pribilof Islands.
ALASKA PENINSULA AREA	Halibut	Residents of the Alaska Peninsula Area and the communities of Ivanof Bay and Perryville.
	All other fish in the Alaska Peninsula Area.	Residents of the Alaska Peninsula Area.
CHIGNIK AREA	Halibut, salmon and fish other than rainbow/steelhead trout.	Residents of the Chignik Area.

Area	Species	Determination
KODIAK AREA—except the Mainland District, all waters along the south side of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°52′ North latitude) mid-stream Shelikof Strait, and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57°1′22″ North latitude, 156°20′30″ West longitude).	Salmon	Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base.
Kodiak Area	Fish other than rainbow/steelhead trout and salmon.	Residents of the Kodiak Area.
COOK INLET AREA	Fish other than salmon, Dolly Varden, trout, char, grayling, and burbot.	Residents of the Cook Inlet Area.
	Salmon, Dolly Varden, trout, char, grayling, and burbot.	No Determination.
PRINCE WILLIAM SOUND AREA: South-Western District and Green Island.	Salmon	Residents of the Southwestern District, which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield, and Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island and adjacent islands.
North of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.	Salmon	Residents of the villages of Tatitlek and Ellamar.
Copper River drainage upstream from Haley Creek.	Freshwater fish	Residents of Cantwell, Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway, Slana, Tanacross, Tazlina, Tetlin, Tok, Tonsina, and those individuals that live along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.
Gulkana Wild and Scenic River	Freshwater fish	Residents of Cantwell, Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway, Paxson-Sourdough, Slana, Tanacross, Tazlina, Tetlin, Tok, Tonsina, and those individuals that live along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.
Chitina Subdistrict of the Upper Copper River District.	Salmon	Residents of Cantwell, Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway, Paxson-Sourdough, Slana, Tanacross, Tazlina, Tetlin, Tok, Tonsina, and those individuals that live along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.
Glennallen Subdistrict of the Upper Copper River District.	Salmon	Residents of the Prince William Sound Area and residents of Cantwell, Chisana, Dot Lake, Healy Lake, Northway, Tanacross, Tetlin, Tok and those individuals living along the Alaska Highway from the Alaskan/Canadian border to Dot Lake, along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.
Waters of the Copper River between National Park Service regulatory markers located near the mouth of Tanada Creek, and in Tanada Creek between National Park Service regulatory markers identifying the open waters of the creek.	Salmon	Residents of Mentasta Lake and Dot Lake.
Remainder of the Prince William Sound Area.	Salmon	Residents of the Prince William Sound Area.
YAKUTAT AREA: Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to the Tsiu River.	Salmon	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to Point Manby.	Dolly Varden, steelhead trout, and smelt.	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Remainder of the Yakutat Area	Dolly Varden, trout, smelt, and eulachon..	Residents of Southeastern Alaska and Yakutat Areas.
SOUTHEASTERN ALASKA AREA: District 1—Section 1–E in waters of the Naha River and Roosevelt Lagoon.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of City of the Saxman.

Area	Species	Determination
District 1—Section 1–F in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek.	Salmon, Dolly Varden, Trout, smelt, and eulachon.	Residents of the City of Saxman.
Districts 2, 3, and 5 and waters draining into those Districts.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents living south of Sumner Strait and west of Clarence Strait and Kashevaroff Passage.
District 5—North of a line from Point Barrie to Boulder Point.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 6 and waters draining into that District.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents living south of Sumner Strait and west of Clarence Strait and Kashevaroff Passage; residents of drainages flowing into District 6 north of the latitude of Point Alexander (Mitkof Island); residents of drainages flowing into Districts 7 & 8, including the communities of Petersburg & Wrangell; and residents of the communities of Meyers Chuck and Kake.
District 7 and waters draining into that District.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of drainages flowing into District 6 north of the latitude of Point Alexander (Mitkof Island); residents of drainages flowing into Districts 7 & 8, including the communities of Petersburg & Wrangell; and residents of the communities of Meyers Chuck and Kake.
District 8 and waters draining into that District.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of drainages flowing into Districts 7 & 8, residents of drainages flowing into District 6 north of the latitude of Point Alexander (Mitkof Island), and residents of Meyers Chuck.
District 9—Section 9–A	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–B north of the latitude of Swain Point.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White north of the Portage Bay boat harbor.
District 10—West of a line from Pinta Point to False Point Pybus.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 12—South of a line from Fishery Point to south Passage Point and north of the latitude of Point Caution.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30′ West longitude, including Killisnoo Island.
District 13—Section 13–A south of the latitude of Cape Edward.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City and Borough of Sitka in drainages that empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–B north of the latitude of Redfish Cape.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City and Borough of Sitka in drainages that empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City and Borough of Sitka in drainages that empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C east of the longitude of Point Elizabeth.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30′ West longitude, including Killisnoo Island.
District 14—Sections 14–B and 14–C.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City of Hoonah and in Chichagof Island drainages on the eastern shore of Port Frederick from Gartina Creek to Point Sophia.
Remainder of the Southeastern Alaska Area.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of Southeastern Alaska and Yakutat Areas.

(3) *Shellfish determinations.* The following communities and areas have been found to have a positive customary and traditional use determination in the listed area for the indicated species:

Area	Species	Determination
BERING SEA AREA	All shellfish	Residents of the Bering Sea Area.
ALASKA PENINSULA-ALEUTIAN ISLANDS AREA.	Shrimp, Dungeness, king, and Tanner crab.	Residents of the Alaska Peninsula-Aleutian Islands Area.
KODIAK AREA	Shrimp, Dungeness, and Tanner crab.	Residents of the Kodiak Area.
Kodiak Area, except for the Semidi Island, the North Mainland, and the South Mainland Sections.	King crab	Residents of the Kodiak Island Borough except those residents on the Kodiak Coast Guard base.
COOK INLET AREA Federal waters in the Tuxedni Bay Area within the boundaries of Lake Clark National Park & Preserve or Alaska Maritime NWR.	Shellfish	Residents of Tuxedni Bay, Chisik Island, and Tyonek.

Area	Species	Determination
PRINCE WILLIAM SOUND AREA	Shrimp, clams, Dungeness, king, and Tanner crab.	Residents of the Prince William Sound Area.
SOUTHEASTERN ALASKA—YAKUTAT AREA.		
Section 1–E south of the latitude of Grant Island light.	Shellfish, except shrimp, king crab, and Tanner crab.	Residents of the Southeast Area.
Section 1–F north of the latitude of the northernmost tip of Mary Island, except waters of Boca de Quadra.	Shellfish, except shrimp, king crag, and Tanner crab.	Residents of the Southeast Area.
Section 3–A and 3–B	Shellfish, except shrimp, king crab, and Tanner crab.	Residents of the Southeast Area.
District 13	Dungeness crab, shrimp, abalone, sea cucumbers, gum boots, cockles, and clams, except geoducks.	Residents of the Southeast Area.

* * * * *

■ 3. In Subpart D of 36 CFR part 242 and 50 CFR part 100, ___.27 and ___.28 are added effective March 1, 2004, through March 31, 2005, to read as follows:

§ ___.27 Subsistence taking of fish.

(a) *Applicability.* (1) Regulations in this section apply to the taking of fish or their parts for subsistence uses.

(2) You may take fish for subsistence uses at any time by any method unless you are restricted by the subsistence fishing regulations found in this section. The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative, except as modified by regulations in § ___.27(i). This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not, after that, take any additional fish of that species under any other harvest limit specified for a State season.

(b) [*Reserved*]

(c) *Methods, means, and general restrictions.* (1) Unless otherwise specified in this section or under terms of a required subsistence fishing permit (as may be modified by this section), you may use the following legal types of gear for subsistence fishing:

(i) A set gillnet;
(ii) A drift gillnet;
(iii) A purse seine;
(iv) A hand purse seine;
(v) A beach seine;
(vi) Troll gear;
(vii) A fish wheel;
(viii) A trawl;
(ix) A pot;
(x) A longline;
(xi) A fyke net;
(xii) A lead;
(xiii) A herring pound;
(xiv) A dip net;
(xv) Jigging gear;
(xvi) A mechanical jigging machine;
(xvii) A handline;
(xviii) A cast net;
(xix) A rod and reel; and
(xx) A spear.

(2) You must include an escape mechanism on all pots used to take fish or shellfish. The escape mechanisms are as follows:

(i) A sidewall, which may include the tunnel, of all shellfish and bottomfish pots must contain an opening equal to or exceeding 18 inches in length, except that in shrimp pots the opening must be a minimum of 6 inches in length. The opening must be laced, sewn, or secured together by a single length of untreated, 100 percent cotton twine, no larger than 30 thread. The cotton twine may be knotted at each end only. The opening must be within 6 inches of the bottom of the pot and must be parallel with it. The cotton twine may not be tied or looped around the web bars. Dungeness crab pots may have the pot lid tie-down straps secured to the pot at one end by a single loop of untreated, 100 percent cotton twine no larger than 60 thread, or the pot lid must be secured so that, when the twine degrades, the lid will no longer be securely closed;

(ii) All king crab, Tanner crab, shrimp, miscellaneous shellfish and bottomfish pots may, instead of complying with paragraph (c)(2)(i) of this section, satisfy the following: a sidewall, which may include the tunnel, must contain an opening at least 18 inches in length, except that shrimp pots must contain an opening at least 6 inches in length. The opening must be laced, sewn, or secured together by a single length of treated or untreated twine, no larger than 36 thread. A galvanic timed-release device, designed to release in no more than 30 days in saltwater, must be integral to the length of twine so that, when the device releases, the twine will no longer secure or obstruct the opening of the pot. The twine may be knotted only at each end and at the attachment points on the galvanic timed-release device. The opening must be within 6 inches of the bottom of the pot and must be parallel with it. The twine may not be tied or looped around the web bars.

(3) For subsistence fishing for salmon, you may not use a gillnet exceeding 50 fathoms in length, unless otherwise specified in this section. The gillnet web must contain at least 30 filaments of equal diameter or at least 6 filaments, each of which must be at least 0.20 millimeter in diameter.

(4) Except as otherwise provided for in this section, you may not obstruct more than one-half the width of any stream with any gear used to take fish for subsistence uses.

(5) You may not use live nonindigenous fish as bait.

(6) You must have your first initial, last name, and address plainly and legibly inscribed on the side of your fishwheel facing midstream of the river.

(7) You may use kegs or buoys of any color but red on any permitted gear, except in the following areas where kegs or buoys of any color, including red, may be used:

(i) Yukon-Northern Area; and
(ii) Kuskokwim Area.

(8) You must have your first initial, last name, and address plainly and legibly inscribed on each keg, buoy, stakes attached to gillnets, stakes identifying gear fished under the ice, and any other unattended fishing gear which you use to take fish for subsistence uses.

(9) You may not use explosives or chemicals to take fish for subsistence uses.

(10) You may not take fish for subsistence uses within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction, unless otherwise indicated.

(11) *Transactions between rural residents.* Rural residents may exchange in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from other rural residents. The Board may recognize regional differences and define customary trade differently for separate regions of the State.

(i) Bristol Bay Fishery Management Area—The total cash value per household of salmon taken within Federal jurisdiction in the Bristol Bay Fishery Management Area and exchanged in customary trade to rural residents may not exceed $500.00 annually.

(ii) [Reserved]

(12) *Transactions between a rural resident and others.* In customary trade, a rural resident may trade fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from individuals other than rural residents if the individual who purchases the fish, their parts, or their eggs uses them for personal or family consumption. If you are not a rural resident, you may not sell fish, their parts, or their eggs taken under the regulations in this part. The Board may recognize regional differences and define customary trade differently for separate regions of the State.

(i) Bristol Bay Fishery Management Area—The total cash value per household of salmon taken within Federal jurisdiction in the Bristol Bay Fishery Management Area and exchanged in customary trade between rural residents and individuals other than rural residents may not exceed $400.00 annually. These customary trade sales must be immediately recorded on a customary trade recordkeeping form. The recording requirement and the responsibility to ensure the household limit is not exceeded rests with the seller.

(ii) [Reserved]

(13) *No sale to, nor purchase by, fisheries businesses.*

(i) You may not sell fish, their parts, or their eggs taken under the regulations in this part to any individual, business, or organization required to be licensed as a fisheries business under Alaska Statute AS 43.75.011 (commercial limited-entry permit or crew license holders excluded) or to any other business as defined under Alaska Statute 43.70.110(1) as part of its business transactions.

(ii) If you are required to be licensed as a fisheries business under Alaska Statute AS 43.75.011 (commercial limited-entry permit or crew license holders excluded) or are a business as defined under Alaska Statute 43.70.110(1), you may not purchase, receive, or sell fish, their parts, or their eggs taken under the regulations in this part as part of your business transactions.

(14) Except as provided elsewhere in this section, you may not take rainbow/steelhead trout.

(15) You may not use fish taken for subsistence use or under subsistence regulations in this part as bait for commercial or sport fishing purposes.

(16) [Reserved]

(17) Unless specified otherwise in this section, you may use a rod and reel to take fish without a subsistence fishing permit. Harvest limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:

(i) If you are required to obtain a subsistence fishing permit for an area, that permit is required to take fish for subsistence uses with rod and reel in that area. The harvest and possession limits for taking fish with a rod and reel in those areas are the same as indicated on the permit issued for subsistence fishing with other gear types;

(ii) Except as otherwise provided for in this section, if you are not required to obtain a subsistence fishing permit for an area, the harvest and possession limits for taking fish for subsistence uses with a rod and reel are the same as for taking fish under State of Alaska subsistence fishing regulations in those same areas. If the State does not have a specific subsistence season and/or harvest limit for that particular species, the limit shall be the same as for taking fish under State of Alaska sport fishing regulations.

(18) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish for subsistence uses at any time.

(19) Provisions on ADF&G subsistence fishing permits that are more restrictive or in conflict with the provisions contained in this section do not apply to Federal subsistence users.

(20) You may not intentionally waste or destroy any subsistence-caught fish or shellfish; however, you may use for bait or other purposes, whitefish, herring, and species for which harvest limits, seasons, or other regulatory methods and means are not provided in this section, as well as the head, tail, fins, and viscera of legally-taken subsistence fish.

(21) The taking of fish from waters within Federal jurisdiction is authorized outside of published open seasons or harvest limits if the harvested fish will be used for food in traditional or religious ceremonies that are part of funerary or mortuary cycles, including memorial potlatches, provided that:

(i) Prior to attempting to take fish, the person (or designee) or Tribal Government organizing the ceremony contacts the appropriate Federal fisheries manager to provide the nature of the ceremony, the parties and/or clans involved, the species and the number of fish to be taken, and the Federal waters from which the harvest will occur;

(ii) The taking does not violate recognized principles of fisheries conservation, and uses the methods and means allowable for the particular species published in the applicable Federal regulations (the Federal fisheries manager will establish the number, species, or place of taking if necessary for conservation purposes);

(iii) Each person who takes fish under this section must, as soon as practical, and not more than 15 days after the harvest, submit a written report to the appropriate Federal fisheries manager, specifying the harvester's name and address, the number and species of fish taken, and the date and locations of the taking; and

(iv) No permit is required for taking under this section; however, the harvester must be eligible to harvest the resource under Federal regulations.

(d) [*Reserved*]

(e) *Fishing permits and reports.* (1) You may take salmon only under the authority of a subsistence fishing permit, unless a permit is specifically not required in a particular area by the subsistence regulations in this part, or unless you are retaining salmon from your commercial catch consistent with paragraph (f) of this section.

(2) The U.S. Fish and Wildlife Service, Office of Subsistence Management may issue a permit to harvest fish for a qualifying cultural/educational program to an organization that has been granted a Federal subsistence permit for a similar event within the previous 5 years. A qualifying program must have instructors, enrolled students, minimum attendance requirements, and standards for successful completion of the course. Applications must be submitted to the Office of Subsistence Management 60 days prior to the earliest desired date of harvest. Permits will be issued for no more than 25 fish per culture/education camp. Appeal of a rejected request can be made to the Federal Subsistence Board. Application for an initial permit for a qualifying cultural/educational program, for a permit when the circumstances have changed significantly, when no permit has been issued within the previous 5 years, or

when there is a request for harvest in excess of that provided in this paragraph (e)(2), will be considered by the Federal Subsistence Board.

(3) If a subsistence fishing permit is required by this section, the following permit conditions apply unless otherwise specified in this section:

(i) You may not take more fish for subsistence use than the limits set out in the permit;

(ii) You must obtain the permit prior to fishing;

(iii) You must have the permit in your possession and readily available for inspection while fishing or transporting subsistence-taken fish;

(iv) If specified on the permit, you must record, prior to leaving the harvest site, daily records of the catch, showing the number of fish taken by species, location and date of catch, and other such information as may be required for management or conservation purposes; and

(v) If the return of catch information necessary for management and conservation purposes is required by a fishing permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you demonstrate that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances. You must also return any tags or transmitters that have been attached to fish for management and conservation purposes.

(f) *Relation to commercial fishing activities.* (1) If you are a Federally-qualified subsistence user who also commercial fishes, you may retain fish for subsistence purposes from your lawfully-taken commercial catch.

(2) When participating in a commercial and subsistence fishery at the same time, you may not use an amount of combined fishing gear in excess of that allowed under the appropriate commercial fishing regulations.

(g) You may not possess, transport, give, receive, or barter subsistence-taken fish or their parts which have been taken contrary to Federal law or regulation or State law or regulation (unless superseded by regulations in this part).

(h) [*Reserved*]

(i) *Fishery management area restrictions.* (1) *Kotzebue Area.* The Kotzebue Area includes all waters of Alaska between the latitude of the westernmost tip of Point Hope and the latitude of the westernmost tip of Cape Prince of Wales, including those waters draining into the Chukchi Sea.

(i) You may take fish for subsistence purposes without a permit.

(ii) You may take salmon only by gillnets, beach seines, or a rod and reel.

(iii) In the Kotzebue District, you may take sheefish with gillnets that are not more than 50 fathoms in length, nor more than 12 meshes in depth, nor have a stretched-mesh size larger than 7 inches.

(iv) You may not obstruct more than one-half the width of a stream, creek, or slough with any gear used to take fish for subsistence uses, except from May 15 to July 15 and August 15 to October 31 when taking whitefish or pike in streams, creeks, or sloughs within the Kobuk River drainage and from May 15 to October 31 in the Selawik River drainage. Only one gillnet 100 feet or less in length with a stretched-mesh size from 2½ to 4½ inches may be used per site. You must check your net at least once in every 24-hour period.

(2) *Norton Sound-Port Clarence Area.* The Norton Sound-Port Clarence Area includes all waters of Alaska between the latitude of the westernmost tip of Cape Prince of Wales and the latitude of Point Romanof, including those waters of Alaska surrounding St. Lawrence Island and those waters draining into the Bering Sea.

(i) Unless otherwise restricted in this section, you may take fish at any time in the Port Clarence District.

(ii) In the Norton Sound District, you may take fish at any time except as follows:

(A) In Subdistricts 2 through 6, if you are a commercial fisherman, you may not fish for subsistence purposes during the weekly closures of the State commercial salmon fishing season, except that from July 15 through August 1, you may take salmon for subsistence purposes 7 days per week in the Unalakleet and Shaktoolik River drainages with gillnets which have a stretched-mesh size that does not exceed 4½ inches, and with beach seines;

(B) In the Unalakleet River from June 1 through July 15, you may take salmon only from 8 a.m. Monday until 8 p.m. Saturday.

(iii) You may take salmon only by gillnets, beach seines, fishwheel, or a rod and reel.

(iv) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, jigging gear, spear, lead, or a rod and reel.

(v) In the Unalakleet River from June 1 through July 15, you may not operate more than 25 fathoms of gillnet in the aggregate nor may you operate an unanchored gillnet.

(vi) You must have a subsistence fishing permit for net fishing in all waters from Cape Douglas to Rocky Point.

(vii) Only one subsistence fishing permit will be issued to each household per year.

(3) *Yukon-Northern Area.* The Yukon-Northern Area includes all waters of Alaska between the latitude of Point Romanof and the latitude of the westernmost point of the Naskonat Peninsula, including those waters draining into the Bering Sea, and all waters of Alaska north of the latitude of the westernmost tip of Point Hope and west of 141° West longitude, including those waters draining into the Arctic Ocean and the Chukchi Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Yukon-Northern Area at any time. You may subsistence fish for salmon with rod and reel in the Yukon River drainage 24 hours per day, 7 days per week, unless rod and reel are specifically restricted by this paragraph (i)(3) of this section.

(ii) For the Yukon River drainage, Federal subsistence fishing schedules, openings, closings, and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), unless superseded by a Federal Special Action.

(iii) In the following locations, you may take salmon during the open weekly fishing periods of the State commercial salmon fishing season and may not take them for 24 hours before the opening of the State commercial salmon fishing season:

(A) In District 4, excluding the Koyukuk River drainage;

(B) In Subdistricts 4–B and 4–C from June 15 through September 30, salmon may be taken from 6 p.m. Sunday until 6 p.m. Tuesday and from 6 p.m. Wednesday until 6 p.m. Friday;

(C) In District 6, excluding the Kantishna River drainage, salmon may be taken from 6 p.m. Friday until 6 p.m. Wednesday.

(iv) During any State commercial salmon fishing season closure of greater than five days in duration, you may not take salmon during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk River drainage, salmon may not be taken from 6 p.m. Friday until 6 p.m. Sunday;

(B) In District 5, excluding the Tozitna River drainage and Subdistrict 5–D, salmon may not be taken from 6 p.m. Sunday until 6 p.m. Tuesday.

(v) Except as provided in this section, and except as may be provided by the terms of a subsistence fishing permit,

you may take fish other than salmon at any time.

(vi) In Districts 1, 2, 3, and Subdistrict 4–A, excluding the Koyukuk and Innoko River drainages, you may not take salmon for subsistence purposes during the 24 hours immediately before the opening of the State commercial salmon fishing season.

(vii) In Districts 1, 2, and 3:

(A) After the opening of the State commercial salmon fishing season through July 15, you may not take salmon for subsistence for 18 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period;

(B) After July 15, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period.

(viii) In Subdistrict 4–A after the opening of the State commercial salmon fishing season, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each State commercial salmon fishing period; however, you may take king salmon during the State commercial fishing season, with drift gillnet gear only, from 6 p.m. Sunday until 6 p.m. Tuesday and from 6 p.m. Wednesday until 6 p.m. Friday.

(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:

(A) Kanuti River upstream from a point 5 miles downstream of the State highway crossing;

(B) Bonanza Creek;

(C) Jim River including Prospect and Douglas Creeks.

(x) You may not subsistence fish in the Delta River.

(xi) In Beaver Creek downstream from the confluence of Moose Creek, a gillnet with mesh size not to exceed 3-inches stretch-measure may be used from June 15 to September 15. You may subsistence fish for all non-salmon species but may not target salmon during this time period (retention of salmon taken incidentally to non-salmon directed fisheries is allowed). From the mouth of Nome Creek downstream to the confluence of Moose Creek, only rod and reel may be used. From the mouth of Nome Creek downstream to the confluence of O'Brien Creek, the daily harvest and possession limit is 5 grayling; from the mouth of O'Brien Creek downstream to the confluence of Moose Creek, the daily harvest and possession limit is 10 grayling. The Nome Creek drainage of Beaver Creek is closed to subsistence fishing for grayling.

(xii) You may not subsistence fish in the Toklat River drainage from August 15 through May 15.

(xiii) You may take salmon only by gillnet, beach seine, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(xiv) In District 4, if you are a commercial fisherman, you may not take salmon for subsistence purposes during the State commercial salmon fishing season using gillnets with stretched-mesh larger than 6-inches after a date specified by ADF&G emergency order issued between July 10 and July 31.

(xv) In Districts 4, 5, and 6, you may not take salmon for subsistence purposes by drift gillnets, except as follows:

(A) In Subdistrict 4–A upstream from the mouth of Stink Creek, you may take king salmon by drift gillnets less than 150 feet in length from June 10 through July 14, and chum salmon by drift gillnets after August 2;

(B) In Subdistrict 4–A downstream from the mouth of Stink Creek, you may take king salmon by drift gillnets less than 150 feet in length from June 10 through July 14.

(xvi) Unless otherwise specified in this section, you may take fish other than salmon and halibut by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, subject to the following restrictions, which also apply to subsistence salmon fishing:

(A) During the open weekly fishing periods of the State commercial salmon fishing season, if you are a commercial fisherman, you may not operate more than one type of gear at a time, for commercial, personal use, and subsistence purposes;

(B) You may not use an aggregate length of set gillnet in excess of 150 fathoms and each drift gillnet may not exceed 50 fathoms in length;

(C) In Districts 4, 5, and 6, you may not set subsistence fishing gear within 200 feet of other operating commercial, personal use, or subsistence fishing gear except that, at the site approximately 1 mile upstream from Ruby on the south bank of the Yukon River between ADF&G regulatory markers containing the area known locally as the ''Slide,'' you may set subsistence fishing gear within 200 feet of other operating commercial or subsistence fishing gear and in District 4, from Old Paradise Village upstream to a point 4 miles upstream from Anvik, there is no minimum distance requirement between fish wheels;

(D) During the State commercial salmon fishing season, within the Yukon River and the Tanana River below the confluence of the Wood River, you may use drift gillnets and fish wheels only during open subsistence salmon fishing periods;

(E) In Birch Creek, gillnet mesh size may not exceed 3-inches stretch-measure from June 15 through September 15.

(xvii) In District 4, from September 21 through May 15, you may use jigging gear from shore ice.

(xviii) You must possess a subsistence fishing permit for the following locations:

(A) For the Yukon River drainage from the mouth of Hess Creek to the mouth of the Dall River;

(B) For the Yukon River drainage from the upstream mouth of 22 Mile Slough to the U.S.-Canada border;

(C) Only for salmon in the Tanana River drainage above the mouth of the Wood River.

(xix) Only one subsistence fishing permit will be issued to each household per year.

(xx) In Districts 1, 2, and 3, you may not possess king salmon taken for subsistence purposes unless the dorsal fin has been removed immediately after landing.

(xxi) In the Yukon River drainage, chinook (king) salmon must be used primarily for human consumption and may not be targeted for dog food. Dried chinook salmon may not be used for dogfood anywhere in the Yukon River drainage. Whole fish unfit for human consumption (due to disease, deterioration, deformities), scraps, and small fish (16 inches or less) may be fed to dogs. Also, whole chinook salmon caught incidentally during a subsistence chum salmon fishery in the following time periods and locations may be fed to dogs:

(A) After July 10 in the Koyukuk River drainage;

(B) After August 10, in Subdistrict 5–D, upstream of Circle City.

(4) *Kuskokwim Area.* The Kuskokwim Area consists of all waters of Alaska between the latitude of the westernmost point of Naskonat Peninsula and the latitude of the southernmost tip of Cape Newenham, including the waters of Alaska surrounding Nunivak and St. Matthew Islands and those waters draining into the Bering Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Kuskokwim Area at any time without a subsistence fishing permit.

(ii) For the Kuskokwim area, Federal subsistence fishing schedules, openings, closings, and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS

16.05.060), unless superseded by a Federal Special Action.

(iii) In District 1 and in those waters of the Kuskokwim River between Districts 1 and 2, excluding the Kuskokuak Slough, you may not take salmon for 16 hours before, during, and for 6 hours after, each State open commercial salmon fishing period for District 1.

(iv) In District 1, Kuskokuak Slough, from June 1 through July 31 only, you may not take salmon for 16 hours before and during each State open commercial salmon fishing period in the district.

(v) In Districts 4 and 5, from June 1 through September 8, you may not take salmon for 16 hours before, during, and 6 hours after each State open commercial salmon fishing period in each district.

(vi) In District 2, and anywhere in tributaries that flow into the Kuskokwim River within that district, from June 1 through September 8 you may not take salmon by net gear or fishwheel for 16 hours before, during, and 6 hours after each open commercial salmon fishing period in the district. You may subsistence fish for salmon with rod and reel 24 hours per day, 7 days per week, unless rod and reel are specifically restricted by this paragraph (i)(4) of this section.

(vii) You may not take subsistence fish by nets in the Goodnews River east of a line between ADF&G regulatory markers placed near the mouth of the Ufigag River and an ADF&G regulatory marker placed near the mouth of the Tunulik River 16 hours before, during, and 6 hours after each State open commercial salmon fishing period.

(viii) You may not take subsistence fish by nets in the Kanektok River upstream of ADF&G regulatory markers placed near the mouth 16 hours before, during, and 6 hours after each State open commercial salmon fishing period.

(ix) You may not take subsistence fish by nets in the Arolik River upstream of ADF&G regulatory markers placed near the mouth 16 hours before, during, and 6 hours after each State open commercial salmon fishing period.

(x) You may only take salmon by gillnet, beach seine, fish wheel, or rod and reel subject to the restrictions set out in this section, except that you may also take salmon by spear in the Holitna, Kanektok, and Arolik River drainages, and in the drainage of Goodnews Bay.

(xi) You may not use an aggregate length of set gillnets or drift gillnets in excess of 50 fathoms for taking salmon.

(xii) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, dip net, jigging gear, spear, lead, handline, or rod and reel.

(xiii) You must attach to the bank each subsistence gillnet operated in tributaries of the Kuskokwim River and fish it substantially perpendicular to the bank and in a substantially straight line.

(xiv) Within a tributary to the Kuskokwim River in that portion of the Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakoff River, you may not set or operate any part of a set gillnet within 150 feet of any part of another set gillnet.

(xv) The maximum depth of gillnets is as follows:

(A) Gillnets with 6-inch or smaller stretched-mesh may not be more than 45 meshes in depth;

(B) Gillnets with greater than 6-inch stretched-mesh may not be more than 35 meshes in depth.

(xvi) You may take halibut only by a single hand-held line with no more than two hooks attached to it.

(xvii) You may not use subsistence set and drift gillnets exceeding 15 fathoms in length in Whitefish Lake in the Ophir Creek drainage. You may not operate more than one subsistence set or drift gillnet at a time in Whitefish Lake in the Ophir Creek drainage. You must check the net at least once every 24 hours.

(xviii) Rainbow trout may be taken by only residents of Goodnews Bay, Platinum, Quinhagak, Eek, Kwethluk, Akiachak, and Akiak. The following restrictions apply:

(A) You may take rainbow trout only by the use of gillnets, dip nets, fyke nets, handline, spear, rod and reel, or jigging through the ice;

(B) You may not use gillnets, dip nets, or fyke nets for targeting rainbow trout from March 15 through June 15;

(C) If you take rainbow trout incidentally in other subsistence net fisheries and through the ice, you may retain them for subsistence purposes;

(D) There are no harvest limits with handline, spear, rod and reel, or jigging.

(5) *Bristol Bay Area.* The Bristol Bay Area includes all waters of Bristol Bay, including drainages enclosed by a line from Cape Newenham to Cape Menshikof.

(i) Unless restricted in this section, or unless under the terms of a subsistence fishing permit, you may take fish at any time in the Bristol Bay area.

(ii) In all State commercial salmon districts, from May 1 through May 31 and October 1 through October 31, you may subsistence fish for salmon only from 9 a.m. Monday until 9 a.m. Friday. From June 1 through September 30, within the waters of a commercial salmon district, you may take salmon only during State open commercial salmon fishing periods.

(iii) In the Egegik River from 9 a.m. June 23 through 9 a.m. July 17, you may take salmon only from 9 a.m. Tuesday to 9 a.m. Wednesday and 9 a.m. Saturday to 9 a.m. Sunday.

(iv) You may not take fish from waters within 300 feet of a stream mouth used by salmon.

(v) You may not subsistence fish with nets in the Tazimina River and within one-fourth mile of the terminus of those waters during the period from September 1 through June 14.

(vi) Within any district, you may take salmon, herring, and capelin only by drift and set gillnets.

(vii) Outside the boundaries of any district, you may take salmon only by set gillnet, except that you may also take salmon by spear in the Togiak River, excluding its tributaries.

(viii) The maximum lengths for set gillnets used to take salmon are as follows:

(A) You may not use set gillnets exceeding 10 fathoms in length in the Egegik River;

(B) In the remaining waters of the area, you may not use set gillnets exceeding 25 fathoms in length.

(ix) You may not operate any part of a set gillnet within 300 feet of any part of another set gillnet.

(x) You must stake and buoy each set gillnet. Instead of having the identifying information on a keg or buoy attached to the gillnet, you may plainly and legibly inscribe your first initial, last name, and subsistence permit number on a sign at or near the set gillnet.

(xi) You may not operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(xii) During State closed commercial herring fishing periods, you may not use gillnets exceeding 25 fathoms in length for the subsistence taking of herring or capelin.

(xiii) You may take fish other than salmon, rainbow trout, herring, capelin, and halibut by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(xiv) You may take salmon and char only under authority of a subsistence fishing permit. You may take rainbow trout only under authority of a Federal subsistence fishing permit; permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G and local users.

(xv) Only one subsistence fishing permit for salmon, one for char, and one

for rainbow trout may be issued to each household per year.

(xvi) In the Togiak River section and the Togiak River drainage, you may not possess coho salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed.

(xvii) You may take rainbow trout only by rod and reel or jigging gear. Rainbow trout daily harvest and possession limits are 2 per day/2 in possession with no size limit from April 10 through October 31 and 5 per day/5 in possession with no size limit from November 1 through April 9.

(xviii) If you take rainbow trout incidentally in other subsistence net fisheries, or through the ice, you may retain them for subsistence purposes.

(6) *Aleutian Islands Area.* The Aleutian Islands Area includes all waters of Alaska west of the longitude of the tip of Cape Sarichef, east of 172° East longitude, and south of 54°36′ North latitude.

(i) You may take fish other than salmon, rainbow/steelhead trout, or char at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) In the Unalaska District, you may take salmon for subsistence purposes from 6 a.m. until 9 p.m. from January 1 through December 31, except as may be specified on a subsistence fishing permit.

(iii) In the Adak, Akutan, Atka-Amlia, and Umnak Districts, you may take salmon at any time.

(iv) You may not subsistence fish for salmon in the following waters:

(A) The waters of Unalaska Lake, its tributaries and outlet stream;

(B) The waters of Summers and Morris Lakes and their tributaries and outlet streams;

(C) All streams supporting anadromous fish runs that flow into Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point;

(D) Waters of McLees Lake and its tributaries and outlet stream;

(E) All freshwater on Adak Island and Kagalaska Island in the Adak District.

(v) You may take salmon by seine and gillnet, or with gear specified on a subsistence fishing permit.

(vi) In the Unalaska District, if you fish with a net, you must be physically present at the net at all times when the net is being used.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon, trout, and char only under the terms of a subsistence fishing permit, except that you do not need a permit in the Akutan, Umnak, and Atka-Amlia Islands Districts.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit, except that in the Unalaska and Adak Districts, you may take no more than 25 salmon plus an additional 25 salmon for each member of your household listed on the permit. You may obtain an additional permit.

(x) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(xi) The daily harvest limit for halibut is two fish, and the possession limit is two daily harvest limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(7) *Alaska Peninsula Area.* The Alaska Peninsula Area includes all Pacific Ocean waters of Alaska between a line extending southeast (135°) from the tip of Kupreanof Point and the longitude of the tip of Cape Sarichef, and all Bering Sea waters of Alaska east of the longitude of the tip of Cape Sarichef and south of the latitude of the tip of Cape Menshikof.

(i) You may take fish, other than salmon, rainbow/steelhead trout, or char, at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries or through the ice, you may retain them for subsistence purposes.

(ii) You may take salmon, trout, and char only under the authority of a subsistence fishing permit.

(iii) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(iv) You may take salmon at any time except within 24 hours before and within 12 hours following each State open weekly commercial salmon fishing period within a 50-mile radius of the area open to commercial salmon fishing, or as may be specified on a subsistence fishing permit.

(v) You may not subsistence fish for salmon in the following waters:

(A) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon;

(B) Trout Creek and within 500 yards outside its mouth.

(vi) You may take salmon by seine, gillnet, rod and reel, or with gear specified on a subsistence fishing permit.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may not use a set gillnet exceeding 100 fathoms in length.

(ix) You may take halibut for subsistence purposes only by a single handheld line with no more than two hooks attached.

(x) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on your subsistence fishing permit.

(xi) The daily harvest limit for halibut is two fish and the possession limit is two daily harvest limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(8) *Chignik Area.* The Chignik Area includes all waters of Alaska on the south side of the Alaska Peninsula enclosed by 156°20.22′ West longitude (the longitude of the southern entrance to Imuya Bay near Kilokak Rocks) and a line extending southeast (135°) from the tip of Kupreanof Point.

(i) You may take fish other than salmon, rainbow/steelhead trout, or char at any time, except as may be specified by a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may not take salmon in the Chignik River, upstream from the ADF&G weir site or counting tower, in Black Lake, or any tributary to Black and Chignik Lakes.

(iii) You may take salmon, trout, and char only under the authority of a subsistence fishing permit.

(iv) You must keep a record on your permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(v) If you hold a commercial fishing license, you may not subsistence fish for salmon from 48 hours before the first State commercial salmon fishing opening in the Chignik Area through September 30.

(vi) You may take salmon by seines, gillnets, rod and reel, or with gear specified on a subsistence fishing permit, except that in Chignik Lake you may not use purse seines.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take halibut for subsistence purposes only by a single

handheld line with no more than two hooks attached.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit.

(x) The daily harvest limit for halibut is two fish, and the possession limit is two daily harvest limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(9) *Kodiak Area.* The Kodiak Area includes all waters of Alaska south of a line extending east from Cape Douglas (58°51.10′ North latitude), west of 150° West longitude, north of 55°30.00′ North latitude; and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (156°20.22′ West longitude).

(i) You may take fish other than salmon, rainbow/steelhead trout, char, bottomfish, or herring at any time unless restricted by the terms of a subsistence fishing permit. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may take salmon for subsistence purposes 24 hours a day from January 1 through December 31, with the following exceptions:

(A) From June 1 through September 15, you may not use salmon seine vessels to take subsistence salmon for 24 hours before, during, and for 24 hours after any State open commercial salmon fishing period. The use of skiffs from any type of vessel is allowed;

(B) From June 1 through September 15, you may use purse seine vessels to take salmon only with gillnets, and you may have no other type of salmon gear on board the vessel.

(iii) You may not subsistence fish for salmon in the following locations:

(A) Womens Bay closed waters—all waters inside a line from the tip of the Nyman Peninsula (57°43.23′ North latitude, 152°31.51′ West longitude), to the northeastern tip of Mary's Island (57°42.40′ North latitude, 152°32.00′ West longitude), to the southeastern shore of Womens Bay at 57°41.95′ North latitude, 152°31.50′ West longitude;

(B) Buskin River closed waters—all waters inside of a line running from a marker on the bluff north of the mouth of the Buskin River at approximately 57°45.80′ North latitude, 152°28.38′ West longitude, to a point offshore at 57°45.35′ North latitude, 152°28.15′ West longitude, to a marker located onshore south of the river mouth at approximately 57°45.15′ North latitude, 152°28.65′ West longitude;

(C) All waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek;

(D) In Afognak Bay north and west of a line from the tip of Last Point to the tip of River Mouth Point;

(E) From August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek;

(F) All freshwater systems of Afognak Island.

(iv) You must have a subsistence fishing permit for taking salmon, trout, and char for subsistence purposes. You must have a subsistence fishing permit for taking herring and bottomfish for subsistence purposes during the State commercial herring sac roe season from April 15 through June 30.

(v) With a subsistence salmon fishing permit you may take 25 salmon plus an additional 25 salmon for each member of your household whose names are listed on the permit. You may obtain an additional permit if you can show that more fish are needed.

(vi) You must record on your subsistence permit the number of subsistence fish taken. You must complete the record immediately upon landing subsistence-caught fish, and must return it by February 1 of the year following the year the permit was issued.

(vii) You may take fish other than salmon and halibut by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon only by gillnet, rod and reel, or seine.

(ix) You must be physically present at the net when the net is being fished.

(x) You may take halibut only by a single hand-held line with not more than two hooks attached to it.

(xi) The daily harvest limit for halibut is two fish, and the possession limit is two daily harvest limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(10) *Cook Inlet Area.* The Cook Inlet Area includes all waters of Alaska enclosed by a line extending east from Cape Douglas (58°51′06″ North latitude) and a line extending south from Cape Fairfield (148°50′15″ West longitude).

(i) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Cook Inlet Area. If you take rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may not take grayling or burbot for subsistence purposes.

(iii) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit (as may be modified by this section).

(iv) You may only take salmon, Dolly Varden, trout, and char under authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56).

(v) You may only take smelt with dip nets or gillnets in fresh water from April 1 through June 15. You may not use a gillnet exceeding 20 feet in length and 2 inch stretched-mesh. You must attend the net at all times when it is being used. There are no harvest or possession limits for smelt.

(vi) Gillnets may not be used in freshwater, except for the taking of whitefish in the Tyone River drainage or for the taking of smelt.

(11) *Prince William Sound Area.* The Prince William Sound Area includes all waters and drainages of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

(i) You may take fish, other than rainbow/steelhead trout, in the Prince William Sound Area only under authority of a subsistence fishing permit, except that a permit is not required to take eulachon.

(ii) You may take fish by gear listed in paragraph (c)(1) of this part unless restricted in this section or under the terms of a subsistence fishing permit.

(iii) If you catch rainbow/steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes, unless restricted in this section.

(iv) In the Copper River drainage upstream from Haley Creek, you may take salmon only in the waters of the Upper Copper River District, or in the vicinity of the Native Village of Batzulnetas. You may accumulate harvest limits of salmon authorized for the Copper River drainage upstream from Haley Creek with harvest limits for salmon authorized under State of Alaska sport fishing regulations.

(v) In the Upper Copper River District, you may take salmon only by fish wheels, rod and reel, or dip nets.

(vi) Rainbow/steelhead trout and other freshwater fish caught incidentally to salmon by fish wheel in the Upper Copper River District may be retained.

(vii) Freshwater fish other than rainbow/steelhead trout caught incidentally to salmon by dip net in the Upper Copper River District may be retained. Rainbow/steelhead trout caught incidentally to salmon by dip net in the Upper Copper River District must be released unharmed to the water.

(viii) You may not possess salmon taken under the authority of an Upper Copper River District subsistence

fishing permit, or rainbow/steelhead trout caught incidentally to salmon by fishwheel, unless the anal (ventral) fin has been immediately removed from the fish. You must immediately record all retained fish on the subsistence permit. Immediately means prior to concealing the fish from plain view or transporting the fish more than 50 feet from where the fish was removed from the water.

(ix) You may take salmon in the Upper Copper River District only from May 15 through September 30.

(x) The total annual harvest limit for subsistence salmon fishing permits in combination for the Glennallen Subdistrict and the Chitina Subdistrict is as follows:

(A) For a household with 1 person, 30 salmon, of which no more than 5 may be chinook salmon taken by dip net and no more than 5 chinook taken by rod and reel;

(B) For a household with 2 persons, 60 salmon, of which no more than 5 may be chinook salmon taken by dip net and no more than 5 chinook taken by rod and reel, plus 10 salmon for each additional person in a household over 2 persons, except that the household's limit for chinook salmon taken by dip net or rod and reel does not increase;

(C) Upon request, permits for additional salmon will be issued for no more than a total of 200 salmon for a permit issued to a household with 1 person, of which no more than 5 may be chinook salmon taken by dip net and no more than 5 chinook taken by rod and reel, or no more than a total of 500 salmon for a permit issued to a household with 2 or more persons, of which no more than 5 may be chinook salmon taken by dip net and no more than 5 chinook taken by rod and reel.

(xi) The following apply to Upper Copper River District subsistence salmon fishing permits:

(A) Only one subsistence fishing permit per subdistrict will be issued to each household per year. If a household has been issued permits for both subdistricts in the same year, both permits must be in your possession and readily available for inspection while fishing or transporting subsistence-taken fish in either subdistrict. A qualified household may also be issued a Batzulnetas salmon fishery permit in the same year;

(B) Multiple types of gear may be specified on a permit, although only one unit of gear may be operated at any one time;

(C) You must return your permit no later than October 31 of the year in which the permit is issued, or you may be denied a permit for the following year;

(D) A fish wheel may be operated only by one permit holder at one time; that permit holder must have the fish wheel marked as required by Section—.27(i)(11) and during fishing operations;

(E) Only the permit holder and the authorized member of the household listed on the subsistence permit may take salmon;

(F) You must personally operate your fish wheel or dip net;

(G) You may not loan or transfer a subsistence fish wheel or dip net permit except as permitted.

(xii) If you are a fishwheel owner:

(A) You must register your fish wheel with ADF&G or the Federal Subsistence Board;

(B) Your registration number and a wood, metal, or plastic plate at least 12 inches high by 12 inches wide bearing either your name and address, or your Alaska driver's license number, or your Alaska State identification card number in letters and numerals at least 1 inch high, must be permanently affixed and plainly visible on the fish wheel when the fish wheel is in the water;

(C) Only the current year's registration number may be affixed to the fish wheel; you must remove any other registration number from the fish wheel;

(D) You are responsible for the fish wheel; you must remove the fish wheel from the water at the end of the permit period;

(E) You may not rent, lease, or otherwise use your fish wheel used for subsistence fishing for personal gain.

(xiii) If you are operating a fishwheel:

(A) You may operate only one fish wheel at any one time;

(B) You may not set or operate a fish wheel within 75 feet of another fish wheel;

(C) No fish wheel may have more than two baskets;

(D) If you are a permittee other than the owner, you must attach an additional wood, metal, or plastic plate at least 12 inches high by 12 inches wide, bearing your name and address in letters and numerals at least 1 inch high, to the fish wheel so that the name and address are plainly visible.

(xiv) A subsistence fishing permit may be issued to a village council, or other similarly qualified organization whose members operate fish wheels for subsistence purposes in the Upper Copper River District, to operate fish wheels on behalf of members of its village or organization. The following additional provisions apply to subsistence fishing permits issued under this paragraph (i)(11)(xiv):

(A) The permit will list all households and household members for whom the fish wheel is being operated. The permit will identify a person who will be responsible for each fish wheel in a similar manner to a fish wheel owner as described in paragraph (i)(11)(xii) of this section;

(B) The allowable harvest may not exceed the combined seasonal limits for the households listed on the permit; the permittee will notify the ADF&G or Federal Subsistence Board when households are added to the list, and the seasonal limit may be adjusted accordingly;

(C) Members of households listed on a permit issued to a village council or other similarly qualified organization are not eligible for a separate household subsistence fishing permit for the Upper Copper River District;

(D) The permit will include provisions for recording daily catches for each fish wheel; location and number of fish wheels; full legal name of the individual responsible for the lawful operation of each fish wheel as described in paragraph (i)(11)(xii) of this section; and other information determined to be necessary for effective resource management.

(xv) You may take salmon in the vicinity of the former Native village of Batzulnetas only under the authority of a Batzulnetas subsistence salmon fishing permit available from the National Park Service under the following conditions:

(A) You may take salmon only in those waters of the Copper River between National Park Service regulatory markers located near the mouth of Tanada Creek and approximately one-half mile downstream from that mouth and in Tanada Creek between National Park Service regulatory markers identifying the open waters of the creek;

(B) You may use only fish wheels, dip nets, and rod and reel on the Copper River and only dip nets, spears, and rod and reel in Tanada Creek;

(C) You may take salmon only from May 15 through September 30 or until the season is closed by special action;

(D) You may retain chinook salmon taken in a fishwheel in the Copper River. You may not take chinook salmon in Tanada Creek;

(E) You must return the permit to the National Park Service no later than October 15.

(xvi) You may take pink salmon for subsistence purposes from freshwater with a dip net from May 15 until September 30, 7 days per week, with no harvest or possession limits in the following areas:

(A) Green Island, Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche

Island, and adjacent islands, and the mainland waters from the outer point of Granite Bay located in Knight Island Passage to Cape Fairfield;

(B) Waters north of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.

(12) *Yakutat Area.* The Yakutat Area includes all waters and drainages of Alaska between the longitude of Cape Suckling and the longitude of Cape Fairweather.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Yakutat Area.

(ii) You may not take salmon during the period commencing 48 hours before a State opening of commercial salmon net fishing season until 48 hours after the closure. This applies to each river or bay fishery individually.

(iii) When the length of the weekly State commercial salmon net fishing period exceeds two days in any Yakutat Area salmon net fishery, the subsistence fishing period is from 6 a.m. to 6 p.m. on Saturday in that location.

(iv) You may take salmon, trout (other than steelhead), and char only under authority of a subsistence fishing permit. You may only take steelhead trout in the Situk and Ahrnklin Rivers and only under authority of a Federal subsistence fishing permit.

(v) If you take salmon, trout, or char incidentally by gear operated under the terms of a subsistence permit for salmon, you may retain them for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your permit calendar.

(vi) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit.

(vii) In the Situk River, each subsistence salmon fishing permit holder shall attend his or her gill net at all times when it is being used to take salmon.

(viii) You may block up to two-thirds of a stream with a gillnet or seine used for subsistence fishing.

(ix) You must remove the dorsal fin from subsistence-caught salmon when taken.

(x) You may not possess subsistence-taken and sport-taken salmon on the same day.

(xi) You must possess a subsistence fishing permit to take Dolly Varden. The daily harvest and possession limit is 10 Dolly Varden of any size.

(13) *Southeastern Alaska Area.* The Southeastern Alaska Area includes all waters between a line projecting southwest from the westernmost tip of Cape Fairweather and Dixon Entrance.

(i) Unless restricted in this section or under the terms of a subsistence fishing permit, you may take fish other than salmon, rainbow/steelhead trout, and char in the Southeastern Alaska Area at any time.

(ii) From July 7 through July 31, you may take sockeye salmon in the waters of the Klawock River and Klawock Lake only from 8 a.m. Monday until 5 p.m. Friday.

(iii) You must possess a subsistence fishing permit to take salmon, trout, or char. You must possess a subsistence fishing permit to take steelhead in Hamilton Bay and Kadake Bay Rivers. You must possess a subsistence fishing permit to take eulachon from any freshwater stream flowing into fishing sections 1–C or 1–D.

(iv) You may take steelhead trout on Prince of Wales and Kosciusko Islands under the terms of Federal subsistence fishing permits. You must obtain a separate permit for the winter and spring seasons.

(A) The winter season is December 1 through the last day of February, with a harvest limit of 2 fish per household. You may use only a dip net, spear, or rod and reel with artificial lure or fly. You may not use bait. The winter season may be closed when the harvest level cap of 100 steelhead for Prince of Wales/Kosciusko Islands has been reached. You must return your winter season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales/Kosciusko steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(B) The spring season is March 1 through May 31, with a harvest limit of 5 fish per household. You may use only a dip net, spear, or rod and reel with artificial lure or fly. You may not use bait. The spring season may be closed prior to May 31 if the harvest quota of 600 fish minus the number of steelhead harvested in the winter subsistence steelhead fishery is reached. You must return your spring season permit within 15 days of the close of the season and before receiving another permit for a Prince of Wales/Kosciusko steelhead subsistence fishery. The permit conditions and systems to receive special protection will be determined by the local Federal fisheries manager in consultation with ADF&G.

(v) In the Southeastern Alaska Area, except for sections 3A, 3B, and 3C and the Stikine and Taku Rivers, you may take coho salmon under the terms of a subsistence fishing permit. There is no closed season. The daily harvest limit is 20 coho salmon per household, and the annual limit is 40 coho salmon per household. Only dipnets, spears, gaffs, and rod and reel may be used. Bait may only be used from September 15 through November 15. You may not retain incidentally caught trout and sockeye salmon unless taken by gaff or spear.

(vi) You may take coho salmon in Subdistricts 3(A), (B), and (C) only under the terms of a Federal subsistence fishing permit. There is no closed season. The daily harvest limit is 20 fish per household. Only spears, dip net, and rod and reel may be used. Bait may be used only from September 15 through November 15.

(vii) If you take salmon, trout, or char incidentally with gear operated under terms of a subsistence permit for other salmon, they may be kept for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your permit calendar.

(viii) No permits for the use of nets will be issued for the salmon streams flowing across or adjacent to the road systems within the city limits of Petersburg, Wrangell, and Sitka.

(ix) You shall immediately remove the pelvic fins of all salmon when taken.

(x) You may not possess subsistence-taken and sport-taken salmon on the same day.

(xi) For the Salmon Bay Lake system, the daily harvest and season limit per household is 30 sockeye salmon.

(xii) For Virginia Lake (Mill Creek), the daily harvest limit per household is 20 sockeye salmon, and the season limit per household is 40 sockeye salmon.

(xiii) For Thoms Creek, the daily harvest limit per household is 20 sockeye salmon, and the season limit per household is 40 sockeye salmon.

(xiv) The Sarkar River system above the bridge is closed to the use of all nets by both Federally-qualified and non-Federally qualified users.

(xv) Only Federally-qualified subsistence users may harvest sockeye salmon in streams draining into Falls Lake Bay, Gut Bay, or Pillar Bay. In the Falls Lake Bay and Gut Bay drainages, the possession limit is 10 sockeye salmon per household. In the Pillar Bay drainage, the individual possession limit is 15 sockeye salmon with a household possession limit of 25 sockeye salmon.

(xvi) In Baranof Lake, Florence Lake, Hasselborg Lake and River, Mirror Lake, Virginia Lake, and Wilson Lake, in addition to the requirement for a Federal subsistence fishing permit, the

following restrictions for the harvest of Dolly Varden, cutthroat, and rainbow trout apply:

(A) The daily harvest and possession limit is 10 Dolly Varden of any size;

(B) The daily harvest and possession limit is six cutthroat or rainbow trout in combination. You may only retain fish between 11″ and 22″. You may only use a rod and reel without bait.

(xvii) In all waters, other than those identified in paragraph (i)(13)(xvi) of this section, in addition to the requirement for a subsistence fishing permit, you may harvest Dolly Varden and cutthroat and rainbow trout in accordance with the seasons and harvest limits delineated in the Alaska Administrative Code, 5 AAC 47. You may only use a rod and reel without bait unless the use of bait is specifically permitted in 5 AAC 47.

§ ___.28 Subsistence taking of shellfish.

(a) Regulations in this section apply to subsistence taking of Dungeness crab, king crab, Tanner crab, shrimp, clams, abalone, and other shellfish or their parts.

(b) [*Reserved*]

(c) You may take shellfish for subsistence uses at any time in any area of the public lands by any method unless restricted by this section.

(d) *Methods, means, and general restrictions.* (1) The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative. This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not, after that, take any additional shellfish of that species under any other harvest limit specified for a State season.

(2) Unless otherwise provided in this section or under terms of a required subsistence fishing permit (as may be modified by this section), you may use the following legal types of gear to take shellfish:

(i) Abalone iron;

(ii) Diving gear;

(iii) A grappling hook;

(iv) A handline;

(v) A hydraulic clam digger;

(vi) A mechanical clam digger;

(vii) A pot;

(viii) A ring net;

(ix) A scallop dredge;

(x) A sea urchin rake;

(xi) A shovel; and

(xii) A trawl.

(3) You are prohibited from buying or selling subsistence-taken shellfish, their parts, or their eggs, unless otherwise specified.

(4) You may not use explosives and chemicals, except that you may use chemical baits or lures to attract shellfish.

(5) Marking requirements for subsistence shellfish gear are as follows:

(i) You must plainly and legibly inscribe your first initial, last name, and address on a keg or buoy attached to unattended subsistence fishing gear, except when fishing through the ice, you may substitute for the keg or buoy a stake inscribed with your first initial, last name, and address inserted in the ice near the hole; subsistence fishing gear may not display a permanent ADF&G vessel license number;

(ii) Kegs or buoys attached to subsistence crab pots also must be inscribed with the name or United States Coast Guard number of the vessel used to operate the pots.

(6) Pots used for subsistence fishing must comply with the escape mechanism requirements found in § ___.27(c)(2).

(7) You may not mutilate or otherwise disfigure a crab in any manner which would prevent determination of the minimum size restrictions until the crab has been processed or prepared for consumption.

(e) *Taking shellfish by designated harvest permit.* (1) Any species of shellfish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) If you are a Federally-qualified subsistence user (beneficiary), you may designate another Federally-qualified subsistence user to take shellfish on your behalf. The designated fisherman must obtain a designated harvest permit prior to attempting to harvest shellfish and must return a completed harvest report. The designated fisherman may harvest for any number of beneficiaries but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated harvest permit when taking, attempting to take, or transporting shellfish taken under this section, on behalf of a beneficiary.

(4) You may not fish with more than one legal limit of gear as established by this section.

(5) You may not designate more than one person to take or attempt to take shellfish on your behalf at one time. You may not personally take or attempt to take shellfish at the same time that a designated fisherman is taking or attempting to take shellfish on your behalf.

(f) If a subsistence shellfishing permit is required by this section, the following conditions apply unless otherwise specified by the subsistence regulations in this section:

(1) You may not take shellfish for subsistence in excess of the limits set out in the permit unless a different limit is specified in this section;

(2) You must obtain a permit prior to subsistence fishing;

(3) You must have the permit in your possession and readily available for inspection while taking or transporting the species for which the permit is issued;

(4) The permit may designate the species and numbers of shellfish to be harvested, time and area of fishing, the type and amount of fishing gear and other conditions necessary for management or conservation purposes;

(5) If specified on the permit, you must keep accurate daily records of the catch involved, showing the number of shellfish taken by species, location and date of the catch, and such other information as may be required for management or conservation purposes;

(6) You must complete and submit subsistence fishing reports at the time specified for each particular area and fishery;

(7) If the return of catch information necessary for management and conservation purposes is required by a subsistence fishing permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you demonstrate that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances.

(g) *Subsistence take by commercial vessels.* No fishing vessel which is commercially licensed and registered for shrimp pot, shrimp trawl, king crab, Tanner crab, or Dungeness crab fishing may be used for subsistence take during the period starting 14 days before an opening until 14 days after the closure of a respective open season in the area or areas for which the vessel is registered. However, if you are a commercial fisherman, you may retain shellfish for your own use from your lawfully taken commercial catch.

(h) You may not take or possess shellfish smaller than the minimum legal size limits.

(i) *Unlawful possession of subsistence shellfish.* You may not possess, transport, give, receive, or barter shellfish or their parts taken in violation of Federal or State regulations.

(j)(1) An owner, operator, or employee of a lodge, charter vessel, or other

enterprise that furnishes food, lodging, or guide services may not furnish to a client or guest of that enterprise, shellfish that has been taken under this section, unless:

(i) The shellfish has been taken with gear deployed and retrieved by the client or guest who is a federally-qualified subsistence user;

(ii) The gear has been marked with the client's or guest's name and address; and

(iii) The shellfish is to be consumed by the client or guest or is consumed in the presence of the client or guest.

(2) The captain and crewmembers of a charter vessel may not deploy, set, or retrieve their own gear in a subsistence shellfish fishery when that vessel is being chartered.

(k) *Subsistence shellfish areas and pertinent restrictions.* (1) *Southeastern Alaska-Yakutat Area.* No marine waters are currently identified under Federal subsistence management jurisdiction.

(2) *Prince William Sound Area.* No marine waters are currently identified under Federal subsistence management jurisdiction.

(3) *Cook Inlet Area.* (i) You may take shellfish for subsistence purposes only as allowed in this section (k)(3).

(ii) You may not take king crab, Dungeness crab, or shrimp for subsistence purposes.

(iii) In the subsistence taking of Tanner crab:

(A) Male Tanner crab may be taken only from July 15 through March 15;

(B) The daily harvest and possession limit is 5 male Tanner crabs;

(C) Only male Tanner crabs 5½ inches or greater in width of shell may be taken or possessed;

(D) No more than 2 pots per person, regardless of type, with a maximum of 2 pots per vessel, regardless of type, may be used to take Tanner crab.

(iv) In the subsistence taking of clams:

(A) The daily harvest and possession limit for littleneck clams is 1,000 and the minimum size is 1.5 inches in length;

(B) The daily harvest and possession limit for butter clams is 700 and the minimum size is 2.5 inches in length.

(v) Other than as specified in this section, there are no harvest, possession, or size limits for other shellfish, and the season is open all year.

(4) *Kodiak Area.* (i) You may take crab for subsistence purposes only under the authority of a subsistence crab fishing permit issued by the ADF&G.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G before subsistence shrimp fishing during a State closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection. The permit must specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) The daily harvest and possession limit is 12 male Dungeness crabs per person; only male Dungeness crabs with a shell width of 6½ inches or greater may be taken or possessed. Taking of Dungeness crab is prohibited in water 25 fathoms or more in depth during the 14 days immediately before the State opening of a commercial king or Tanner crab fishing season in the location.

(iv) In the subsistence taking of king crab:

(A) The annual limit is six crabs per household; only male king crab with shell width of 7 inches or greater may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a 2-week period must have all bait and bait containers removed and all doors secured fully open;

(C) You may only use one crab pot, which may be of any size, to take king crab;

(D) You may take king crab only from June 1 through January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or greater in depth during the period 14 days before and 14 days after State open commercial fishing seasons for red king crab, blue king crab, or Tanner crab in the location;

(E) The waters of the Pacific Ocean enclosed by the boundaries of Womens Bay, Gibson Cove, and an area defined by a line ½ mile on either side of the mouth of the Karluk River, and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shoreline of Afognak Island are closed to the harvest of king crab except by Federally-qualified subsistence users.

(v) In the subsistence taking of Tanner crab:

(A) You may not use more than five crab pots to take Tanner crab;

(B) You may not take Tanner crab in waters 25 fathoms or greater in depth during the 14 days immediately before the opening of a State commercial king or Tanner crab fishing season in the location;

(C) The daily harvest and possession limit per person is 12 male crabs with a shell width 5½ inches or greater.

(5) *Alaska Peninsula-Aleutian Islands Area.* (i) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed State commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection; the permit must specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(ii) The daily harvest and possession limit is 12 male Dungeness crabs per person; only crabs with a shell width of 5½ inches or greater may be taken or possessed.

(iii) In the subsistence taking of king crab:

(A) The daily harvest and possession limit is six male crabs per person; only crabs with a shell width of 6½ inches or greater may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a 2-week period must have all bait and bait containers removed and all doors secured fully open;

(C) You may take crabs only from June 1 through January 31.

(iv) The daily harvest and possession limit is 12 male Tanner crabs per person; only crabs with a shell width of 5½ inches or greater may be taken or possessed.

(6) *Bering Sea Area.* (i) In that portion of the area north of the latitude of Cape Newenham, shellfish may only be taken by shovel, jigging gear, pots, and ring net.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection; the permit must specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) In waters south of 60° North latitude, the daily harvest and possession limit is 12 male Dungeness crabs per person.

(iv) In the subsistence taking of king crab:

(A) In waters south of 60° North latitude, the daily harvest and possession limit is six male crabs per person;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a 2-week period must have all bait and bait containers removed and all doors secured fully open;

(C) In waters south of 60° North latitude, you may take crab only from June 1 through January 31;

(D) In the Norton Sound Section of the Northern District, you must have a subsistence permit.

(v) In waters south of 60° North latitude, the daily harvest and possession limit is 12 male Tanner crabs.

Dated: December 11, 2003.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: December 11, 2003.

Steve Kessler,

Subsistence Program Leader, USDA-Forest Service.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN 144–4; FRL–7611–5]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Indiana submitted a particulate matter State Implementation Plan (SIP) revision request to EPA on December 19, 2001. EPA is approving revisions to particulate matter (PM) control requirements for certain Indiana natural gas combustion sources subject to 326 Indiana Administrative Code (IAC) 6–1, Indiana's PM regulations. EPA is also approving various cleanup revisions to this rule.

The revision primarily concerns PM limits for combustion sources that burn natural gas and are located in certain Indiana counties. Other revisions to the rule include minor rewording, the updating of source and facility names, and the elimination of references to sources that have shut down.

DATES: This rule is effective on March 4, 2004.

ADDRESSES: Copies of Indiana's submittal and other documents relevant to this action are available for public inspection at: Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886–6524, e-mail: *rau.matthew@epa.gov*.

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I. Background

Indiana submitted a SIP revision request to EPA on December 19, 2001. This request sought approval of provisions for certain natural gas combustion sources and cleanup provisions in 326 IAC 6–1. EPA published a proposed and a direct final rule to approve the requested revisions in the **Federal Register** on October 11, 2002 (67 FR 63268–70, 63353). EPA received an adverse comment on the rule from Ispat Inland, Inc. concerning the inclusion of 326 IAC 6–1–10.1(l) through (v), Continuous Compliance Plan requirements for Lake County, Indiana. As a result of this adverse comment, EPA published a withdrawal of the direct final rule in the November 27, 2002 **Federal Register** (67 FR 70850).

On January 19, 2002, Indiana revised 326 IAC 6–1, to delete subsection 1(b), which concerned the relationship between the limitations in that rule and emission limitations established in certain State operating permits under 40 CFR Part 70. This deletion was based on changes made to the Part 70 Program, as described in a March 20, 2002, State submission. For this SIP revision request, EPA has evaluated only the subsections (a),(b), and (c) (formerly (a),(c), and (d)). In addition, by letter of March 17, 2003, to EPA, Indiana requested that EPA take no further action on the continuous compliance plan provisions in 326 IAC 6–1–10.1(l) through (v) and the Lake County contingency particulate matter contingency measures in 326 IAC 6–1–11.2.

EPA proposed approval of Indiana's requested SIP revisions in the September 16, 2003, **Federal Register** (68 FR 34282–86). No comments were received during the comment period which ended October 16, 2003.

II. What Is the EPA Approving?

EPA is approving changes to 326 IAC 6–1 as revisions to the Indiana SIP. These revisions include exempting certain natural gas combustion sources from PM emissions limits and replacing the limits with a requirement that such sources may only burn natural gas. The other changes consist of certain cleanup provisions, such as removing limits for sources that have shut down and updating the names of other sources.

A. Provisions for Natural Gas Combustion Sources

Revised 326 IAC 6–1–1(b) states that PM limitations shall not be established for combustion units that burn only natural gas at sources or facilities identified in sections 8.1, 9, and sections 12 through 18 of the rule, as long as the units continue to burn only natural gas. The provisions of 326 IAC 6–1–1(b) apply to sources in Clark, Dearborn, Dubois, Howard, Marion, St. Joseph, Vanderburgh, Vigo, and Wayne counties. This revision replaces PM limitations on gas-fired combustion units at the identified sources in these counties with the requirement that the units burn only natural gas.

Revised 6–1–1(c) states that if the emission limits in sections 2 and sections 8.1 through 18 conflict with or are inconsistent with new source performance standards established in 326 IAC 12, then the more stringent limitations apply.

B. Cleanup Revisions

These revisions affect several sections of 326 IAC 6–1. They are sections 1(a), 1.5, 2 through 6, 8.1, 9, 10.1(a) through (k), 11.1, and 12 through 18. They generally consist of adding definitions, making minor wording changes, updating source and facility names, and eliminating references to sources or facilities that have shut down.

III. Public Hearing

Indiana held a public hearing on October 4, 2000 in Indianapolis. No comments were made during the hearing. Notice of this public hearing was published in five newspapers between August 28 and September 5, 2000. Indiana offered three comment periods on this rule. The first was from October 1, 1998, to December 1, 1998, the second was from November 1 through 30, 1999, and the final comment period ran from August 1 through 31, 2000.

IV. What Is the EPA's Analysis of the Requested Revisions?

The revision replaces PM limitations on select gas-fired combustion units with the requirement that they only burn natural gas. PM emissions from sources burning natural gas are typically very low. The AP–42 emission factor from natural gas combustion for filterable PM is 1.9 pounds per million standard cubic feet of natural gas. This is equivalent to 0.00186 pounds per million British Thermal Units. EPA assumes that all PM resulting from

natural gas combustion is less than one micrometer (μm) in diameter. Therefore, the AP–42 emission factor for PM is also a valid estimate of PM less than 10 μm diameter (PM–10) emissions. Thus, the addition of 326 IAC 6–1–1(b) is not expected to harm air quality because natural gas burns with low PM emissions which will not exceed the current limits.

Additional revisions to other portions of 326 IAC 6–1 help clean up the rule. The new definitions and rewording of the rule help increase its clarity. The revisions which update source name changes and delete sources which have shut down will help keep the SIP current.

V. What Are the Environmental Effects of These Actions?

Particulate matter can interfere with lung function when inhaled. Exposure to PM can cause heart and lung disease. PM also aggravates asthma and bronchitis. Airborne particulate is the main source of haze that causes a reduction in visibility. It also is deposited on the ground and in the water. This harms the environment by changing the nutrient and chemical balance.

The addition of 326 IAC 6–1–1(b) will not cause sources to emit PM in excess of the current emission limits because natural gas burns with low PM emissions. Since this SIP revision does not allow for increased emissions, it should not have an adverse effect on air quality. Also, the elimination of limits on sources that have shut down will result in lower overall allowed PM emission limits.

VI. Summary of EPA Action

The specific Indiana regulations being approved by this action are as follows: 326 IAC, Article 6: Particulate Rules, Rule 1: Non-attainment Area Limitations, Section 1: Applicability, Subsections (a), (b) and (c); Section 1.5: Definitions; Section 2: Particulate emission limitations; fuel combustion steam generators, asphalt concrete plant, grain elevators, foundries, mineral aggregate operations; modification by commissioner; Section 3: Non-attainment area particulate limitations; compliance determination; Section 4: Compliance schedules; Section 5: Control strategies; Section 6: State Implementation Plan revisions; Section 8.1: Dearborn County particulate matter emissions limitations; Section 9: Dubois County; Section 10.1: Lake County PM_{10} emission requirements, Subsections (a) through (k); Section 11.1: Lake County fugitive particulate matter control requirements; Section 12: Marion County; Section 13: Vigo County; Section 14: Wayne County; Section 15: Howard County; Section 16: Vanderburgh County; Section 17: Clark County; and Section 18: St. Joseph County.

VII. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

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

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

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).

Regulatory Flexibility Act

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

Unfunded Mandates Reform Act

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

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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).

Executive Order 13132: Federalism

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

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

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.

National Technology Transfer Advancement Act

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.

Paperwork Reduction Act

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

Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 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. section 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 April 5, 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.

Dated: November 26, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(152) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(152) On December 19, 2001, Indiana submitted revised Particulate Matter (PM) control requirements. A March 17, 2003 letter from Indiana clarified what portions of the original submission the State was seeking revisions for. EPA is approving revisions for certain natural gas combustion sources in Indiana and various cleanup revisions to Indiana's PM rules. One revision eliminates PM emissions limits on specified natural gas combustion sources and replaces the limits with a requirement that such sources may only burn natural gas. The submission also contains many cleanup provisions such as eliminating limits for sources which have shut down and updating names of sources.

(i) Incorporation by reference.

(A) Indiana Administrative Code (IAC) Title 326: Air Pollution Control Board, Article 6: Particulate Rules, Rule 1: Nonattainment Area Limitations, IAC 6–1–1.5: Definitions; IAC 6–1–2: Particulate emission limitations; fuel combustion steam generators, asphalt concrete plant, grain elevators, foundries, mineral aggregate operations; modification by commissioner; IAC 6–1–3: Non-attainment area particulate limitations; compliance determination; IAC 6–1–4: Compliance schedules; IAC 6–1–5: Control strategies; IAC 6–1–6: State Implementation Plan revisions; IAC 6–1–8.1: Dearborn County particulate matter emissions limitations; IAC 6–1–9: Dubois County; IAC 6–1–10.1: Lake County PM_{10} emission requirements, Subsections (a) through (k); IAC 6–1–11.1: Lake County fugitive particulate matter control requirements; IAC 6–1–12: Marion County; IAC 6–1–13: Vigo County; IAC 6–1–14: Wayne County; IAC 6–1–15: Howard County; IAC 6–1–16: Vanderburgh County; IAC 6–1–17: Clark County; and, IAC 6–1–18: St. Joseph County. Adopted by the Indiana Air Pollution Control Board August 1, 2001. Filed with the Secretary of State November 8, 2001. Published in the *Indiana Register*, Volume 25, Number 3, December 1, 2001 at 709. State effective December 8, 2001.

(B) Indiana Administrative Code (IAC) Title 326: Air Pollution Control Board, Article 6: Particulate Rules, Rule 1: Non-attainment Area Limitations, 6–1–1: Applicability. Adopted by the Indiana Air Pollution Control Board August 1, 2001. Filed with the Secretary of State November 8, 2001. Published in the *Indiana Register*, Volume 25, Number 3, December 1, 2001 at 709. State effective, December 8, 2001. Amended by Errata filed with the Secretary of State January 10, 2002. Published in the *Indiana Register*, Volume 25, Number 5, February 1, 2002 at 1644. State effective, February 24, 2002. And amended by Errata filed with the Secretary of State October 2, 2002. Published in the *Indiana Register*, Volume 26, Number 2, November 1, 2002 at 383. State effective, November 16, 2002.

[FR Doc. 04–1820 Filed 2–2–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0138, FRL–7551–6]

RIN 2060–AE79

National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing organic liquids distribution (OLD) (non-gasoline) operations, which are carried out at storage terminals, refineries, crude oil pipeline stations, and various manufacturing facilities. These NESHAP implement section 112(d) of the Clean Air Act (CAA) by requiring all OLD operations at plant sites that are major sources to meet hazardous air pollutant (HAP) emissions standards reflecting the application of the maximum achievable control technology (MACT).

The EPA estimates that approximately 5,300 megagrams per year (Mg/yr) (5,900 tons per year (tpy)) of HAP are emitted from facilities in this source category. Although a large number of organic HAP are emitted nationwide from these operations, benzene, ethylbenzene, toluene, vinyl chloride, and xylenes are among the most prevalent. These HAP have been shown to have a variety of carcinogenic and noncancer adverse health effects.

The EPA estimates that the final standards will result in the reduction of HAP emissions from major sources with OLD operations by 60 percent. The emissions reductions achieved by the final standards, when combined with the emissions reductions achieved by other similar standards, will provide improved protection to the public and achieve a primary goal of the CAA.

DATES: This rule is effective February 3, 2004. The incorporation by reference of certain publications listed in today's final rule is approved by the Director of the Federal Register as of February 3, 2004.

ADDRESSES: *Docket.* Docket Nos. A–98–13 and OAR–2003–0138 are located at the U.S. EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For further information concerning applicability and rule determinations,

contact the appropriate State or local agency representative. If no State or local representative is available, contact the EPA Regional Office staff listed in 40 CFR 63.13. For information concerning the analyses performed in developing the NESHAP, contact Martha Smith, U.S. EPA, Emission Standards Division, Waste and Chemical Processes Group, C439–03, Research Triangle Park, North Carolina 27711, (919) 541–2421, *smith.martha@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAICS* code	SIC* code	Examples of regulated entities
Industry	325211, 325192, 325188, 32411, 49311, 49319, 48611, 42269, 42271.	2821, 2865, 2869, 2911, 4226, 4612, 5169, 5171.	Operations at major sources that transfer organic liquids into or out of the plant site, including: liquid storage terminals, crude oil pipeline stations, petroleum refineries, chemical manufacturing facilities, and other manufacturing facilities with collocated OLD operations.
Federal Government			Federal agency facilities that operate any of the types of entities listed under the ''industry'' category in this table.

*Considered to be the primary industrial codes for the plant sites with OLD operations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.2334 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. We have established an official public docket for this action under Docket ID Nos. A–98–13 and OAR–2003–0138. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. All items may not be listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they have received all materials relevant to the final rule. Although a part of the official docket, the public docket does not include Confidential Business Information (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 Office of Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. The telephone number for the Air Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, to 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. Once in the system, select ''search,'' then key in the appropriate docket identification number. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility in the above paragraph entitled *Docket.*

WorldWide Web (WWW). In addition to being available in the docket, an electronic copy of today's final NESHAP will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the NESHAP will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the final NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by April 5, 2004. Under section 307(d)(7)(B) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final rule may not be challenged separately in any civil or criminal proceeding brought to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

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C. What Is the Affected Source?
D. What Are the HAP Emissions Limits, Operating Limits, and Other Standards?
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I. Introduction

A. What Is the Purpose of NESHAP?

The purpose of the final NESHAP is to protect the public health and the environment by reducing emissions of HAP from operations that distribute organic liquids.

B. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. Organic liquids distribution (non-gasoline) (major sources only) was included on the initial list of source categories published on July 16, 1992 (57 FR 31576). Major sources of HAP are those that have the potential to emit 10 tpy or more of any one HAP or 25 tpy or more of any combination of HAP.

Section 112 (d)(2) of the CAA requires NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP. This concept appears in section 112(d)(3) of the CAA. For new sources, the MACT floor cannot be less stringent than the HAP emissions control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average HAP emissions limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or by the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the HAP emissions reductions, any nonair quality health and environmental impacts, and energy requirements, under CAA section 112(d)(2).

The NESHAP for organic liquids distribution were proposed on April 2, 2002 (67 FR 15674). This action announces EPA's final decisions on the NESHAP.

C. What Processes and Operations Are Included in the OLD (Non-gasoline) Source Category?

The OLD (non-gasoline) source category involves the distribution of organic liquids into, out of, or within a plant site. The distribution activities include the storage of organic liquids in storage tanks not subject to other 40 CFR part 63 standards and transfers into or out of the tanks from or to cargo tanks, containers, and pipelines. Organic liquids are those non-crude oil liquids that contain at least 5 percent by weight of any combination of the 98 HAP listed in Table 1 to subpart EEEE of part 63, and have a total liquid vapor pressure of 0.7 kilopascals (0.1 pound per square inch absolute (psia)) or greater, and all crude oils downstream of the first point of custody transfer. For the purposes of the OLD NESHAP, organic liquids do not include gasoline, fuels that are consumed or dispensed on the plant site, kerosene (No. 1 distillate oil), diesel (No. 2 distillate oil), asphalt, and heavier distillate oils and fuel oils, hazardous waste, wastewater, or ballast water. Emission sources controlled by the OLD NESHAP are storage tanks, transfer operations, transport vehicles while being loaded, and equipment leak components (valves, pumps, and sampling connections) that have the potential to leak.

The types of organic liquids and emission sources covered by the OLD NESHAP are frequently found at many types of facilities that are already subject to other NESHAP. If an emission source is in organic liquid distribution service and is already subject to an existing 40 CFR part 63 NESHAP, then that emission source is not subject to the OLD NESHAP.

II. Summary of the Final OLD NESHAP

A. What Source Categories and Subcategories Are Affected by the Final OLD NESHAP?

Today's final rule applies to the OLD source category. We did not develop any subcategories. However, OLD operations that do not meet the specified applicability criteria for relevant emission limitations and work practice standards contained in the final rule are not required to apply emission reduction measures:

B. What Are the Primary Sources of HAP Emissions and What Are the Emissions?

The primary sources of HAP emissions from the OLD source category are the loss of HAP during the filling of storage tanks with organic liquids, storage of organic liquid in storage tanks, vapor displacement during the loading of organic liquids into transport vehicles and containers, and vapor leakage from transport vehicles at transfer racks during loadings of these vehicles. The HAP emissions are also the result of leaks from equipment such as valves, pumps, and sampling connection systems. Total baseline HAP emissions from the OLD source category are approximately 5,900 tpy.

C. What Is the Affected Source?

We have defined the affected source broadly to be the collection of activities and equipment used to distribute organic liquids into, out of, or within a major source plant site. This affected source is termed the ''organic liquids distribution (OLD) operation.'' Four types of emission sources are included in the affected source: storage tanks storing organic liquids; transfer racks at which organic liquids are loaded into or unloaded out of transport vehicles and/or containers; the transport vehicles themselves while they are loading or unloading organic liquids at transfer racks; and equipment leak components in organic liquids service that are associated with pipelines and with storage tanks and transfer racks storing, loading, or unloading organic liquids.

Applicability of the final standards is not restricted to any specific industries, but to each OLD operation that meets the applicability criteria of the final rule. The final standards do not apply to any emission source that is subject to another 40 CFR part 63 rule.

The liquids regulated by the final rule consist of non-crude oil organic liquids that contain at least 5 percent by weight of any combination of the organic HAP compounds listed in Table 1 to subpart EEEE of part 63 and have a total liquid vapor pressure of 0.1 psia or greater, plus all crude oils downstream of the first point of custody transfer. Gasoline is specifically excluded from coverage by the final rule as are fuels consumed or dispensed on the plant site as well as kerosene (No. 1 distillate oil), diesel (No. 2 distillate oil), asphalt, and heavier distillate oils and fuel oils.

Regulatory overlaps are specifically addressed in the final rule. Many of the

facilities potentially affected by the final OLD NESHAP contain activities and equipment (*i.e.*, certain storage tanks, transfer racks, and equipment components) that are already subject to other Federal air standards (such as 40 CFR part 60, subpart Kb, for storage tanks, or subpart GGG or FFFF of 40 CFR part 63). The final rule clarifies that emission sources subject to other 40 CFR part 63 NESHAP are not subject to the OLD NESHAP. The final rule also clarifies that sources subject to other non-MACT rules must comply with the requirements of the OLD NESHAP as well as the other rules.

D. What Are the HAP Emission Limits, Operating Limits, and Other Standards?

We are promulgating the requirements of the final NESHAP in the form of HAP emission limits (*i.e.*, percent reduction or exhaust concentration), operating limits, and work practice standards. The work practice standards are a combination of design, equipment, and operational standards.

The final NESHAP contain emission standards for storage tanks, transfer racks, transport vehicles, and equipment components at existing and new OLD operations.

The standards for storage tanks apply to tanks storing organic liquids and meeting the tank capacity and liquid HAP vapor pressure applicability criteria given in Table 2 to subpart EEEE of part 63. You have three options for control. First, you may install a closed vent system and control device with at least 95 percent control efficiency for the organic HAP listed in Table 1 to subpart EEEE of part 63. You may also choose to demonstrate that the measurement of total organic compounds (TOC) is an appropriate surrogate for organic HAP. As an alternative option to the 95 percent standard, combustion devices may meet an exhaust concentration limit of 20 parts per million by volume (ppmv) of organic HAP or TOC. Second, you may capture and route emissions to a fuel gas system or back into a process. Third, you may meet a work practice standard by using a compliant internal or external floating roof in the affected storage tank. The tank size and liquid vapor pressure applicability criteria defining tanks subject to emission reduction requirements are different for tanks at existing or new affected sources.

The owner or operator will have to install a continuous monitoring system (CMS) and establish operating limits for each control device used to control storage tanks. The CMS may be of a type to measure either organic concentration in the gas stream or an operating parameter (such as fire box temperature) of the control device. A site-specific monitoring plan must be developed and submitted by the owner or operator for each emission source.

The emission limit for transfer racks is a closed vent system and control device achieving a control efficiency of at least 98 percent for the organic HAP listed in Table 1 to subpart EEEE of part 63. You may also utilize a vapor balancing system to achieve the required control efficiency. You may also choose to demonstrate that the measurement of TOC is an appropriate surrogate for organic HAP. As an alternative option to the 98 percent standard, combustion devices may meet an exhaust concentration limit of 20 ppmv of organic HAP or TOC. Only transfer racks meeting the specified applicability criteria in the final rule are required to implement emission reduction measures. The same emission limit applies to affected transfer racks at both existing and new affected sources.

The same requirements for installing a CMS and establishing operating limits for the control device applicable to storage tanks also apply to the control systems installed on transfer racks.

A work practice standard applies to pumps, valves, and sampling connection systems. These equipment leak components in organic liquids service must be included in a leak detection and repair (LDAR) program which requires the use of a detection instrument. The term ''in organic liquid service'' is defined in the final rule to mean an equipment leak component that contains or contacts organic liquids having 5 percent by weight or greater of the organic HAP listed in Table 1 to subpart EEEE of part 63. Owners and operators have the option of applying the provisions from 40 CFR part 63, subpart TT, subpart UU, or subpart H for their LDAR program. The LDAR standard applies to equipment leak components at both existing and new affected sources.

A work practice standard applies to transport vehicles (cargo tanks and tank cars) loading at affected transfer racks. Each of these vehicles must have current vapor tightness certification indicating that it has been properly tested for vapor tightness. If the vehicle is equipped with vapor collection equipment, the vehicle must be tested using EPA Method 27 on an annual basis. For vehicles not so equipped, the Department of Transportation (DOT) leak tightness standards apply, and current certification indicating that these standards have been met must be retained by the owner or operator for each vehicle that loads at affected transfer racks whether the source owns the vehicle or not. The owner or operator is not required to test transport vehicles he or she does not own, but must take adequate steps to ensure that uncertified vehicles are not loaded at affected racks. These work practice standards are the same for both existing and new affected sources.

E. When Must I Comply With the OLD NESHAP?

We are requiring that all existing affected sources comply by February 5, 2007, except for floating roof storage tanks that do not initially meet the equipment standard for storage tanks in the final rule. These tanks must be in compliance following their next degassing and cleaning, or by February 3, 2014, whichever is sooner. If the first degassing and cleaning activity occurs during the 3 years following February 3, 2004, the compliance date is February 5, 2007. Existing area sources that increase their HAP emissions or their potential to emit such that they become major sources of HAP, and thus affected sources, must be in compliance within 3 years after the date they become major sources.

Any affected source that commenced construction after April 2, 2002, at a site where there were no existing OLD operations, is a new affected source. Any affected source that commenced reconstruction after April 2, 2002, at a site that was an existing OLD source, is a reconstructed source. Emissions sources at new and reconstructed affected sources that are now in operation must be in compliance on February 3, 2004, with certain exceptions. These exceptions are due to the fact that the final rule applies to some affected sources and emission sources that would not have been covered by the proposed rule, and that in some cases the final emission standards are more stringent than were proposed. In cases where an emission source at a now-operating new or reconstructed affected source would not have been required to be controlled under the proposed rule but is required to be controlled under the final rule, the emission source must be in compliance by February 5, 2007. Where an emission source at such a new or reconstructed affected source would have been subject to a less stringent control requirement under the proposed rule than applies under the final rule, the emission source must be in compliance with the final rule's requirement by February 5, 2007, and in the interim must comply with the less stringent control requirement as proposed.

New or reconstructed sources that commence construction or reconstruction after February 3, 2004 must comply upon startup.

F. What Are the Testing and Initial Compliance Requirements?

To determine the applicability of the final standards to individual operations, each OLD operation must evaluate whether any of their distributed liquids contain less than 5 percent HAP by weight and, thus, do not meet the definition of an organic liquid under the final rule. The specified test method for this is EPA Method 311 of 40 CFR part 63, appendix A, or other methods approved by the Administrator. An owner or operator may use other means (such as voluntary consensus standard methods, material safety data sheets (MSDS), or certified product data sheets) for determining the HAP content. However, if the results of an analysis by EPA Method 311 (or other approved test method) are different from the HAP content determined by another means, the EPA Method 311 (or other approved test method) results will govern compliance determinations.

Control devices used to comply with the final standards are subject to a performance test to demonstrate initial compliance with the emission limits, except that a design evaluation, conducted according to 40 CFR part 63 subpart SS, may be used for nonflare control devices.

The test methods applicable to control devices include EPA Methods 18, 25, and 25A of 40 CFR part 60, appendix A, and EPA Method 316 of 40 CFR part 63, appendix A, depending on the constituents of the gas stream being controlled and the format of the standard (organic HAP or TOC) the facility selects for its compliance demonstration. Floating roof tanks are subject to visual and seal gap inspections to determine initial compliance with the tank work practice standards. For the LDAR program for equipment components, EPA Method 21 of 40 CFR part 60, appendix A, is applicable.

Initial compliance with the emission limits for storage tanks and transfer racks consists of demonstrating that the control device achieves the required 95 or 98 percent control efficiency for organic HAP (or TOC, if used as a documented surrogate) or 20 ppmv exhaust concentration for combustion devices. The required percentage control efficiency must be applied to the Table 1 to subpart EEEE of part 63 HAP concentration found at the inlet to the control device.

Work practice standards apply to storage tanks, transfer racks, transport vehicles, and equipment components. You must perform a visual inspection before filling internal floating roof tanks. You must also conduct a measurement of seal gaps for external floating roof tanks within 90 days after filling. For transfer racks, you must ensure that vapor balancing systems or equipment for routing emissions to a fuel gas system or back to a process are properly designed and operated. For transport vehicles, you must perform vapor tightness testing for vehicles that you own and maintain documentation for all affected vehicles certifying that they are vapor-tight. Finally, for the equipment LDAR program, you must identify which 40 CFR part 63 subpart you are complying with and keep a record identifying the selected subpart.

G. What Are the Continuous Compliance Requirements?

If you use a control device, we are requiring that you monitor and record the operating parameters established during the initial performance test and calculate operating parameter values averaged on a daily basis. Continuous compliance is demonstrated if you collect CMS data as specified and maintain the operating limits established during the design evaluation or performance test.

If you are subject to work practice standards, we are requiring that you demonstrate continuous compliance by performing the required work practices and by keeping the records required to show that you are in compliance. For storage tanks, you must continue to perform the applicable inspections and seal gap measurement to ensure that the floating roofs continue to provide the proper control. For transport vehicles, you must continue performing the required vapor tightness testing on vehicles that you own and take steps to ensure that all transport vehicles loading at the OLD operation have the required certification. For equipment components, you must perform the required monitoring, keep the required records, and file the required reports consistent with the LDAR program you selected for the equipment components in the affected source.

H. What Are the Notification, Reporting, and Recordkeeping Requirements?

The notifications, records, and reports required by the final rule are generally consistent with the requirements of the General Provisions of subpart A of 40 CFR part 63. Two basic types of reports are required: notifications (such as the Initial Notification and the Notification of Compliance Status) and semiannual compliance, or periodic, reports. The Initial Notification apprises the permitting authority of applicability for existing sources or of construction for new sources.

The Notification of Compliance Status must be submitted within 60 days after the compliance demonstration activity has been completed. This report contains the results of the initial performance test, as well as all calculations and analyses used to show that the affected source has achieved and will continue to achieve compliance.

You are required to describe in your semiannual compliance reports any deviations of monitored parameters from reference values; failures to comply with the startup, shutdown, and malfunction (SSM) plan for control devices; and results of LDAR monitoring and storage tank inspections. These reports are also used to notify the permitting authority of any changes in CMS, processes, or controls since the last reporting period.

You are required to keep a copy of each notification and report, along with supporting documentation, for 5 years. Of these 5 years, the 2 most recent years must be kept on-site. The final rule allows electronic recordkeeping; however, you must be able to access all required records in a timely manner. You must keep records related to SSM, records of performance tests, and records for each continuous monitoring system. If you must comply with work practice standards, you also need to keep records for 5 years (the 2 most recent years must be kept on-site) certifying that you are in compliance with the work practices.

III. Summary of Environmental, Energy, and Economic Impacts

A. What Facilities Are Affected by the Final OLD NESHAP?

Facilities affected by the final OLD NESHAP are those facilities that carry out organic liquid distribution activities. Most of these facilities can be grouped under three general categories: stand-alone (usually for-hire) storage terminals; OLD operations collocated with a petroleum refinery, a chemical manufacturing plant site, or other manufacturing plant site; and crude oil pipeline pumping or breakout stations (containing crude oil tankage).

We estimate that in 1997, the baseline year for the final standards, there were approximately 279 collocated OLD operations, 86 stand-alone storage terminals, and 16 crude oil pipeline stations, for a total of approximately 381

existing major source plant sites with OLD operations.

B. What Are the Air Quality Impacts?

The 1997 baseline HAP emissions from OLD operations are approximately 5,900 tpy. The final OLD NESHAP will reduce HAP from existing major sources by 3,500 tpy, a reduction of 60 percent. Such emission reductions are likely to reduce the risk of adverse effects of HAP.

Although the final OLD NESHAP do not specifically require the control of volatile organic compounds (VOC), the organic HAP emission control technologies upon which the standards are based will also significantly reduce VOC emissions from the source category. We estimate that the final OLD NESHAP will reduce nationwide VOC emissions emitted by the source category by approximately 9,900 tpy, or 70 percent, from baseline. This will have the effect of reducing adverse ozone-related health and welfare impacts.

The final OLD NESHAP will result in small increases in other air pollution emissions from combustion devices that will be installed in the next 5 years to comply with today's final rule. These increases result both from the combustion device directly and from the electrical generating plants used to generate the electricity necessary to operate the add-on controls and associated air handling equipment.

C. What Are the Water Quality Impacts?

We estimate that the final OLD NESHAP will not significantly impact water quality. The final standards do not contain requirements related to water discharges, wastewater collection, or spill containment, and no additional organic liquids are expected to enter these areas as a result of the OLD NESHAP. A few facilities may select a scrubber (depending on the specific emissions they are controlling) to control emissions from transfer racks or fixed-roof storage tanks. The impact on water quality from the use of scrubbers is not expected to be significant.

D. What Are the Solid and Hazardous Waste Impacts?

We project that there will be no significant solid or hazardous waste impact. Flares, thermal oxidizers, scrubbers, and condensers do not generate solid waste as a by-product of their operation. When adsorption systems are used, the spent activated carbon or other adsorbent that cannot be further regenerated may be disposed of in a landfill, which would contribute a small amount of solid waste.

E. What Are the Energy Impacts?

The control devices used for transfer rack and storage tank control use electric motor-driven blowers, dampers, or pumps, depending on the type of system, in addition to electronic control and monitoring systems. The installation of these devices would have a small negative energy impact. To the extent that some of the controlled organic liquids are non-gasoline fuels, the applied control measures would keep these liquids in the distribution system and thus have a positive impact on this form of energy.

F. What Are the Cost Impacts?

We have estimated the industrywide capital costs for HAP emissions control equipment to be $49.3 million for the 381 existing sources. The capital costs include the costs to purchase and install the control equipment.

We have estimated the industrywide annual costs of the final rule are $25.1 million per year for the 381 existing sources. Annual costs include fixed annual costs, such as reporting, recordkeeping and capital amortization, and variable annual costs such as natural gas. The estimated average cost of the final rule is $7,100 per ton of HAP emissions reductions for existing sources.

G. What Are the Economic Impacts?

The increases in price for petroleum and chemical products affected by the final OLD rule are less than 0.003 percent, and the price increase for distribution service covered by the final rule is 0.1 percent. Reductions in output for petroleum and chemical products are also less than 0.003 percent, and the output reduction of distribution services is less than 0.002 percent.

None of the facilities affected are expected to close as a result of incurring costs associated with the final rule. Therefore, it is likely that there is no adverse impact expected to occur for the industries affected by the final rule, such as chemical manufacturing, petroleum refineries, pipeline operators, and petroleum bulk terminal operators.

IV. Summary of Rule Differences From Proposal

A. Rule Applicability

We made several clarifications to our intent as to the composition of the OLD source category and the affected source and the overall applicability of various requirements of the final rule. We have removed the facilitywide 7.29 million gallon throughput cutoff. We found, after reanalyzing our database, that we could not support such a cutoff, since our data reanalysis indicated that MACT floor levels of control applied to facilities below the proposed facility throughput cutoff. For the final rule, we have adopted a set of applicability criteria to be applied to each type of emission source to determine whether emission reductions are required for each specific emission source. These applicability criteria were developed from our MACT floor analysis of our database.

We have written the definition of the term ''organic liquid'' to include any non-crude oil liquid that contains at least 5 percent by weight of any combination of the HAP listed in Table 1 to subpart EEEE of part 63 and also has a total liquid vapor pressure of at least 0.1 psia, plus all crude oil downstream of the first point of custody transfer. This reflects our reanalysis of our database, which revealed that MACT floor levels of control apply to liquids with these HAP concentrations and vapor pressures. The definition also reflects our decision to eliminate the ''black oil'' exemption as proposed because we identified MACT floor controls for storage of crude oil.

In response to several comments, we clarified that the OLD final rule will not regulate any emission sources that are part of another 40 CFR part 63 MACT rule's affected source, whether those sources are actually controlled or not. We also included a new section in the final rule on how owners and operators should treat regulatory overlaps (*i.e.*, two Federal rules with applicability to the same emission source).

The final rule also corrects several of the proposed citations to 40 CFR part 63, subparts PP, SS, TT, UU, and WW and adds new ones to make the use of the referenced provisions easier for regulated sources to understand.

B. Compliance Demonstrations

The proposed rule was unclear as to how a source could use a design evaluation as an alternative to a performance test when demonstrating initial compliance for a control device. The final rule clarifies that the design evaluation (per 40 CFR part 63 subpart SS) may only be applied to nonflare control devices. Flares are subject to specific design criteria contained in the General Provisions (40 CFR 63.11(b)).

We have changed the principal test method to be used for analyzing the organic HAP content of liquids from EPA Method 18 of 40 CFR part 60, appendix A, to EPA Method 311 of 40 CFR part 63, appendix A. The EPA Method 18 is not an appropriate method for liquid analysis of the type that will be performed under the OLD NESHAP.

Method 18 is appropriate for determining the HAP content in air streams, not the HAP content in liquids. We are now specifying EPA Method 311 of appendix A of 40 CFR part 63, which is titled ''Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection into a Gas Chromatograph.'' Sources may also use alternative analytical methods with EPA's approval, or rely on supplier information, MSDS, and similar analyses that do not require the source to perform any testing. If an MSDS, or similar documentation, presents the HAP content of components of a liquid as a range, then you must use the upper end of the range of values in determining the total HAP content of the liquid. If the results of an analysis by EPA Method 311 are different from the HAP content determined by another means, the EPA Method 311 results will govern compliance determinations.

The final rule allows up to 180 days after the compliance date to conduct the initial performance tests, rather than having to conduct them by the compliance date, and, thus, makes the final rule consistent with the amended General Provisions and other MACT rules.

C. Emission Limitations and Work Practice Standards

At proposal, we specified liquid vapor pressure cutoffs to determine applicability of the storage tank control requirements in terms of the annual average true vapor pressure of the stored liquid. This format was compatible with the liquid property data in our OLD database as we had received the data from industry. For the final rule, we have determined, in response to comments and after our re-analysis of our database, that the vapor pressure basis should be consistent with other NESHAP that also specify storage tank vapor pressure cutoff levels. Therefore, we have written the basis for the applicability criteria in the final OLD NESHAP to be the annual average true vapor pressure of the total organic HAP in the stored liquid.

We have also increased the time period over which an owner or operator may achieve compliance with the work practice standards for floating roof storage tanks. For any floating roof tanks that do not currently meet the equipment requirements specified in 40 CFR part 63 subpart WW, full compliance may be achieved within 10 years after the effective date of the final OLD NESHAP, or at the next degassing or cleaning of the tank, whichever occurs first. If the first degassing and cleaning activity occurs during the 3 years following the effective date of the final OLD NESHAP, the compliance date is 3 years from the effective date of the final OLD NESHAP. Fixed-roof tanks are still required to achieve compliance within 3 years after the effective date of the final OLD NESHAP.

At proposal, the emission limit and applicability throughput cutoff for transfer racks was based on each rack loading position. In re-analyzing the database since proposal, we have determined that the information for transfer racks could not be verified on the basis of individual rack loading position. We have written the final rule based on the entire transfer rack to be consistent with many other MACT rules.

In response to requests by commenters and after re-analyzing our database, we added 40 CFR part 63 subpart H as one of the LDAR programs that may be used to comply with the work practice standard for equipment. We also clarified that only equipment leak components associated with the affected source need to be included in a source's LDAR program.

D. Monitoring, Recordkeeping, and Reporting

The proposed rule contained detailed procedures for performing monitoring and for carrying out quality assurance checks on the monitors. The final rule incorporates the monitoring provisions of 40 CFR part 63, subpart SS, and requires owners and operators to submit their own monitoring plan for approval by the applicable title V permitting authority. In accordance with subpart SS, the final rule allows the use of organic monitors in addition to monitors that measure an operating parameter of the control device (such as temperature). This will provide more flexibility in the way a source determines operating limits and monitors operation of control systems. In response to several comments, the averaging time for the monitored data is daily, which is consistent with 40 CFR part 63 subpart SS.

Following proposal, we reviewed the proposed requirements to file reports and keep records and determined that these requirements could be streamlined by reorganizing the pertinent rule sections and deleting certain records and reports that were duplicative or unnecessary for ensuring that sources were maintaining compliance with the standards. We also responded to comments requesting flexibility in the way a source generates and submits reports by allowing a source to combine the reports required by different MACT rules or to send the periodic reports required under the final OLD NESHAP along with those required by title V of the CAA. We have incorporated provisions to allow these forms of combined reporting, as well as an allowance for multiple Notifications of Compliance Status for the same affected source to be submitted together. We have included specific references to the periodic reporting requirements in 40 CFR part 63, subparts SS, TT, UU, and WW, which had been inadvertently omitted from the proposal.

V. Summary of Responses to Major Comments

A. Rule Applicability

Comment: Several commenters stated that the Agency should revise the definition of ''OLD operation'' to be the combination or group of emission units used to transfer organic liquids into or out of a plant site in order to provide a clear definition of the OLD source category. Two of the commenters stated that EPA's definition of ''OLD operation'' is inconsistent with its source category listing. The proposed definition captures facilities that receive organic liquids but do not serve as distribution points, and from which such liquids are not obtained for further use and processing. These commenters urged EPA to limit the source category so that facilities and activities that do not serve as distribution points, or are merely managing organic liquids without distribution, are not captured in the final rule. Other commenters urged EPA to clarify that the final rule will not apply to end-users of organic liquid products, but rather only to manufacturers and distributors of those organic liquid products in the SIC/NAICS codes listed at proposal.

Response: The commenter's suggested definition for ''OLD operation'' is more appropriate for the affected source definition to clearly establish the limits of the affected source, but is not appropriate for describing the source category as a whole.

Further, we disagree with the commenters that our definition of OLD operation and, thus, the OLD source category is inconsistent with the source category listing by including facilities that receive organic liquids without further distributing them to end users. We consider the distribution network to include both outgoing and incoming transfers and storage of organic liquids, whether offsite or onsite. Thus, while the types of facilities identified by the commenters may never distribute the liquids offsite, the activities, equipment, and emissions that occur at such receiving and end-use facilities are part

of the overall organic liquid distribution network.

The final rule is clear that the source category includes OLD operations that are collocated with other (such as manufacturing) activities at major source plant sites. Since the source category includes distribution operations in many industrial categories, we have not included any reference to SIC or NAICS codes in the final rule.

Comment: One commenter noted that the Technical Support Document (TSD) indicates that ''tanks and other liquid handling equipment involved solely in activities within the plant site would not be considered to be OLD emission sources * * *,'' but the provisions of the proposed rule and the definition of ''OLD operation'' do not support this position.

Similarly, commenters recommended that the affected source not include dedicated equipment used to transfer and store organic liquids between on-site process units.

Response: Our intent for the final rule is to reduce HAP emissions from the storage and transfer of organic liquids within a distribution network. It is our judgment that the distribution network ends only when the organic liquids reach a final destination where they are consumed or are introduced into an operation included in another source category. Therefore, the OLD network includes the transfer and storage of organic liquids involving any equipment identified in the affected source for OLD and that are not subject to another MACT rule. Further, in our judgement, there is no practical difference in the types of equipment in use and the types of available emission controls are identical for both inter- and intra-plant site transfers.

Based on these considerations, it is our intent that equipment used to store or transfer organic liquids that occur ''within'' a plant site are considered part of the OLD distribution network and part of the OLD affected source unless such equipment is subject to another MACT standard. Therefore, we have not excluded from the final rule ''tanks and other liquid handling equipment involved solely in activities within the plant site,'' and we have written the definition of OLD operation to include transfers and storage of organic liquids ''into, out of, or within a plant site.'' Thus, if an emission source meets the relevant HAP content, vapor pressure, and capacity or throughput criteria, the emission reduction requirements of the final rule apply to that emission source even if it transfers or stores organic liquids wholly within a plant site.

Comment: Several commenters requested that EPA clarify the relationship between applicability and affected source. These commenters felt that restricting the affected source to only those emission points that are subject to controls could result in a very narrow definition of the affected source. It could also result in triggering the MACT new source requirements by the addition of a relatively small component to an OLD operation, if the rest of the OLD operation were exempt from controls. This does not appear to be EPA's intent, but rather an inadvertent consequence of the manner in which the proposed rule addresses emission points that are exempt from controls.

Another commenter stated that EPA's proposed affected source definition is unlawful because EPA chose a broad definition that allows equipment to be replaced without the replacement becoming a new source.

Response: We agree with the commenters that the proposed rule did not contain a clear definition of the affected source, primarily because of confusion that occurred as the result of the two different definitions of ''affected source'' that were inadvertently created in the proposed rule.

While the intent of proposed § 63.2338(b)(2) was to provide additional detail to supplement the definition in § 63.2338(b)(1), we understand the confusion that this created by appearing to present a different and conflicting affected source definition. In the final rule, we have defined ''affected source'' as ''* * * the collection of activities and equipment used to distribute organic liquids into, out of, or within a facility that is a major source of HAP.''

We also agree with the commenters that the affected source should include all of the pertinent emission sources without regard to the applicability criteria that cause certain equipment to be subject to different requirements of the final rule. Therefore, the final rule, in § 63.2338(b), presents a description of the affected source in which all of the pertinent emission sources are listed, without regard to their control requirements under the final rule. We have also written § 63.2338(b)(1) to define the affected source as ''the collection of activities and equipment.'' This clarifies our intention to have a broad interpretation of affected source.

We acknowledge that a broad definition in many circumstances allows individual emission points (such as a single storage tank, pump, etc.) to be replaced without the new source standards being applied to that new piece of equipment. Using a broad definition of affected source is, however, within our discretion in selecting the best approach for the standards for a particular source category. The term ''affected source'' refers to the collection of processes, activities, or equipment to which a MACT standard applies. In other MACT rules, we have adopted either a broader or narrower definition of affected source for given categories depending on the nature of particular MACT requirements and the strategies available for meeting them. A broader definition permits emission reduction requirements to apply to a larger group of processes, activities, and equipment. This approach encourages owners or operators to develop and utilize more innovative and economically efficient control strategies. Using a narrower definition of affected source frequently leads to difficulties for facilities in managing differing requirements for individual pieces of equipment without achieving substantive emission reduction.

For the purpose of determining MACT, however, we chose to utilize the approach of examining the emission sources individually. In our industry survey, we requested data for each emission source rather than from the entire OLD operation. By evaluating the data on an emission source basis, we were able to establish MACT floors for each type of emission source without having to consider how each facility controlled emissions on a facilitywide basis. For example, we established MACT floors for storage tanks based on facilities with the best controlled storage tanks, even if those facilities did not utilize the best controlled transfer racks.

Our selected approach for the final OLD NESHAP is consistent with the 40 CFR part 63 General Provisions, as amended (67 FR 16582, April 5, 2002), which adopt a broader definition of affected source such that future MACT standards will generally adopt a definition of affected source which consists of all existing HAP-emitting equipment and activities that are at a single contiguous site and are within a specific category or subcategory.

Comment: Several commenters recommended that compounding, blending, and packaging operations be included in the affected source, but with no control requirements. According to the commenters, this would result in a more accurate investment basis for OLD operations at a site, would clarify which MACT affected source these operations are associated with, and would avoid the potential for future regulatory overlap.

One commenter supported the inclusion of small containers (pails, drums, portable tanks, and isotainers) as part of the OLD affected source but urged that small containers be excluded from controls in the final rule.

Response: We have written the definition of affected source in the final rule to include storage tanks and transfer racks used to store or transfer organic liquids regardless of the particular operation or activity such tanks and transfer racks were supporting, including such operations and activities as packaging, blending, and compounding.

We have not defined the affected source to single out the operations identified by the commenter because the changes that were made to the definition provide the necessary clarity. The final rule makes it clear that equipment used in operations such as these would be part of the affected source if they meet the general criteria of storing or transferring organic liquids and they are not subject to another MACT rule. Equipment meeting the affected source criteria in § 63.2338 of the final rule are to be included as emission sources in the initial Notifications and Reports required under §§ 63.2382 and 63.2386 of the final rule.

Finally, we have included containers in the definition of affected source. This is consistent with how we have re-defined the affected source to include equipment even if control is not required under the final rule. The re-analysis of our data after reviewing the public comments resulted in a finding that the floor level of control for existing container filling operations is no emission reduction. We did, however, identify a MACT floor level of control for new source container filling. As discussed in more detail later in this preamble, we have determined that there are no feasible or cost-effective beyond-the-floor alternatives for the filling of containers at existing sources. Therefore, the final rule includes control requirements only for container filling operations that are new sources.

Comment: A number of commenters stated that the inclusion of cargo tanks as part of the affected source is inappropriate. These commenters pointed out that third parties typically provide cargo tanks and they are not generally under the common control of the OLD facilities. The commenters also stated that, if the OLD operation owner purchases either new cargo tanks or a fleet of existing cargo tanks, they should not be included in the reconstruction cost evaluation and potentially trigger new source MACT requirements at the OLD operation.

Response: As discussed in the proposal preamble and the TSD, and in previous rulemakings including the Gasoline Distribution MACT NESHAP (40 CFR part 63, subpart R), cargo tanks (consisting of tank trucks and tank cars, and renamed as ''transport vehicles'' in the final rule) can be a significant source of emissions while being loaded at transfer racks. Transport vehicles (whether owned/leased by the facility or operated by other firms) must be included in the affected source to ensure that MACT control will extend to these sources. As the final rule makes clear in Table 4 to subpart EEEE of part 63, the owner or operator must have vapor tightness documentation for each transport vehicle loading at an affected transfer rack. Third parties in many cases will be responsible for getting periodic testing (EPA Method 27 or DOT test) performed and for providing the certification papers to the facilities.

The acquisition of additional transport vehicles, whether by the source owner or by third parties, would not be included in the reconstruction cost evaluation and would not trigger any different control requirements for the liquid transfer operation. The items that define the affected source are the stationary infrastructure of the facility; that is, the combination of tanks, transfer racks, and equipment leak components. The primary mission of transport vehicles is transporting the liquids on roadways. Thus, they are not part of the stationary infrastructure of the facility. The objective of the ''reconstruction'' provisions of the CAA is to prevent an existing source from avoiding more stringent new source standards by perpetually rebuilding existing equipment rather than installing new equipment. The purchase of transport vehicles should have no impact on the triggering of more stringent standards for the storage tanks or transfer racks at an affected source. Also, at an OLD operation, facilitywide emission rates are impacted by the size, throughput capacity, and number of storage tanks and transfer racks. From the standpoint of overall emissions, it makes no difference if one vehicle is loaded ten times or if ten identical vehicles are loaded once. Therefore, the number of individual transport vehicles or the acquisition of additional transport vehicles should not be included as part of the infrastructure of the facility that is considered in determining ''reconstruction'' cost. The acquisition of additional containers by an owner or operator of an OLD facility would also not be considered in the determination of ''reconstruction'' costs.

Comment: Three commenters stated that EPA needed to clarify that only pipelines with equipment leak components (*i.e.*, pumps, valves, or sampling connection systems) associated with a storage tank or transfer rack included in the affected source will be subject to the LDAR requirements. Commenters requested that a pipeline that transfers organic liquids directly to or from a process unit that does not pass through a transfer rack or storage vessel subject to the rule is not to be included in the affected source or in the calculation of throughput used in applicability determinations.

Commenters also stated that the exclusions from the OLD rule should include pipeline equipment leak components used to directly transfer organic liquids across plant site boundaries into or out of storage tanks not subject to another MACT standard or process equipment that are not storage tanks, and unloading facilities and pipeline equipment used to transfer organic liquids from ships, barges, tank trucks, or tank cars into a storage tank covered by other MACT standards or process equipment that are not storage tanks.

Response: Pipelines themselves are not and never were part of the affected source definition. Only equipment leak components that are part of a pipeline were considered part of the affected source at proposal. We know of no reason as to why equipment leak components associated with a pipeline that transfers organic liquids should not be part of the affected source for the final rule, regardless of whether the organic liquid being transferred is deposited in a storage tank subject to the final rule or to another MACT standard. If the pipeline's equipment leak components are subject to another MACT standard, then they are not subject to the final OLD NESHAP. If the pipeline's equipment leak components are not subject to another MACT standard and the pipeline is in organic liquids service, then the equipment leak components are subject to the requirements of the final OLD NESHAP.

Finally, the final rule does not include a facility-level throughput calculation to determine whether or not a facility is subject to the final rule. Therefore, there is no longer a need to clarify the relationship of pipelines to the throughput applicability determination.

Comment: We received a large number of comments concerning the proposed applicability criteria of 7.29 million gallons per year, which would

have excluded facilities from the OLD rule if their facility throughput was less than 7.29 million gallons of organic liquids. Several commenters supported the cutoff and requested clarification on the procedures for determining throughput. Other commenters questioned the appropriateness of excluding from control those facilities that are in the source category and have emission sources that could be controlled by the final OLD rule.

Response: We proposed a facility-level throughput cutoff believing it was a useful criterion to identify smaller facilities at which controls would not be required based on our understanding that such facilities were not typically required to be controlled under other rules. We re-analyzed the database to determine if MACT floors existed for facilities with throughputs less than 7.29 million gallons of organic liquids, and determined that MACT floors exist for facilities with throughputs of less than 7.29 million gallons. Therefore, we can not support the proposed 7.29 million gallon cutoff.

However, as a result of our re-analysis of the database, we determined that throughput cutoffs for certain emission points were justified. The throughput cutoffs are now a part of the applicability criteria used to determine which transfer racks are subject to control.

Comment: Several commenters requested clarification of the relationship between the OLD rule and other existing rules and future rules.

Response: We agree with the commenters that the final OLD NESHAP must be explicit in describing the specific applicability of other 40 CFR part 63 NESHAP for sources that potentially may be drawn into more than one subpart. Section 63.2338(c)(1) of the final rule states that storage tanks, transfer racks, and equipment leak components that are part of an affected source under another 40 CFR part 63 NESHAP are excluded from the definition of affected source, even in cases where the other rule does not require a reduction in emissions from the emission source.

Comment: Several commenters stated that EPA needs to address overlap between the OLD NESHAP and other non-40 CFR part 63 existing rules, such as the Storage Tank New Source Performance Standard (40 CFR part 60, subpart Kb), the Benzene Storage Tank and Benzene Transfer Operations NESHAP (40 CFR part 61, subparts Y and BB, respectively), and Resource Conservation and Recovery Act (RCRA) regulations.

Response: We have written 40 CFR 63.2396 to address the overlap between the final OLD NESHAP and those rules cited by the commenters. If meeting the requirements of another rule does not result in an owner or operator fully meeting the requirements of the OLD NESHAP, then the owner or operator must modify the compliance methods to come into full compliance with the OLD NESHAP while remaining in compliance with the other rule.

Comment: One commenter, whose facility is subject to 40 CFR part 63, subpart Y (Marine Loading), pointed out that 40 CFR part 63, subpart SS, § 63.983(b) and (c), imposes an initial leak detection standard for closed vent systems that is more stringent than the detection standard contained in subpart Y; § 63.983(c)(1)(v) specifies only the use of methane for calibration of the instrument used to conduct the initial EPA Method 21 sweeps in subpart SS, while subpart Y is more flexible; subpart Y and subpart SS conflict on the response required if a leak is found; and, for closed vent systems that contain bypass lines, subpart Y contains an exemption on closure requirements for maintenance vents, but subpart SS does not allow that exemption. The commenter stated that this is appropriate for subpart Y due to the ''batch'' nature of tank vessel loading, and that it would be inappropriate to impose the subpart SS requirement on part of their facility.

Response: If an OLD emission source is required to be controlled under the final OLD NESHAP and that emission source is already controlled in a ''shared'' control device, then the owner or operator is required to be in compliance with both NESHAP or the NESHAP that impose the more stringent emission standard and/or work practices.

If an OLD emission source is in OLD operation part of the year and ''in service'' for another NESHAP for the rest of the year, then that OLD emission source is required to be in compliance with the final OLD NESHAP when that emission source is in OLD operation, even if the requirements between the two NESHAP rules are different. The owner or operator still has the option to permanently comply with whichever NESHAP provides the most stringent emission standard and/or work practices.

Comment: One commenter noted several conflicts between 40 CFR part 63, subparts SS and Y, and the proposed OLD NESHAP; specifically, performance tests on incinerators using specified test methods and conflicting language regarding the temperature monitoring location. The commenter claimed that the proposed control device evaluation in 40 CFR 63.2362(g) that would be submitted according to the requirements of 40 CFR 63.985(b)(1)(i) is an unnecessarily burdensome requirement for a facility that has source test data less than 5 years old showing that the control device more than adequately controls emissions. For such facilities, the commenter requested that existing data be allowed to be used in lieu of a design evaluation.

Response: We have written the performance test and design evaluation requirements in § 63.2362 of the final rule and Table 5 to subpart EEEE of part 63 to more clearly specify the use of the 40 CFR part 63, subpart SS, procedures and also to clarify that prior test results may be used, in many cases, to demonstrate compliance with the final OLD NESHAP. The final rule also allows owners or operators the flexibility of applying for approval to use alternative test methods.

Comment: Two commenters recommended that EPA clarify the OLD boundary by incorporating the concept of ''intervening storage tanks,'' which has been used in several other MACT standards such as the Hazardous Organic NESHAP (HON) and the Polymers and Resins rules. Under this concept, if a bulk tank in a centralized tank farm area has received organic liquids from outside the plant site and feeds that material to another storage tank at the process unit (an ''intervening storage tank''), the bulk tank is assigned to the organic liquid distribution operation and the intervening storage tank to the process unit.

Response: We have evaluated the comment concerning the concept of ''intervening storage tanks'' and have determined that such a concept is neither appropriate nor needed for the final OLD NESHAP. The ''intervening storage tank'' concept is specifically to help facilities identify which storage tanks are part of the affected source of a particular MACT source category. The intent of the final OLD NESHAP is to supplement other NESHAP and apply to all remaining unregulated storage tanks that are in OLD operation. To incorporate similar ''intervening storage tank'' language in the final OLD rule is at best unnecessary and at worst could lead to excluding tanks that should be covered by the final OLD NESHAP.

Comment: Several commenters recommended that EPA clarify that the emission limitations and work practice standards identified in § 63.2346 apply whenever an emission source is in OLD operation, but not when the emission

source is not in OLD operation. Commenters pointed out that the proposal stated that affected facilities must be in compliance with the emission limitations at all times except for periods of startup, shutdown, or malfunction. They felt that periods of ''non-operation of the affected source'' should be included on this list.

Commenters recommended that § 63.2374(c) be clarified such that for demonstrating continuous compliance data averages should only include data collected when vapors from OLD operations are being routed to the control device.

Response: It was our intent in the proposed rule that the emission limitations and work practice standards apply only when an emission source is transferring or storing an organic liquid or when an equipment leak component is in organic liquids service. Because there are no emissions from storage tanks or transfer racks during periods of ''non-operation of the affected source,'' there is no need for the emission limitations to apply during these times. In addition to periods when the entire affected source is not in operation, there may be periods when any one of the emissions sources within the affected source is not in operation or is not in OLD operation. During these periods, the emission limitations for all other emission sources would still apply, but the emission limitations would not apply to the emission source not in OLD operation. This intention has been clarified in § 63.2350 of the final rule.

We agree with the comment that only data collected during times when emissions are being routed to the control device should be used in demonstrating continuous compliance and have written § 63.2374(c) of the final rule to the effect that data are not to be used when collected during ''periods when emissions from organic liquids are not routed to the control device.''

Comment: One commenter felt that the proposed rule should be modified to allow pilot flames to be turned off during flare shutdowns and when all the sources serviced by the flare are shut down.

A second commenter thought EPA should reconsider the continuous compliance requirements for thermal incinerators that utilize ''bladder tanks,'' which collect emissions in a bladder until a sufficient quantity is collected to use the incinerator, so that the oxidizer does not have to be operated continuously. The commenter suggested changing the rule language to require sites to maintain the average fire box temperature only during times that vapors are introduced to the control device.

Response: The requirement to continuously maintain a flare pilot flame is part of the 40 CFR part 63 General Provisions, which state that a pilot flame is required for an open flare during periods when emissions may be vented to the flare. If the flare is shutdown (out of service), there is no need to require a pilot flame because no emissions will be vented to the flare. Where the emissions sources serviced by the flare are shutdown, we agree that operating a pilot flame during such periods would be nonproductive because there are no emissions to be vented to the flare. We have written Table 9 to subpart EEEE of part 63 to allow an owner or operator not to maintain the pilot flame when all emission sources serviced by the flare are shutdown (out of service). However, we are requiring in the final rule that owners and operators make a demonstration to the permitting authority that it will not experience a deviation and to keep records of each time the pilot flame is extinguished and relit.

We also agree with the commenter that it is unnecessary to maintain the average fire box temperature in thermal incinerators during periods when emissions are not vented to the incinerator. Therefore, we have written Table 9 to subpart EEEE of part 63 to clarify that the average fire box temperature in thermal incinerators need only be maintained while emissions are being vented to the control device. The final rule requires the owner or operator to monitor both this temperature and the time periods when vapors are flowing to the device. We also note that an owner or operator may have to increase the firebox temperature some time before emissions are vented back into the incinerator in order to comply with the average fire box temperature requirement.

Comment: We received several comments concerning the definition of ''organic liquid'' that affects the applicability of the proposed standards. One commenter asserted that the exemption of most organic liquids containing less than 5 percent HAP by weight is in violation of the requirements of the CAA. Another commenter claimed that the 5 percent HAP cutoff is legally permissible on ''*de minimis*'' grounds.

Two commenters recommended that EPA revise its definition of ''organic liquid'' to exclude liquids that are not predominantly organic in order to exclude from regulation those liquids that contain very small amounts of organic material such as predominantly aqueous or inorganic liquids. The commenters felt that these liquids should not be included in the final OLD NESHAP because they do not emit significant amounts of organics to the environment and controlling them will not provide the intended emission reductions.

Finally, several commenters added that EPA should provide a list of common materials within the petroleum industry that will not be regulated, such as kerosene (No. 1 distillate oil), diesel (No. 2 distillate oil), asphalt, and heavier distillate oils and fuel oils.

Response: The EPA disagrees that the proposed exemption of organic liquids containing less than 5 percent HAP-by-weight can be justified by *de minimis* principles. The EPA's *de minimis* authority exists to help avoid excessive regulation of tiny amounts of pollutants, where regulation would yield a result contrary to a primary legislative goal. It is unavailable ''where the regulatory function does provide benefits, in the sense of furthering the regulatory objectives, but the agency concludes that the acknowledged benefits are exceeded by the costs.'' *EDF* v. *EPA,* 82 F.3d 451, 466 (D.C. Cir. 1996); *Public Citizen* v. *Young,* 831 F.2d 1108, 1112–13 (D.C. Cir. 1987); *Alabama Power* v. *EPA,* 636 F.2d 323, 360–61 & n.89 (D.C. Cir. 1979). Accordingly, a *de minimis* exemption to section 112(d)(3) is unavailable, because it would frustrate a primary legislative goal by carving out tons of HAP emissions from regulation. The EPA's rejection of the *de minimis* concept has already been affirmed by the U.S. Court of Appeals for the District of Columbia Circuit, in *National Lime Ass'n* v. *EPA,* 233 F.3d 625, 640 (D.C. Cir. 2000) (''*NLA*''), in which the court rejected the petitioner's claim that in light of both the high costs and low quantities of HAP at issue in that case, EPA should read a *de minimis* exception into the requirement that it regulate all HAP emitted by major sources. In that case, the Court found that ''EPA reasonably rejected this argument on the ground that the statute 'does not provide for exceptions from emissions standards based on *de minimis* principles where a MACT floor exists.' '' *NLA* at 640.

Contrary to the commenter's request, EPA sees no reason to revisit this fundamental issue, and rejects the assertion that both EPA and the court decided this issue incorrectly in *NLA.* Section 112 of the CAA is replete with careful definitions of volume-or effect-based limitation on regulation, indicating that Congress has already defined what amounts of HAP

emissions are too small to warrant MACT standards. The requirement to adopt MACT emission limitations, for example, applies without exception to ''each category or subcategory of major sources * * * of [HAP].'' CAA section 112(d)(1). For sources below the major source threshold, however, EPA has discretion to require ''generally available control technologies or management practices.'' CAA section 112(d)(5). Congress has thus itself defined volumetrically which sources' emissions are small enough not to warrant mandatory MACT standards.

Congress likewise defined several MACT exceptions applicable where emissions have *de minimis* health effects. Section 112(d)(4) of the CAA allows EPA to establish standards less stringent than MACT for HAP with an established health threshold, so long as it sets a standard below the health threshold with ''an ample margin of safety.'' Section 112(b)(3)(C) of the CAA directs EPA to de-list HAP—precluding section 112(d) MACT standards—if EPA determines that ''there is adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation or deposition of the substance may not reasonably be anticipated to cause any adverse effects to the [sic] human health or adverse environmental effects.'' Section 112(c)(9)(B)(i) of the CAA lets EPA delete source categories from the category list—the consequence again being no MACT control—if it determines that, for emissions of carcinogenic HAP, ''no source in the category * * * emits such [HAP] in quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutant from the source.'' For noncarcinogens, EPA may delete source categories if it determines that ''emissions from no source in the category or subcategory * * * exceed a level which is adequate to protect public health with an ample margin of safety and no adverse environmental effect will result from emissions from any source.'' CAA section 112(c)(9)(B)(ii). Moreover, in defining which source modifications trigger additional regulatory standards, CAA section 112(g)(1)(A) mentions a ''greater than *de minimis* increase in actual emission of a [HAP].'' This shows that Congress knew how to use the *de minimis* concept when it considered such was appropriate in section 112, and the fact that it did not use it in section 112(d)(3) supports EPA's—and the D.C. Circuit's—conclusion that it is unavailable to support an exception to a MACT floor.

The EPA does not find persuasive the commenter's reliance on *CMA* v. *EPA,* 217 F.3d 861, 866 (D.C. Cir. 2000) for the proposition that the overall purpose of section 112 is protecting human health and the environment, and that, therefore, as long as this general purpose is met, EPA may fashion *de minimis* exceptions from MACT. First, this position appears to assume that the issue is to be drawn on a clean slate, while in fact the same court has affirmed EPA's view that section 112(d)(3) provides no discretion to use a *de minimis* rationale to avoid MACT, and the *CMA* case was not faced with it. Second, the commenter appears to give prominence to an over-arching statutory goal over the specific language of the statutory provisions themselves, in assessing whether those provisions are ''extraordinarily rigid'' regarding EPA's otherwise-inherent *de minimis* authority; the logical extension of such an approach would be to find that no single provision in the CAA could restrict EPA's *de minimis* authority, in light of the CAA's over-arching purpose ''to promote the public health and welfare.'' CAA section 101(b)(1). Third, the commenter does not present any statutory arguments to overcome those that EPA presented to the court—and which the court affirmed—in *NLA,* beyond noting that CAA section 112(d)(8) is even more extraordinarily rigid in requiring regulation of coke ovens than is otherwise the case for MACT standards. Finally, EPA is unable to discern the basis for the commenter's suggestion that EPA has in fact ''been relying on'' *de minimis* authority in the MACT program ''for years,'' and is not aware of any instance in which EPA has explicitly created such an exception from an identified MACT floor. Therefore, and for the additional reasons discussed below, EPA does not believe it is appropriate or necessary to revisit the Agency's and the D.C. Circuit's prior conclusions regarding the availability of the *de minimis* principle in the final OLD NESHAP.

However, for the final rule, we are promulgating a 5 percent HAP by weight threshold for non-crude oil liquids in the definition of an organic liquid. No such cutoff is being adopted for crude oil. There are several reasons why we believe such a cutoff is appropriate for the final OLD NESHAP, which EPA believes support the use of a non-crude oil 5 percent cutoff without having to rely upon a legally unavailable *de minimis* theory. During the planning and development of the proposed rule, we intended to reduce HAP emissions from the distribution of organic liquid products that were either pure HAP liquids, mixtures of HAP and non-HAP liquids, or crude oils. As stated, our intent was to focus on products (including crude oil, which is a naturally occurring product) ''intended for further use or processing.'' Therefore, we focused our data gathering efforts on five 2-digit Standard Industrial Classification (SIC) codes that we believed represented the vast majority of the facilities nationwide engaged in the distribution of what we considered to be organic liquid products.

We surveyed facilities in these five 2-digit SIC codes asking broad questions about the liquids that they distributed that contained organic HAP. In evaluating and analyzing the data, we discovered that the types of liquids containing organic HAP, including some non-product liquids and liquids with very low organic HAP contents, were more diverse than we had expected. In addition, the types of facilities engaged in distribution of such liquids, were greater than we had assumed in developing the proposed rule, as was the degree to which unforseen facility types were distributing and controlling emissions from such liquids.

As stated above, such low HAP content non-crude oil liquids were not initially anticipated to be covered by the OLD rule, and may in many cases be the result of impurities or contaminants and not the result of an intended formulation of a product. These types of non-crude oil liquids (those with small HAP contents) can be found at many facilities outside the five 2-digit SIC that we targeted. At this point, based on the data collected for the OLD rule, we cannot ascertain the representativeness of our data for those industries in other 2-digit SIC codes that we did not survey. Nor can we ascertain how many additional emission sources (controlled or uncontrolled) might need to be added to the database to adequately assess the MACT floor for these facilities and non-crude oil liquids and make final, enforceable regulatory decisions. We believe that our current data are insufficient for this purpose and do not provide enough information about the emissions, emission controls in use, or potential to reduce emissions to complete the MACT floor analyses that we believe are appropriate to address the unexpected non-crude oil liquids and facility types that we did not foresee as being subject to the OLD rule when we developed the proposal. As a result, we do not have sufficient data to develop regulatory requirements,

including those regarding emissions control and reduction, and monitoring, recordkeeping and reporting, for low HAP-content non-crude oil liquids. We also do not currently have the flexibility in our schedule to allow us to gather the necessary additional data to assess requirements for these low HAP-content non-crude oil liquids prior to the consent decree date for promulgation of the final OLD rule. Section 112(d)(3)(A) and (B) of the CAA directs EPA to base existing source MACT floor determinations on ''emissions information'' which EPA ''has'' or ''could reasonably obtain.'' Rather than adopt requirements for low-HAP non-crude oil liquids based on insufficient data, EPA is proceeding with the final OLD NESHAP as initially envisioned and supported.

We are also concerned that if we were to lower or eliminate the 5 percent HAP content cutoff level for non-crude oil liquids, the final OLD NESHAP would have previously unforeseen impacts on a significant number of Department of Defense (DoD) facilities, at a time when the Federal government as a whole is re-assessing the extent to which it is appropriate to subject DoD facilities to regulatory requirements. There was a consensus among representatives of the DoD that the OLD rule as proposed (a 5 percent HAP content cutoff) would not impact the storage and distribution of many types of fuels and other liquids in use at military installations. However, if non-crude oil liquids with less than 5 percent HAP were included in the definition of organic liquids as written in the final OLD rule, many DoD facilities would be subject to the final rule and impacted in ways that DoD representatives have informed EPA may seriously compromise the military function. The potential impacts of facilities such as these becoming subject to the final OLD rule were not considered at proposal. No information was provided by commenters, including DoD or others, during the public comment period that would be useful in quantifying the potential impacts of lowering or eliminating the cutoff for these facilities. In light of the sensitivity of this issue, EPA believes it would be inappropriate to proceed with the final rule in a form that might cause unforeseen and as-yet un-analyzed impacts on DoD facilities.

After evaluating the issues discussed above, we have concluded that the most appropriate approach for the final OLD NESHAP, and the one that is most consistent with the CAA's directives, is to adopt a definition of organic liquid that includes a HAP content cutoff level for non-crude oil liquids. We have also concluded that the proposed level of 5 percent is a reasonable separation between our intended scope of products and those non-crude oil liquids that contain low amounts of HAP, often as impurities and contaminants.

For vapor pressure, we have only a small amount of data for non-crude oil liquids with true vapor pressures less than 0.1 psia. The data we do have are not representative of the universe of such low vapor pressure non-crude oil liquids and are not sufficient to enable us to support a MACT floor or emission standard requiring controls. We conclude that for a non-crude oil organic liquid to be subject to the final OLD rule, the organic liquid must have a total vapor pressure of at least 0.1 psia and must also contain at least 5 percent HAP by weight.

With regard to the comments about excluding organic liquids that are not predominantly HAP and including primarily aqueous or inorganic liquids, we investigated the HAP emission potential for solutions of HAP in organic liquids, inorganic liquids, and water (or mostly water). Based on consideration of the volatilization properties of organic compounds in various types of liquid media, we cannot support the suggestion for limiting the scope of the organic liquid definition. More detail on our analysis of this issue can be found in a memorandum in the docket.

Lastly, we have included a list of exempt liquids in the definition because the liquids are well defined and would exhibit such low vapor pressure that they would not exceed the 0.1 psia vapor pressure threshold.

Comment: One commenter requested that EPA clarify that the evaluation of crude oil as an organic liquid is only applicable after custody transfer.

Several commenters felt that ''black oil'' should be redefined based on whether it has the potential for flash emissions rather than in terms of the gas-to-oil ratio (GOR) and API gravity because petroleum transporters, petroleum marketers, and major petroleum product testing laboratories do not commonly use the gas-to-oil ratio. One commenter suggested that, for OLD MACT applicability, ''black oil'' should be determined solely on the basis of API gravity. This commenter also noted that for the purpose of ''black oil'' determination, the point of entry to the distribution system should be defined as the point of entry to the affected facility. Two other commenters felt that the determination should be made at a point that is representative of the combined crude oil stream.

One commenter provided data on crude oils handled throughout the country, including the Alaskan oil pipeline and the Valdez Marine Terminal (VMT). These data indicated that the API gravities for all of these crude oils average less than 40 degrees. For example, the blended North Slope crude oil loaded at the VMT ranges from 23 degrees to about 28 degrees, with most of it averaging 26 degrees API. The commenter concluded that if the OLD NESHAP are finalized with an exemption for crude oils having an API gravity less than 40 degrees, the effect will be to exclude virtually all crude oil from the final OLD rule.

Response: We have clarified in the final rule that only crude oil after the first point of custody transfer is subject to the final rule.

As discussed in the proposal preamble, the exclusion of black oil from the definition of crude oil (and hence from the family of regulated ''organic liquids'') was based on a similar exemption in the Oil and Gas Production NESHAP, 40 CFR part 63, subpart HH. Based on the comments received and additional data (*e.g.*, typical API gravities of crude oil distributed), we have discovered that most crude oil being distributed at OLD facilities would have been excluded from the final rule, even though our impacts analyses assumed most crude oil was subject to control. Moreover, in the reevaluation of our data, we determined that there are emission reduction floors for crude oil. Furthermore, the emission potential of crude oil is the same as for other organic liquids with similar HAP and HAP contents, and the total HAP emissions can actually be much larger due to the significant volumes of crude oil being distributed.

We have revised the definition of organic liquid to include all crude oil (after the first point of custody transfer) and have deleted the ''black oil'' exemption, the exclusion for heavier crude oils (*i.e.*, those with an API gravity less than 40 degrees), and the parameter ''gas-to-oil-ratio'' as a measure of applicability for crude oil. Under the final rule, crude oil will be subject to the same storage tank capacity and HAP vapor pressure criteria used to determine control requirements for other organic liquids.

Comment: We received comments stating that EPA Method 18 is not an appropriate method for determining the organic composition of liquid streams, and that only the analytical requirements of EPA Method 18 should be made applicable in the final rule.

The commenters stated that testing should not be required if a material is already known to be a regulated organic

liquid through process knowledge, an approach EPA has used in other rules, or if the material transferred is a commercial product with established specifications and is accompanied by an MSDS based on prior analysis.

Response: After reviewing the EPA's analytical test methods, we are in agreement with these commenters that EPA Method 18 is not an appropriate method for liquid analysis of the type that will be performed under the final OLD NESHAP. The EPA Method 18 is appropriate for determining the HAP content in air streams, not the HAP content in liquids. We are now specifying EPA Method 311 of appendix A of 40 CFR part 63, which is titled ''Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection into a Gas Chromatograph.''

The final rule includes provisions that allow the owner or operator of an affected OLD operation to use a variety of information available to them to determine whether a given liquid meets the HAP content criteria in the definition of ''organic liquids.'' Information such as product data sheets or MSDS, as well as knowledge of commonly accepted formulations for certain products, may be used to designate materials as above or below the HAP content criteria.

While the owner or operator will not be required to test each liquid, EPA may require a test using EPA Method 311 (or an approved alternative) to confirm the reported content of organic HAP (from Table 1 to subpart EEEE of part 63) in the liquid. In the event of any inconsistency between information provided by the owner or operator and the values obtained using the test methods, the results obtained through the use of an approved test method (*e.g.*, EPA Method 311) will govern compliance determinations.

Comment: One commenter felt there is an issue of the reliability of determining vapor pressures at 0.1 psia and lower. Since true vapor pressure is uncertain for low volatility stocks (such as distillate oils), EPA should allow the use of a surrogate property. The commenter suggested allowing the use of a flash point of 100°F as a surrogate for the 0.1 psia vapor pressure cutoff.

Response: We agree that measured values of liquid vapor pressure become increasingly uncertain as the vapor pressure decreases. In order to avoid the difficulties of these measurements for liquids with very low volatilities, and also to be consistent with other rules such as the HON, we have changed the basis for determining the vapor pressure of an organic liquid. Under the final rule, the vapor pressure may be determined by using the specified test methods or by using a calculated value based on knowledge of the organic HAP content of the liquid. As vapor pressure may now be a calculated value, it is not necessary to use a surrogate approach. Also, we have included a list of exempt liquids in the definition of organic liquids because the liquids exempted are well defined and would exhibit such low vapor pressure that they would not exceed the 0.1 psia vapor pressure threshold. Therefore, the final rule does not incorporate the flash point approach.

Comment: Two commenters stated that the storage tank capacity and vapor pressure criteria need to be reevaluated. The commenters noted that the proposed cutoffs in Table 2 to subpart EEEE of part 63 for applicability of storage tank controls are the same as those in the HON, and stated that the HON criteria should not set a precedent for any other source category. The commenters pointed out that other MACT rules that have followed the statutory procedure for MACT floor determination, such as the Refinery MACT, have concluded that the values for these criteria should be much higher. One commenter stated that the storage tank capacity and vapor pressure applicability criteria should, in fact, be consistent with 40 CFR part 63, subpart CC (Refinery MACT I). According to the commenter, these differences lead to confusion about applicability for facilities that must comply with several MACT rules.

Response: Applicability criteria are established based on the MACT floor and beyond-the-floor determinations and are made independently for each source category. This determination depends on the data available for each category. Since the data reflect different tank sizes and liquids stored, the applicability criteria may, and do, vary from one rule to the next. Therefore, it is not necessary or appropriate that the OLD applicability criteria be the same as for the Refinery MACT. Further, based on the re-analysis of the database, the applicability criteria for the final OLD rule have been written to better reflect our OLD database and no longer matches the HON applicability criteria.

One commenter was concerned about the potential confusion differences in applicability criteria may create for facilities that must meet several MACT rules. There should be no confusion at such facilities. The OLD NESHAP will not conflict with other storage tank applicability requirements, as storage tanks that are already subject to an existing 40 CFR part 63 subpart rule will continue to be subject to that subpart. The fact that an owner or operator must comply with different NESHAP for different storage tanks simply means that the owner or operator will have to implement an accurate and more exact accounting of which NESHAP apply to which tanks. This needs to be done only once, provided storage tanks do not change source categories.

Comment: Several commenters stated that the final OLD NESHAP should include a vapor pressure threshold for transfer rack control. The commenters suggested that a 1.5 psia threshold (*i.e.*, no control for a rack if all transferred liquids are below the threshold), which was used in the HON and in the Marine Tank Vessel Loading NESHAP, be adopted. These commenters did not believe that cost-effective controls could be implemented for these low vapor pressure materials because of the low level of emissions. They also felt that mandating controls for these low volatility liquids could result in greater emissions from the control device than from the loading activities.

Response: In response to these comments, we re-examined the OLD database to determine the relationship between the current level of transfer rack control and the organic HAP vapor pressures. We determined that MACT floors consisting of the use of a control device existed for transfer racks handling liquids with vapor pressures greater than 0.1 psia at both new and existing sources. Since the MACT floor for loading activities down to this level is a closed vent and control system, we did not include a vapor pressure criterion for transfer racks in the final rule. We note, however, that transfer racks transferring non-crude oil liquids with total vapor pressures less than 0.1 psia (*i.e.*, liquids that are not ''organic liquids'' for purposes of the OLD NESHAP) are not subject to the final OLD rule.

Comment: One commenter suggested that EPA's proposed exemption from control for the following emission sources: (a) storage tanks below 10,000 gallon capacity, (b) transfer racks with annual throughput less than 3.12 million gallons, and (c) pumps and valves in organic liquids service for less than 300 hours per year is unlawful because it allows unregulated HAP emissions.

Response: Based on a reevaluation of our database, we have revised the emission source criteria approach for storage tanks and transfer racks in the final rule. We are, however, retaining the 300 hour per year requirement for pumps and valves. Each of these items is discussed below.

Storage tanks below 10,000 gallons capacity. At proposal, we proposed to exclude from control new tanks with capacities of less than 10,000 gallons and existing tanks with capacities of less than 20,000 gallons. This exclusion was based on other MACT rules with storage tank standards that exclude such tanks from control. We have revised the database to include only those tanks likely to be subject to the final OLD rule and re-calculated MACT floors based on the remaining tanks in the database. We retained the basic analysis methodology of examining tanks by capacity and vapor pressure ranges, using common capacity and vapor pressure ranges (*i.e.*, those frequently found in other rules) and by examining the cumulative level of control across these ranges.

Based on the revised analysis, the only MACT floors requiring emission reduction that were identified for existing tanks with less than 10,000 gallons capacity were for those tanks with capacities between 5,000 and 10,000 gallons capacities that are included in the 5,000 to 50,000 gallons capacity range containing non-crude oil liquids with a HAP partial vapor pressure equal to or greater than 4.0 psia or crude oil.

For new sources, a MACT floor requiring emission reduction was identified for tanks with 5,000 to 10,000 gallons capacities containing non-crude oil liquids with a HAP partial vapor pressure equal to or greater than 4.0 psia or crude oil. A MACT floor was also identified for tanks with capacities of 10,000 gallons or more and containing non-crude oil liquids with a HAP partial vapor pressure equal to or greater than 0.1 psia or crude oil. We have used these findings to determine the applicability criteria (tank capacity and HAP partial vapor pressure) to determine which tanks will be subject to control.

For those tanks for which the MACT floor was found to be ''no emission reduction,'' we conducted a beyond-the-floor analysis, and we have determined that there are no feasible or cost effective beyond-the-floor alternatives for these storage tanks. Therefore, the final rule does not include control requirements for tanks for which the MACT floor was determined to be ''no emission reduction.''

In conclusion, the final rule is driven by the data for the OLD source category and includes capacity and vapor pressure criteria based on those data to determine which OLD storage tanks are required to be controlled and those that are not required to be controlled. Requiring no additional emission reduction from certain tanks is justified by the available data, meets the mandates of the CAA, and is not unlawful.

Transfer rack loading positions below 3.12 million gallons per year. As for storage tanks, we proposed to exclude relatively smaller transfer rack positions from control based on the requirements of other 40 CFR part 63 subparts (*e.g.*, subparts SS and YY define a low throughput transfer rack as one that transfers less than a total of 11.8 million liters/yr (3.12 million gallons per year) of liquid containing regulated HAP). This throughput is equivalent to about 9,000 gallons per day, or the filling of approximately one tank truck.

Based on a re-analysis of the data (as described for storage tanks above), we determined that this applicability criterion is not appropriate for the OLD source category. Our data re-assessment indicates that there are emission reduction MACT floors for existing and new transfer racks above and below the 3.12 million gallons per year threshold. Therefore, the final rule does not adopt the 3.12 million gallons per year exemption for transfer racks.

Equipment in organic liquids service less than 300 hours per year. The stringency of a LDAR program is based on a number of factors. These factors include the definition of ''in organic HAP service'' (*e.g.*, 5 percent HAP, 10 percent HAP), the leak definition (*e.g.*, 500 ppmv, 10,000 ppmv), the frequency of monitoring (*e.g.*, monthly, quarterly, annually), and exemptions for monitoring requirements (*e.g.*, difficult to monitor components, in service less than 300 hours per year). The smaller the values associated with the definition of ''in organic HAP service'' and the leak definition, and the more frequent the monitoring, the more effective the LDAR program (better emission reduction). The more exemptions, the less effective the LDAR program.

In examining the LDAR programs in place at OLD facilities, we evaluated the overall effectiveness of the programs, including each of the aforementioned items. In general, the majority of the LDAR programs in place at OLD facilities use a 10 percent HAP in organic HAP service definition and do not contain a 300-hour per year in service exemption because the LDAR programs tend to be State or local rules or older New Source Performance Standard-type rules. The proposed rule allowed an affected source to comply with either of two NESHAP (40 CFR part 63, subpart TT or UU) for equipment leaks. While both of these NESHAP contain an exemption for components in service less than 300 hours per year, they have an ''in organic HAP service'' definition of 5 percent (not 10 percent). When compared to a 10 percent ''in organic HAP service'' definition without a 300-hour per year exemption, a LDAR program with a 5 percent ''in organic HAP service'' definition with a 300-hour per year exemption is more effective in reducing emissions (*i.e.*, is more stringent). This occurs, in part, because there are more components caught by lowering the ''in organic HAP service'' definition than are ''lost'' due to the 300-hour per year in service exemption and, in part, because there are less emissions associated with components operating only 300 hours per year than from components in the 5 to 10 percent organic HAP range.

The 300-hour per year in service exemption has been provided in previous rules primarily to address equipment that has only occasional use in HAP service. Examples of such equipment are pumps and compressors used only during startup and shutdown of a process unit. Equipment in use less than 300 hours per year would be difficult to monitor within a regularly scheduled LDAR program, and very little emission reduction would be realized by including them.

The analysis of equipment LDAR programs in place within the OLD industry indicated that the 300-hour service exemption with monthly instrument-based inspections results in a level of control at least as stringent as the MACT floor level of control. Our investigation of the available control approaches for controlling equipment leaks did not identify any control approaches that would be beyond-the-floor level and also cost effective.

Therefore, for the reasons stated above, we are not removing the 300 hours per year exemption from the LDAR programs specified in the final rule.

Comment: One commenter stated that the CAA requires EPA to promulgate standards for all emission points at all major sources, and that exemptions based on capacity, throughput, and hours of service violate that requirement. The commenter noted that EPA attempts to justify the exemptions by arguing that the exempted facilities do not have a volume of emissions that warrants control, but the Agency does not claim that these emissions are *de minimis*.

Response: The EPA disagrees with the commenter's suggestion that every emission point at an affected source must be required to reduce emissions. Section 112(a) of the CAA does not state, or imply, that all emission points must be subjected to control

requirements in standards promulgated under section 112. Section 112(d)(1) allows the Administrator to distinguish among classes, types, and sizes of sources within a category or subcategory in establishing such standards. We interpret this provision for the final OLD rule, as we have for previous NESHAP, as allowing emission limitations to be established for subcategories of sources based on size or volume of materials processed at the affected source. Under the discretion allowed by the CAA to consider sizes of sources, we made the determination that certain small-capacity and low-use operations can be analyzed separately for purposes of identifying the MACT floor and determining whether beyond-the-floor requirements are reasonable. With regard to whether emissions from certain groups of sources are ''*de minimis*,'' the commenter did not elaborate on its interpretation of this term or how it might apply in discussing the OLD applicability criteria for emission limitations.

Comment: One commenter stated that the EPA has no discretion to exempt certain OLD emission sources such as container filling, wastewater collection, and semi-aqueous waste. Several other commenters stated that the final rule should explicitly state that wastewater operations, including the treatment, storage, transfer, or discharge of wastewater, are exempt from the final OLD NESHAP. Some commenters were concerned that the rule as proposed would regulate hazardous waste transfer and conveyance systems that are collocated at manufacturing facilities that are major sources for HAP and requested that EPA allow such sites to utilize alternate LDAR programs established under 40 CFR part 265, subpart BB, and 40 CFR part 63, subpart GGG.

Response: As previously discussed, the proposed rule would reduce HAP emissions from the distribution of organic liquid products that were either pure HAP liquids, mixtures of HAP and non-HAP liquids, or crude oils, focusing on products (including crude oil, which is a naturally occurring product) intended for further use or processing. The handling of wastewater and semi-aqueous waste is not part of the distribution of organic liquid products. The definition of ''organic liquid'' in the final rule excludes hazardous waste, wastewater, and ballast water. In addition, the final rule clearly states that emission sources that are part of the affected source under another 40 CFR part 63 rule (such as oil and natural gas production) are not included in the affected source for the final OLD rule.

However, based on a review of data on container filling operations, we have determined that the only MACT floor for either existing or new sources is a new source floor for container filling operations. We identified one container filling operation that controls emissions by performing the operation in a total enclosure that is vented to a thermal oxidizer. This level of control meets the level 3 control for container filling found in 40 CFR part 63, subpart PP, the National Emission Standards for Containers. We have not, however, identified any technology that would achieve cost-effective beyond-the-floor control for new source container filling operations. The final rule requires owners or operators of new container filling operations to comply with the level 3 control requirements found in § 63.924 of subpart PP.

B. Emission Limitations and Work Practice Standards

Comment: A commenter claimed that EPA set the floor for new storage tanks the same as the floor for existing tanks without demonstrating that the floors reflect the best performing source, and claimed that EPA set the floor for existing transfer racks as the use of a control device with 95 percent control efficiency based on a ''cursory analysis.''

The commenter states that EPA's proposed emission standards do not reflect the maximum achievable degree of reduction in emissions, and that EPA failed to adequately consider beyond-the-floor standards for each of the three regulated emission sources.

Response: As a clarification, the averaging process (for either the arithmetic average or the median) is applied to the top 12 percent of sources and not to the whole data set. This approach, consisting of more than one possible way of determining floors, is a practical necessity when working with the results of an averaging process. In examining our database and evaluating it based on comments, we have used the median source of the top performing 12 percent of existing sources where there are at least 30 sources, or the median source of the top performing five sources where there are fewer than 30 sources to determine MACT floors for the final OLD rule. Our methodology for determining MACT floors for existing sources is reasonable and conforms to the legal requirements of the CAA.

In developing the proposal and performing the MACT floor analysis for storage tanks, we evaluated each of the three primary types of tanks used for storage of organic liquids. These tank types are characterized by their basic construction and are referred to as fixed roof, internal floating roof, and external floating roof tanks. The selection of which type to use in a given situation is based on factors including capacity, types of liquids to be stored, climate, throughput, and cost. The emission control approach utilized for storage tanks differs depending on the tank type. The most common emission control approach for organic liquids storage tanks is floating roof technology, installed as either an internal or external floating roof. Floating roofs with properly designed seals and gaskets have been determined to perform at the highest level of emission control in use for storage tanks. External floating roof tanks achieve a somewhat lower control efficiency, because the vapor space above the floating roof is open to the atmosphere. However, the application of floating roof technology is the best demonstrated technology for this type of tank construction. For these reasons the Agency has developed storage tank equipment standards that specify in detail the design features that must be incorporated into a compliant floating roof design.

The emission reductions that can be achieved by add-on control devices on fixed roof tanks are equivalent to the reductions that can be achieved by floating roof technology. As with floating roof technology, the performance of the various types of add-on controls are somewhat variable depending on operational factors such as the types of liquids being stored and the tank filling rate. Properly designed and operated add-on control systems have been demonstrated to achieve emission reductions of 95 percent or greater from fixed roof storage tanks.

We developed MACT floor levels of control for the range of tank capacities and HAP vapor pressure of liquids stored based on the OLD storage tank database. The MACT floor level of control that was determined from the database is the use of properly designed floating roof technology or an add-on control device achieving a 95 percent reduction in HAP emissions. The MACT floor for storage tanks at new sources is not the same as the floor for tanks at existing sources. The new source storage tank floor is more stringent because the control requirements extend to tanks storing liquids with lower vapor pressures (*i.e.*, more tanks will undergo control than at existing sources). New storage tanks in the 10,000 to 50,000 gallons capacity range will be subject to control under the final OLD rule at HAP vapor pressures as low as 0.1 psia (versus 4.0 psia for existing tanks in this same capacity range).

Based on our review of the types of control devices in use (primarily incinerators, adsorbers, and scrubbers) and the range of control efficiencies reported (approximately 20 percent to over 99 percent), we proposed that 95 percent was the most appropriate control efficiency for transfer operations. We selected this value based on the known capabilities of these control devices and on regulatory limits specified in other rules.

Following proposal, we re-analyzed our OLD database and determined that the MACT floor for transfer racks at existing and new sources is a control efficiency of 98 percent, based on the best performing sources. The 98 percent level of control has been shown to be achievable by well-designed and operated combustion devices. The choice of control options is not limited to combustion devices, however, as vapor balancing systems also achieve the required 98 percent control level where they are technically feasible.

In evaluating beyond-the-floor alternatives, we examined the ability to switch products, the ability to switch fuels, the potential for improved performance of add-on controls at already controlled sources, and the use of add-on control devices to reduce emissions from sources for which we determined the floors were ''no additional emission reductions.''

The emission sources subject to the OLD rule are storage tanks, transfer racks, and equipment leak components (pumps, valves, and sampling connections). The liquids that are stored in storage tanks are those liquids required by a facility or its customers. It is not feasible for a facility to switch to a lower vapor pressure liquid when its customer requires a specific liquid. Therefore, product switching is not a feasible beyond-the-floor alternative for storage tanks. For the same basic reason, product switching is not a feasible beyond-the-floor alternative for transfer racks. Finally, equipment leak components can only leak what is in the process stream that they contact. Those process streams come from OLD storage tanks and transfer racks. As product switching is not feasible for tanks and racks, it is not feasible for equipment leaks.

With regards to fuel switching, the emissions that occur from tanks, racks, and equipment leak components have no fuel sources associated with them. The emissions occur as the result of displaced vapors when loading, breathing losses, and leaks. There are no fuel sources to ''switch.'' Therefore, fuel switching is not feasible.

The use of add-on control devices, including vapor balancing, however, represents a feasible beyond-the-floor alternative for storage tanks and transfer racks. Our analyses of beyond-the-floor alternatives for those emission sources for which we determined the floors are ''no emission reduction,'' showed cost-effectiveness values greater than $10,000 per ton for storage tanks and greater than $50,000 per ton for transfer racks. We have determined that these values are not reasonable. Further, because add-on controls were determined to be ''not cost effective,'' we did not evaluate the associated impacts of add-on controls for energy and other non-air quality environmental impacts. We note here that we have included in the final rule the option for transfer racks of using a vapor balancing system where technically feasible. These systems have demonstrated control efficiencies of 98 percent or greater (*i.e.*, floor levels of control).

Our investigation of the available control approaches for controlling equipment leaks did not identify any control approaches that would be beyond-the-floor level and also cost effective. We are, therefore, promulgating equipment leak standards based on the floor level of control determined from the OLD database.

Comment: Commenters stated that the proposed rule text did not indicate whether the entire CAA section 112 HAP list or the proposed OLD Table 1 to subpart EEEE of part 63 HAP list is the appropriate chemical list to use for the various determinations and performance demonstrations, even though the proposal preamble notes that organic HAP listed on Table 1 to subpart EEEE of part 63 (and all crude oil except black oil) are the ''regulated liquids.'' One commenter noted that the proposal did not include emission standards for 24 of the 93 organic HAP that EPA claims are emitted from OLD operations, based on the Agency's claim that the HAP for which standards were not set are lower in volatility and have lower potential to be emitted.

Response: We have written Table 1 to subpart EEEE of part 63 to include all of the organic HAP identified as being present in OLD liquids. The control devices and work practice standards in the final OLD rule affect all of the HAP in an OLD liquid, even those that have lower emission potential due to their low vapor pressure. By including all of the known organic HAP in Table 1 to subpart EEEE of part 63, there is no longer any inconsistency between the HAP emitted by OLD operations, the HAP used to determine whether control is required, and the HAP used to demonstrate compliance. Therefore, while the initial determination of whether an entire facility meets the criteria for being a major source is based on all the HAP listed in the CAA, compliance with the final OLD rule is based only on the 98 HAP found in Table 1 to subpart EEEE of part 63.

Comment: One commenter pointed out that EPA has proposed allowing sources to meet a standard for TOC emissions rather than meeting any standard for HAP, stating that the Agency cannot credibly claim that TOC is a valid surrogate for all HAP that OLD facilities emit. In addition, the TOC option would result in control of even fewer HAP. For these reasons, the commenter believes this provision of the proposal is unlawful.

Response: The primary format for the emission limits in the final OLD rule is a control efficiency standard for organic HAP. At proposal, we offered the option of complying with the percent reduction standards using a TOC format. The use of ''surrogate'' pollutants is an accepted practice in environmental regulation, because it is often reasonable to infer similar behavior among members of a class of pollutants that share a common attribute. *Dithiocarbamate Task Force* v. *EPA,* 98 F.3d 1394, 1399 (D.C. Cir. 1996); *NRDC* v. *EPA,* 822 F.2d 104, 125 (D.C. Cir. 1987). Significant regulatory cost and time can be saved by relying on that relationship; monitoring, sampling, and recordkeeping can be reduced when a surrogate pollutant, rather than numerous individual pollutants, are tracked. Specifically, EPA's use of a surrogate pollutant in the MACT program has been upheld as reasonable in judicial review, where the court held that if control of the surrogate pollutant is the means by which sources achieve reductions in multiple HAP, EPA may require surrogate control without quantifying the reduction in HAP thus achieved. *NLA* v. *EPA*, 233 F.3d 625, 639 (D.C. Cir. 2000). After evaluating the comments, we have retained the optional TOC measurement format, but have added a requirement for a demonstration by the owner or operator that the HAP emission reduction achieved is at least as stringent as the TOC emission reduction for their affected sources. To make this demonstration, the owner or operator will have to show that the ratio of captured organic HAP-to-TOC is at least 1-to-1, such that it can thereafter be assured that capture of TOC will result in capture of organic HAP to at least as stringent a level as required. After the initial demonstration to establish the relationship between HAP and TOC emission reductions, use of the TOC

format will be an acceptable alternative emission limit.

For the 20 ppmv outlet concentration standard, the use of TOC is an acceptable option without an equivalency determination. Because measured TOC in a gas stream includes all HAP, and may include some organic compounds that are not HAP, the concentration of HAP at the outlet of a control device will always be less than the measured TOC value. Thus, the limitation of TOC to a maximum concentration of 20 ppmv will always result in HAP emissions of 20 ppmv, or less.

We initially selected the TOC format as a possible alternative for the standards to provide flexibility for source owners and operators, while still requiring the MACT level of emission control to be achieved. The requirements of the final OLD rule will accomplish both objectives by allowing the use of a demonstrated surrogate, in appropriate cases. The approach adopted in the final rule will ensure that in all cases where the TOC surrogate is used, the correlation between the surrogate and organic HAP will have been demonstrated, and that control of the surrogate will achieve emission reductions of organic HAP at least as stringent as under the organic HAP limit.

Comment: Several commenters stated that the proposed rule fails to provide for the use of a number of proven emission reduction options and focuses primarily on closed vent systems and control devices. The commenters stated that EPA must allow the option of vapor balancing for storage tank and transfer rack emission reduction. Further, emission reduction options such as cooling the liquid in a storage tank to reduce vapor pressure, maintaining an inert gas blanket, or routing emissions to a fuel gas system or to a process should be specifically stated to be acceptable alternatives for compliance with the proposed rule.

Response: We have considered these comments and reviewed the provisions of the HON and other MACT rules that allow the alternative of vapor balancing, and we have added vapor balancing to the final rule as an alternative control approach for transfer racks (*i.e.*, to control HAP vapors displaced during the loading of transport vehicles). Vapor balancing is a highly efficient (98 percent or greater) means of reducing the emissions of vapors displaced during the loading of transport vehicles. Vapor balancing to a fixed roof tank with an add-on control device may be a viable option for facilities that utilize this type of tank. However, vapor balancing is not technically feasible in all cases.

We recognize that, for the variety of liquids and equipment configurations that exist at OLD operations in many different industries, there may be numerous control approaches that would reduce HAP emissions to a degree equivalent to an end-of-pipe control system. Cooling a liquid may reduce its actual vapor pressure below the threshold for control in a storage tank, in which case the storage tank control requirements would not apply. The final rule addresses the routing of emissions to a fuel gas system or a process in §§ 63.2346(a) and (b) and 63.2378(d). We have not added the use of an inert gas blanket as an approved control measure because we have no evidence (and the commenters did not provide any) that this approach inherently provides the level of control required by the final standards. However, § 63.2346(g) of the final rule provides for requests for approval to use any other alternative approach. We have added a reference to § 63.177 of the HON to provide a more structured method for receiving approval of approaches that are not specifically listed in the final rule.

Comment: One commenter requested that the availability of the floating roof option be limited to those storage tanks storing stock with an annual average true vapor pressure of less than 11.1 psia. Proposed Table 4 allows compliance with 40 CFR part 63, subpart WW (floating roof control), as an alternative compliance measure for storage tanks, but without this vapor pressure restriction. Other EPA rules require controls on tanks storing stocks with vapor pressure greater than 11.1 psia (if the tank is in the capacity category that is subject to controls), but they do not allow the use of floating roofs as a control option for these higher volatility stocks. Several commenters also recommended that the storage tank definition should exclude pressure vessels designed to operate in excess of 204.9 kilopascals (29.7 psia) and without emissions to the atmosphere.

Response: We have written the final OLD rule to limit the application of floating roof technology to storage tanks containing organic liquids with an organic HAP annual average true vapor pressure less than 76.6 kilopascals (11.1 psia). For affected tanks with liquids ≥11.1 psia, only a closed-vent system and control device may be used. The OLD storage tank definition has also been written to exclude from OLD coverage pressure vessels designed to operate in excess of 204.9 kilopascals (29.7 psia) and without emissions to the atmosphere.

Comment: One commenter noted that EPA proposed to regulate equipment leaks through work practice standards, and EPA has not determined that it is not feasible to prescribe or enforce an emission standard. In fact, EPA notes in the TSD that leakless equipment, such as seal-less pumps, can ''eliminate emissions entirely.''

Response: We have previously determined in the development of rules such as the HON that emission standards (in the format of a numerical emission limit) are not feasible for equipment leaks. Under section 112 of the Act, national emission standards must, whenever possible, take the format of a numerical emission standard. Typically, an emission standard is written in terms of an allowable emission rate (mass per unit of time), performance level (*e.g.*, 90 percent control), or an allowable concentration. These types of standards require the direct measurement of emissions to determine compliance. For some source types, emission standards cannot be prescribed because it is not feasible to measure emissions. Section 112(h)(2) of the CAA recognizes this situation by defining two conditions under which it is not feasible to establish an emission standard. These conditions are: (1) If the pollutants cannot be emitted through a conveyance designed and constructed to emit or capture the pollutant; or (2) if the application of measurement methodology is not practicable due to technological and economic limitations. If an emission standard cannot be established, EPA may instead establish a design, equipment, work practice, or operational standard or combination thereof.

For equipment leak sources, such as pumps and valves, EPA has previously determined that it is not feasible to prescribe or enforce emission standards. Except for those items of equipment for which standards can be set at a specific concentration, the only method of measuring emissions is total enclosure of individual items of equipment, collection of emissions for a specified time period, and measurement of the emissions. This procedure, known as bagging, is a time-consuming and prohibitively expensive technique considering the great number of individual items of equipment in a typical process unit. Moreover, this procedure would not be useful for routine monitoring and identification of leaking equipment for repair.

While we did not include this rationale in the OLD proposal, emission

standards in the form of numerical emission limits are not feasible for components subject to the OLD equipment leak regulations, and we have included the rationale in the final rule for establishing the equipment leak standards under CAA section 112(h).

The use of leakless equipment, as discussed in the TSD, may not be compatible with many of the liquids transferred at OLD sources. For example, seal-less pumps use the pumped liquid for lubrication and cooling, and some transferred liquids may not be adequate in this capacity. Also, this equipment can develop leaks after a period of time, which would require an LDAR program similar to the program in place for traditional equipment. For OLD operations, we have not developed enough experience and do not have data to indicate that equipment emissions at these operations justify this extreme type of reduction approach. The LDAR program represented in the final rule is being used successfully throughout industry to maintain low leakage rates from equipment.

Comment: Several commenters believe that EPA should not require instrument LDAR to control equipment leaks at OLD facilities. They said that instrument scanning for equipment leaks is impractical and not cost-effective, and they recommended that the OLD MACT rule specify a sensory (sight, sound, smell) leak detection and repair program similar to that in the Gasoline Distribution MACT rule, 40 CFR part 63, subpart R. One of the commenters felt that many OLD sources are already subject to regular Coast Guard inspection as well as EPA's SPCC plan requirements. The gains from additional LDAR requirements on the same piping must be quite limited but would come with a substantial burden.

Another commenter noted that the preamble states that the Agency found that an instrument-based LDAR program similar to the HON represents the MACT floor, but the OLD MACT rule generally applies to facilities similar to bulk gasoline terminals. Consequently, Table 4 Item 3 should state: ''You must comply with the requirement of subpart R of this part.''

Response: In our MACT analysis, we determined that the MACT floor for existing sources is an instrument-based LDAR program. We further determined that this is the best system of emission reduction available, so we selected it as MACT for existing and new sources. Therefore, allowing a sensory program would not represent MACT because such programs have not been demonstrated to the Administrator's satisfaction to be equivalent to equipment-based programs for OLD operations. We specifically requested data to show that sensory programs would achieve the MACT level of control. In the development of 40 CFR part 63, subpart R, industry provided such data for gasoline and the final rule allows sensory programs. The Agency has received no data to support the claim that sensory programs would achieve equivalent control for OLD operations. Therefore, we have not written the equipment leak standards in the final rule as requested by the commenters. The final rule provides flexibility by allowing LDAR programs that are consistent with the provisions of 40 CFR part 63, subpart TT, UU, or H.

C. Testing, Compliance Requirements, and Monitoring

Comment: One commenter felt that proposed Table 5 to subpart EEEE of part 63 needs to be revised to allow for design evaluations in lieu of performance testing for non-flare control devices controlling emissions from storage tanks, as 40 CFR part 63, subpart SS specifies. In proposed § 63.2362, there is no language explaining specifically when a design evaluation may be done in lieu of a performance test. In addition, it appears that you must conduct a performance test to demonstrate compliance with emission limits in Table 2 to subpart EEEE of part 63 for both storage tanks and transfer racks. The commenter provided suggested revised language to clarify § 63.2362 through references to applicable provisions of subpart SS.

A second commenter noted that the text of proposed § 63.2354(a) pertaining to ''other initial compliance demonstrations'' was imprecise and confusing, since there is nothing other than performance testing requirements in 40 CFR 63.7(a)(2).

One commenter noted that a source that qualifies as an existing source may already be obligated to perform initial performance tests as a condition of a new source review construction permit. In the event of overlapping requirements to perform initial performance tests, there should be coordination of the schedule by which the testing is to be performed.

Two other commenters noted that proposed § 63.2358 would require performance testing of a control device used to comply with the OLD rule even if it is the same control device already tested and in use for compliance with another 40 CFR part 63 NESHAP standard. They felt that a facility that has already conducted performance testing to comply with a more stringent NESHAP should be able to use those test results in place of a new performance test.

Response: We have written § 63.2354 of the final rule and Table 5 to subpart EEEE of part 63 to clarify that design evaluations may be used in lieu of performance testing for demonstrating initial compliance for nonflare control devices. The requirements in 40 CFR 63.985(b)(1) were developed to ensure that design evaluations include adequate documentation to demonstrate that the control device being used achieves the required control efficiency. By specifically listing this alternative to performance testing in the final OLD rule, we have provided additional flexibility to owners or operators and increased uniformity among the other MACT rules that affect them.

We have also written the language in § 63.2370 of the final rule to clarify that the initial compliance demonstrations referred to in that section are those initial compliance requirements contained in Tables 6 and 7 to subpart EEEE of part 63. We have clarified that the General Provisions in § 63.7(a)(2) impose a schedule for the performance testing, while design evaluations are to be submitted in the Notification of Compliance Status per § 63.985(b)(1) of 40 CFR part 63, subpart SS.

Under 40 CFR 63.7(h), the owner or operator of an affected facility may request a waiver of the performance test requirements. Individual performance tests may be waived if, in the Administrator's judgment, the source is meeting the relevant standard(s) on a continuous basis. The provisions allowing for submission of a request for a waiver of the performance test, accompanied by supporting information such as a documented performance test previously conducted on the device, should avoid the situation of overlapping tests.

Comment: One commenter stated that EPA has failed to mandate adequate continuous monitoring requirements and that, at a minimum, EPA must establish requirements that provide a reasonable assurance of compliance. As an example, EPA did not propose the use of continuous emission monitoring systems (CEMS), but rejected them on cost grounds without indicating why the costs are too high. Another commenter noted that 40 CFR part 63, subpart SS (§ 63.990(c)), allows for use of organic monitoring device CEMS as an alternative to the continuous parameter monitoring systems (CPMS) for which operating limits are to be established. The final OLD rule should include the same allowance.

Response: Section 112 of the CAA does not require EPA to impose a CEMS requirement in MACT standards. Instead, EPA has substantial discretion in exercising its technical expertise to devise a monitoring system that assures compliance with applicable requirements. *NLA* v. *EPA,* 233 F.3d 625, 635 (D.C. Cir. 2000); *Marsh* v. *Oregon Natural Resources Council,* 490 U.S. 360, 377 (1989). Particularly, the D.C. Circuit has already ruled that parameter monitoring requirements provide the necessary assurance of continuous compliance with applicable requirements and enhance the enforceability of emission standards, as required by the CAA. *NRDC* v. *EPA,* 194 F.3d 130, 134–37 (D.C. Cir. 1999). The commenters should note that the proposal included a requirement (in § 63.2366(a)) to install, operate, and maintain a CPMS on each control device installed under the final OLD rule. These CPMS continuously measure an operating parameter of the control device that influences emissions (such as temperature inside a thermal incinerator, vacuum achieved during the desorption cycle of a carbon adsorption system, etc.). They have been widely prescribed in several other MACT rules and are specified under the monitoring requirements of 40 CFR part 63, subpart SS. We consider properly selected CPMS to provide a reasonable assurance of compliance with the applicable requirements established in the final OLD rule. Deviations from the established values (operating limits) for these parameters must be reported by the facility in their periodic reports to EPA.

Because CPMS are judged to provide a reasonable assurance of compliance and are generally less expensive to install and operate, a requirement to use CEMS is not necessary. While we are not requiring the use of CEMS in the final OLD rule, facilities may request to utilize CEMS as an alternative monitoring method under § 63.8 of the General Provisions.

In addition, we have added an option for the use of organic monitoring devices (one type of CEMS) to Table 9 to subpart EEEE of part 63. In accordance with the 40 CFR part 63, subpart SS, requirements in § 63.990(c), an organic monitoring device may be used (as an alternative to CPMS) where absorbers (scrubbers), condensers, and carbon adsorbers are used to meet a weight percent emission reduction or a ppmv outlet concentration requirement. Organic monitors provide a reasonable assurance of compliance by quantifying exhausted total organic compounds (pollutants), which in turn provides an indication of the proper operation of the control device. A properly operating control device will continue to achieve the required control levels for organic HAP specified in the final OLD rule.

The alternative of installing and operating either CPMS or CEMS, in conjunction with effectively managed control devices, will provide a reasonable assurance of compliance with the final OLD rule's requirements.

Comment: Several commenters asserted that EPA has proposed installation, operation, and maintenance requirements for continuous parameter monitoring systems in § 63.2366 of the final rule that are wasteful, unnecessary, and in some cases infeasible and will have environmentally negative impacts. Due to the significant problems associated with the proposed continuous parameter monitoring system requirements, EPA should withdraw these requirements from the OLD final rule and use the existing subpart SS requirements for continuous monitoring systems.

Response: We have decided not to include the performance specifications for CPMS in the final OLD rule as they were proposed. We have clarified in the final rule that owners and operators must comply with the continuous monitoring provisions of subpart SS. Since owners and operators subject to the final OLD rule are required to comply with the requirements of subpart SS, they are already required to follow written performance specifications. We have concluded that the requirements in subpart SS are adequate to ensure that CPMS are properly operated and provide reasonable assurance of continuing compliance with the standards.

In a separate action, we are currently developing performance specifications for CPMS that we intend to propose to be followed by owners and operators of all sources subject to standards under 40 CFR part 63. We decided it would be premature to promulgate performance specifications for the final OLD rule when the performance specifications that would ultimately be promulgated in the General Provisions of 40 CFR part 63 may be significantly different as a result of possible public comments received on that rulemaking.

Comment: One commenter stated that a minimum or maximum parameter monitoring limit should be established based on the parameter values measured during the performance test and supplemented by engineering assessments and/or manufacturer's recommendations. Nowhere in the proposal preamble, 40 CFR part 63, subpart EEEE, or any of the referenced standards is there any indication of how operating limits are established. The final OLD rule should allow the facility to establish the operating limits necessary to achieve the requirements of Table 2 to subpart EEEE of part 63. This would be consistent with the HON. In addition, the conditions for conducting performance tests should be consistent between Table 12 to subpart EEEE of part 63 (§ 63.7(e)(1)) and § 63.997(e)(1) of 40 CFR part 63, subpart SS, to avoid confusion.

Response: We have included in the final OLD rule a requirement for the owner or operator to develop and submit a monitoring plan according to the requirements in § 63.985(c) of 40 CFR part 63, subpart SS. The monitoring plan must specify the parameters that an owner or operator proposes to monitor and the range of acceptable values for each parameter. The final OLD rule specifies parameters that must be monitored unless the owner or operator chooses to request permission to monitor an alternative parameter. The final OLD rule does not, however, provide specific ranges of acceptable values for the monitored parameters. Owners or operators must establish monitored parameter limits based on performance testing or design evaluation information. Thus, the owner or operator now has the flexibility to establish monitoring parameter limits that are most appropriate for assuring that their particular equipment complies with the emission limitations.

Comment: Two commenters stated that, in Tables 3 and 9 to subpart EEEE of part 63, compliance with the operating limits should be based on a daily average value instead of an hourly average. They claim that using an hourly average as the basis for compliance with the operating limit is a very stringent requirement and is in direct conflict with numerous 40 CFR part 63 standards. They also claim that the use of daily averages instead of hourly averages supports every legitimate need of EPA's Enforcement Office, while still making compliance with the final OLD rule possible.

Response: We have evaluated the changes recommended by the commenters and have modified Tables 3 and 9 to require that daily average values of recorded parameters be used to determine compliance. Daily average values have been considered by EPA in other MACT rules to be sufficient to demonstrate compliance for the types of control devices in use within this industry. We concluded, after further evaluation, that an hourly average may not be sufficient to account for normal, short-term fluctuations of operating

parameter values. Also, the parameter monitoring limits are normally established during performance testing that covers a span of three, 1-hour runs. This testing period helps ensure that short-term variations in operating conditions (temperature, flow rate, concentration, etc.) do not inappropriately bias the overall average. It is consistent with EPA policy developed in other MACT rules and with good engineering judgement to allow daily average values to be used to determine compliance. It should also be noted that in cases where an emission source operates for a total of less than 24 hours at a time, the average recorded values must comply over the total operating period.

Comment: One commenter stated that the non-applicability of the emission limits during periods of SSM is unclear and needs to be addressed, and recommended that specific language in § 63.2378, patterned on 40 CFR §§ 63.102–103 or 63.480(j) regarding operation during SSM, be included in the final OLD rule.

Response: We have written the language in § 63.2378 to clarify the applicability of the emission limitations during periods of SSM. While the emission limitations still apply during periods of SSM, deviations from the emission limitations during these periods are not automatically considered to be violations if the owner or operator demonstrates that they have followed the requirements of their SSM plan. Paragraphs (b)(2) of § 63.2378 require that control devices be operated during periods of SSM if possible without damaging the devices and paragraphs (b)(3) require that appropriate measures be taken to minimize emissions during periods of SSM. The final OLD rule does require, in § 63.2386(d), that deviations from the emission limitation that occur during periods of SSM be reported in the semiannual compliance report.

Comment: The same commenter stated that proposed § 63.2378(d) is unnecessary and confusing and should be deleted, stating that SSM requirements are adequately addressed in the recently amended General Provisions and no argument has been made to justify deviating from those provisions.

Response: As discussed in the previous response pertaining to SSM requirements, we have clarified in the final rule that deviations occurring during periods of SSM must be reported in the semiannual compliance report even though they are not automatically considered to be violations of the emission limitation. The result is more consistency between the final OLD rule and other recently promulgated rules and also provides the EPA with information necessary to decide on a case by case basis if further documentation should be requested from a facility.

Comment: Several commenters felt that EPA should allow storage tanks with nonconforming seals to upgrade the seals up until the next time the tank is out of service, but no more than 10 years after rule promulgation. For an existing affected source, the proposed OLD rule would have required compliance with the emission limitations and work practice standards for existing sources no later than 3 years after the effective date of the final rule. Other MACT rules with storage tank provisions recognize that a 3-year compliance schedule would typically result in an increase in emissions because the emissions associated with emptying and degassing the tanks for performing the required alterations can be greater than the emission reductions that those alterations would achieve.

Response: In response to these comments, we reviewed the allowances made in other MACT rules regulating storage tanks, and also the Generic MACT standards for storage vessels, 40 CFR part 63, subpart WW, which are an allowable alternative (in Table 4 of the proposed rule) to the 95 percent emission limit.

The Gasoline Distribution MACT rule (40 CFR part 63, subpart R) allows a 3-year compliance period for upgrading external floating deck rim seals and for applying controls (gaskets, etc.) to deck fittings. However, if only the fitting controls are needed for a particular external floating roof tank to achieve compliance, the facility may wait until the next scheduled degassing and cleaning of the tank (or up to 10 years) to install the fitting controls. Subpart WW of 40 CFR 63.1063(a)(2)(ix) is similar to the Gasoline Distribution rule in that fitting controls may be installed up to 10 years after promulgation.

The Petroleum Refinery MACT rule (40 CFR part 63, subpart CC) allows up to 10 years to achieve compliance for existing floating roof storage tanks, but gives fixed-roof tanks only 3 years to comply due to the much greater emission reduction achieved for fixed-roof tanks.

Analysis of the emissions created by a tank degassing and cleaning event were performed under both the Gasoline Distribution and Refinery rules. We agree that for OLD storage tanks, the net cumulative emissions from performing a special cleaning and degassing to bring a floating roof tank into compliance would be greater than from allowing an OLD operation to wait until a scheduled cleaning event to make these modifications. Therefore, the final OLD rule includes a provision to allow a facility up to 10 years to convert the rim seals or deck fittings on existing floating roof tanks. However, the analysis for the Refinery rule showed that the emissions from degassing and cleaning fixed-roof tanks can be balanced within 1 year by the reductions achieved by applying the subpart WW controls (specific floating roofs and seals) or a 95 percent efficient control device. Therefore, existing fixed-roof tanks are required in the final rule to achieve compliance within 3 years after the effective date.

The final OLD rule is written to be consistent with the overall CAA goal of reducing HAP emissions. In a situation such as the control of this type of storage tanks, strictly adhering to the 3-year compliance timeframe to implement the MACT floor level of control actually results in increased emissions. Thus, if our goal is to reduce HAP emissions, we are faced with a choice of allowing facilities more time to comply with the MACT level of control or not require that they comply at all. The approach taken achieves more HAP emission reductions than would be achieved by not requiring facilities to meet the MACT level of control.

D. Notifications, Reports, and Records

Comment: One commenter stated that the provisions of proposed § 63.2386(c)(4) and (d) (information to be included in semiannual Compliance reports) are too broad and EPA has not indicated why such broad applicability is needed and what useful purpose repeated submittal of information will serve.

Similarly, another commenter requested that EPA revise § 63.2386(d) concerning the first Compliance report because the records requested in § 63.2386(d)(1), (4), and (5) will literally require the submission of reams of paper with each Compliance report.

Response: We have reviewed the proposed requirements related to the content of the initial notification of compliance status (NOCS) and subsequent compliance reports. We agree that, to the extent that the initial NOCS includes the information necessary to understand the OLD activities at the site, this information need not be reported again in subsequent compliance reports unless there are substantive changes affecting applicability or organic HAP emissions. Therefore, we have streamlined the referenced paragraphs to eliminate

duplicated information (but also to require the initial Compliance report to contain any updated or final facility information that was not reported in the NOCS).

Comment: One commenter stated that language added April 5, 2002, to 40 CFR 63.10(d)(5)(i) of the General Provisions concerning reporting the number, duration, and a brief description of each SSM is unnecessarily burdensome for OLD-type operations, where there are many individual components, any of which can be undergoing SSM activities independent of the other components. The commenter suggested that the approach used in the HON offers reasonable relief and that it be used. Specifically, the commenter recommended that requirements for recordkeeping and reporting be for ''startups, shutdowns, and malfunctions during which excess emissions occur.''

Two other commenters expressed concern with the immediate SSM reporting requirement in Table 11 to subpart EEEE of part 63, item 2. They stated that this requirement should be made consistent with the HON, which allows these events to be reported in the next semiannual Compliance report.

Response: The amount of information required in the amended General Provisions for the SSM reports does not represent an undue burden for OLD operations. We believe that the additional information required under the amended General Provisions is useful to the EPA in gaining an understanding of the frequency, duration, and types of SSM activities at an affected source. Because sources are required to minimize emissions to the extent which is consistent with safety and good air pollution control practices during periods of SSM, gaining an understanding of the overall operation of an affected source is important. Therefore, we have retained the requirement in § 63.2386(c)(5), which references the General Provisions. We have also retained the requirement in Table 11 to subpart EEEE of part 63, item 2, which specifies that an immediate SSM report must be submitted if the owner or operator takes an action that is not consistent with their SSM plan. We concluded that a failure to follow an approved SSM plan should not go unreported for a period of time that could be almost 6 months. In those cases where the owner or operator follows their SSM plan, reporting in the next scheduled compliance report is allowed under Table 11 to subpart EEEE of part 63.

Comment: Two commenters expressed concern with proposed § 63.2378(b), which implies that if the operator starts up or shuts down a control device and it does not meet the 1-hour average temperature because it only ran for 15 minutes of a given hour, then the operator has to report that they did not meet the required temperature even though the temperature during the actual loading operation may have met the requirements. One of the commenters stated that this results in much more recordkeeping and reporting than the HON, Polymers & Resins MACT rules, or 40 CFR part 63, subpart SS, for no environmental or compliance benefits.

Response: We have written the language in § 63.2378 to clarify the applicability of the emission limitations during periods of SSM. While the emission limitations still apply during periods of SSM, deviations from the emission limitations during these periods are not automatically considered to be violations if the owner or operator demonstrates that they have followed the requirements of their approved SSM plan. Paragraphs (b)(2) require that control devices be operated during periods of SSM if possible without damaging the devices and paragraph (b)(3) require that appropriate measures be taken to minimize emissions during periods of SSM. The final OLD rule does require, in § 63.2386(d), that deviations from the emission limitations that occur during periods of SSM be reported in the semiannual compliance report, even though they are not automatically considered to be violations of the emission limitations. It should be noted that the averaging period has been written as daily averages of monitored parameters and, also, that monitoring is only required during periods of operation of the emission source. In the commenters example of a source operating for only 15 minutes, if the monitored parameter meets the operating limitation during that period of operation, it would not be considered a deviation.

E. Definitions

Comment: Several commenters felt that EPA should revise the definition of annual average true vapor pressure in proposed § 63.2406, as there is no good reason to require annual recalculation of the average ambient temperature. The referenced method for determining true vapor pressure (API 2517) uses the normal average annual temperature. This is published by the National Climatic Data Center as a cumulative average over many years, and thus may be considered a constant for a given location.

Commenters stated that the temperature basis used for vapor pressure determination should be related to the actual facility emission potential and consistent with the regulatory basis. Two of the commenters stated that the vapor pressure determination for storage tank applicability should be based on the annual average temperature of the stored organic liquid.

Response: We agree that the average annual temperature for a given location is not likely to vary from year to year to the extent that, if all other factors are unchanged, it will have a noticeable effect on emissions. Thus, annual recalculation of this temperature is unnecessary and we have written the definition in the final OLD rule to reflect this. As suggested by one of the commenters, we have also added the term ''actual annual average temperature'' to clarify that the actual liquid temperature should be used in determinations of vapor pressure.

We have also written the definition of ''annual average true vapor pressure'' so that it is based on the actual annual average temperature of the liquid, and annual recalculation of the vapor pressure value is not needed.

Comment: One commenter suggested that in the definition of black oil, EPA should delete the word ''hydrocarbon'' and the parentheses around ''petroleum'' to ensure clarity of intent. It is possible for a chemical plant to bring onto or ship out from a plant an oily, black hydrocarbon liquid that could meet the other criteria of this definition. The commenter believes that EPA intends that black oil be a technical term related only to petroleum liquids.

Response: We have deleted the term ''black oil'' from the final rule. All crude oil will now be subject to the requirements under the final OLD rule.

Comment: One commenter recommended that EPA use the proposed § 63.2334(b) definition of ''organic liquid'' in § 63.2406 (Definitions) to specifically exclude ''black oil'' and gasoline. Another commenter recommended that EPA revise the organic liquid definition to make clear the intent that the HAP content cutoff (5 percent by weight) applies to liquids other than crude oil.

Response: We have written the definition of ''organic liquid'' to clarify the intended meaning of this term in the final OLD rule and have removed the description of organic liquids from § 63.2334(b). We have included a 5 percent cutoff level for defining non-crude oil liquids as ''organic liquids.''

Comment: Many commenters suggested changes to the definition of

storage tank. One commenter stated that EPA should clarify that the rule only applies to stationary tanks. The proposed definition stated that the term means a stationary unit, and then cited several examples of non-stationary units. If these examples were to be interpreted as constituting the only non-stationary units that are not subject to the rule, then other portable tanks and containers could be improperly construed as being subject to the rule. Several commenters recommended that the storage tank definition should exclude pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere. Three commenters recommended that the storage tank definition be changed to clearly include blending tanks in the affected source and that, therefore, storage tanks and transport vessels used for ''incidental mixing and blending'' are a part of the OLD affected source. The commenters maintained that it must be clear that the OLD rule does not exclude from the affected source those storage tanks that have the ability to practice ''incidental blending and mixing to maintain product specifications.''

A final commenter recommended that vessels permanently attached to motor vehicles such as trucks, tank cars, barges, or ships be excluded from this definition (per the definition in the HON).

Response: We are in agreement with the commenters concerning the types of tanks intended to be covered by the term ''storage tank.'' We have written the definition to make it more consistent with other rules (such as the HON and the Miscellaneous Organic NESHAP) and to reflect suggestions of the commenters.

Comment: Two commenters suggested that the definition of transfer rack be amended by deleting the ''physically separate'' criterion because the 11.8 million liter (3.12 million gallon) throughput cutoff in the OLD rule is based on each transfer rack loading position and not the transfer rack as a whole. The last sentence in the transfer rack definition was also included in the HON subparts F and G definitions for loading rack, in §§ 63.101 and 63.111. Under the HON, this sentence was important to enable one to distinguish between the terms ''transfer rack'' and ''loading rack'' when making the Group 1/Group 2 determination. This Group status was based on throughput of the entire transfer rack and not each transfer rack loading position.

Response: We are retaining the definition as proposed for ''transfer rack,'' including the ''physically separate'' criterion, because we have written the description of the transfer rack emission source subject to emission standards from each loading position to the entire transfer rack, consistent with other air emission control regulations for volatile organic and petroleum liquid transfer operations. In the data reassessment we performed after proposal, we also found that the reported transfer rack data were sufficient to develop a MACT floor level of control for transfer racks but not for individual loading positions.

VI. 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 a regulation is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government 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 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 today's final rule is not a ''significant regulatory action'' because it will not have an annual effect on the economy of $100 million or more and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (ICR No. 1963.02) The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The final rule will require maintenance inspections of the control devices but will not require any notifications or reports beyond those required by the General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden to affected sources for this collection (averaged over the first 3 years after the effective date of the promulgated rule) is estimated to be 137,170 labor-hours per year, with a total annual cost of $7.5 million per year. These estimates include a one-time performance test and report (with repeat tests where needed), one-time submission of an SSMP with semiannual reports for any event when the procedures in the plan were not followed, semiannual compliance reports, maintenance inspections, notifications, and recordkeeping.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the

approved information collection requirements contained in the final rule.

C. Regulatory Flexibility Analysis

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule. The EPA has also determined that the final rule will not have a significant economic impact on a substantial number of small entities.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 100 or 1,500 employees, or a maximum of $5 million to $18.5 million in revenues, depending on the size definition for the affected North American Industry Classification System (NAICS) code; (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. It should be noted that companies in 42 NAICS codes are affected by the final rule, and the small business definition applied to each industry by NAICS code is that listed in the Small Business Administration (SBA) size standards (13 CFR 121). For more information on size standards for particular industries, please refer to the economic impact analysis in the docket.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We have determined that six small firms in the industries affected by the final rule may be affected. Out of the six affected small firms, none are estimated to have compliance costs that exceed one percent of their revenues.

In addition, the final rule is likely to increase profits at the many small firms not adversely affected by the final rule due to the very slight increase in market prices. The median compliance cost to sales estimates for the affected small and large firms is virtually identical (0.02 percent compared to less than 0.01 percent for the large firms) and no small firms are expected to close in response to incurring the compliance costs associated with the final rule.

Although the final rule will not have a significant economic impact on a substantial number of small entities, the final rule includes provisions that will minimize the impact on small entities in several ways. We chose to set the control requirements at the MACT floor control level and not at a control level more stringent. The transfer rack cutoff, based on facilitywide throughput, and tank size cutoffs in the final rule will reduce the effects on small businesses. We have identified a list of 98 HAP from the list of 188 in the CAA to be considered for regulation. Regulated liquids are non-crude oil organic liquids that contain at least 5 percent by weight of the 98 HAP listed in Table 1 to subpart EEEE of part 63 and a vapor pressure of at least 0.1 psia, and all crude oil after the first point of custody transfer after the production field. In addition, we worked with various trade associations during the development of the rulemaking. These actions have reduced the economic impact on small entities from the final rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's final rule does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the UMRA 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.''

Under 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 proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the regulation.

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. Furthermore, the final OLD NESHAP do not require these governments to take on any new responsibilities. Therefore, the requirements of section 6 of Executive Order 13132 does not apply to the 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 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.''

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. No affected plant sites are known to be owned or operated by Indian tribal governments. 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 regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost; therefore, the results of any such analysis would have no impact on the stringency decision.

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

The final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001). The rule is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, and use of energy. The reduction in petroleum product output, which includes reductions in fuel production, is estimated at only 0.006 percent, or about 311 barrels per day (about 15,500 metric tons per year). The reduction in coal, natural gas, and electricity output is expected to be negligible. The increase in price of petroleum products is estimated to be only 0.001 percent nationwide. While energy distribution services such as pipeline operations will be directly affected by the final rule, energy distribution costs are expected to increase by only 0.1 percent. We estimate that there will be a slight increase of only 0.001 percent of net imports (imports — exports), and no other adverse outcomes are expected to occur with regard to energy supplies. Given the minimal impacts on energy supply, distribution, and use as a whole nationally, all of which are under the threshold screening criteria for compliance with this Executive Order established by the Office of Management and Budget, no significant adverse energy effects are expected to occur.

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 bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rule involves technical standards. The EPA cites the following standards in the final rule: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3B, 4, 18, 21, 25, 25A, 27, 311, 316 (formaldehyde). Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 21, 27, 311, and 316. The search and review results have been documented and are placed in the docket (docket numbers A–98–13 and OAR–2003–0138) for the final rule.

Three voluntary consensus standards were identified as appropriate to the final rule. The voluntary consensus standard ASTM D6420–99, ''Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (GC/MS),'' is appropriate in the cases described below for inclusion in the final rule in addition to EPA Method 18 codified at 40 CFR part 60, Appendix A, for measurement of organic HAP or total organic compounds. Therefore, the standard ASTM D6420–99 is cited in today's final rule.

Similar to EPA's performance-based Method 18, ASTM D6420–99 is also a performance-based method for measurement of gaseous organic compounds. However, ASTM D6420–99 was written to support the specific use of highly portable and automated GC/MS. While offering advantages over the traditional EPA Method 18, the ASTM method does allow some less stringent criteria for accepting GC/MS results than required by EPA Method 18. Therefore, ASTM D6420–99 is a suitable alternative to EPA Method 18 only where: the target compound(s) are those listed in Section 1.1 of ASTM D6420–99; and the target concentration is between 150 ppbv and 100 ppmv.

For target compound(s) not listed in Section 1.1 of ASTM D6420–99, but potentially detected by mass spectrometry, the regulation specifies that the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble. For target compound(s) not listed in Section 1.1 of ASTM D6420–99, and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply.

As a result, EPA included ASTM D6420–99 in the final rule, and EPA Method 18 as a gas chromatography (GC) option in addition to ASTM D6420–99. This will allow the continued use of GC configurations other than GC/MS.

Two additional voluntary consensus standards, ASTM D2879–83 ''Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope,'' and API Publication 2517 ''Evaporative Loss from External Floating-Roof Tanks, Third Edition, February 1989,'' were already incorporated by reference in 40 CFR

§ 63.14 and are also being cited in the final rule for measurement of vapor pressure.

Five voluntary consensus standards: ASTM D1979–91, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS9–94 are incorporated by reference in EPA Method 311.

The search for emissions measurement procedures identified nine other voluntary consensus standards. The EPA determined that seven of these nine standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the final rule were impractical alternatives to EPA test methods for the purposes of the final rule. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for this determination for the seven methods are discussed in the docket.

Two of the nine voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of the final rule because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 2 (and possibly 1); and ASME/BSR MFC 12M, ''Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2.

Section 63.2362 and Table 5 to subpart EEEE of part 63 list the EPA testing methods included in the regulation. Under § 63.7(f) and § 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. § 801 *et seq.*, as added by the SBREFA, 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 this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. § 804(2). The final rule will be effective on February 3, 2004.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: August 25, 2003.

Marianne Lamont Horinko,

Acting Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

Subpart A—[Amended]

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

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

■ 2. Section 63.14 is amended by revising paragraphs (b)(8) and (c)(1) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(b) * * *

(8) ASTM D2879–83, 96, Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, IBR approved for § 63.111 and § 63.2406.

(c) * * *

(1) API Publication 2517, Evaporative Loss from External Floating-Roof Tanks, Third Edition, February 1989, IBR approved for § 63.111 and § 63.2406.

* * * * *

■ 3. Part 63 is amended by adding a new subpart EEEE to read as follows:

Subpart EEEE—National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)

Sec.

What This Subpart Covers

63.2330 What is the purpose of this subpart?
63.2334 Am I subject to this subpart?
63.2338 What parts of my plant does this subpart cover?
63.2342 When do I have to comply with this subpart?

Emission Limitations, Operating Limits, and Work Practice Standards

63.2346 What emission limitations, operating limits, and work practice standards must I meet?

General Compliance Requirements

63.2350 What are my general requirements for complying with this subpart?

Testing and Initial Compliance Requirements

63.2354 What performance tests, design evaluations, and performance evaluations must I conduct?
63.2358 By what date must I conduct performance tests or other initial compliance demonstrations?
63.2362 When must I conduct subsequent performance tests?
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63.2370 How do I demonstrate initial compliance with the emission limitations, operating limits, and work practice standards?

Continuous Compliance Requirements

63.2374 When do I monitor and collect data to demonstrate continuous compliance and how do I use the collected data?
63.2378 How do I demonstrate continuous compliance with the emission limitations, operating limits, and work practice standards?

Notifications, Reports, and Records

63.2382 What notifications must I submit and when and what information should be submitted?
63.2386 What reports must I submit and when and what information is to be submitted in each?
63.2390 What records must I keep?
63.2394 In what form and how long must I keep my records?

Other Requirements and Information

63.2396 What compliance options do I have if part of my plant is subject to both this subpart and another subpart?
63.2398 What parts of the General Provisions apply to me?
63.2402 Who implements and enforces this subpart?
63.2406 What definitions apply to this subpart?

Tables to Subpart EEEE of Part 63

Table 1 to Subpart EEEE of Part 63—Organic Hazardous Air Pollutants
Table 2 to Subpart EEEE of Part 63—Emission Limits
Table 3 to Subpart EEEE of Part 63—Operating Limits—High Throughput Transfer Racks
Table 4 to Subpart EEEE of Part 63—Work Practice Standards
Table 5 to Subpart EEEE of Part 63—Requirements for Performance Tests and Design Evaluations
Table 6 to Subpart EEEE of Part 63—Initial Compliance with Emission Limits
Table 7 to Subpart EEEE of Part 63—Initial Compliance with Work Practice Standards
Table 8 to Subpart EEEE of Part 63—Continuous Compliance with Emission Limits
Table 9 to Subpart EEEE of Part 63—Continuous Compliance with Operating Limits—High Throughput Transfer Racks
Table 10 to Subpart EEEE of Part 63—Continuous Compliance with Work Practice Standards

Table 11 to Subpart EEEE of Part 63—Requirements for Reports
Table 12 to Subpart EEEE of Part 63—Applicability of General Provisions to Subpart EEEE

What This Subpart Covers

§ 63.2330 What is the purpose of this subpart?

This subpart establishes national emission limitations, operating limits, and work practice standards for organic hazardous air pollutants (HAP) emitted from organic liquids distribution (OLD) (non-gasoline) operations at major sources of HAP emissions. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations, operating limits, and work practice standards.

§ 63.2334 Am I subject to this subpart?

(a) Except as provided for in paragraphs (b) and (c) of this section, you are subject to this subpart if you own or operate an OLD operation that is located at, or is part of, a major source of HAP emissions. An OLD operation may occupy an entire plant site or be collocated with other industrial (*e.g.*, manufacturing) operations at the same plant site.

(b) Organic liquid distribution operations located at research and development facilities, consistent with section 112(c)(7) of the Clean Air Act (CAA), are not subject to this subpart.

(c) Organic liquid distribution operations do not include the activities and equipment, including product loading racks, used to process, store, or transfer organic liquids at facilities listed in paragraph (c) (1) and (2) of this section.

(1) Oil and natural gas production field facilities, as the term ''facility'' is defined in § 63.761 of subpart HH.

(2) Natural gas transmission and storage facilities, as the term ''facility'' is defined in § 63.1271 of subpart HHH.

§ 63.2338 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing OLD operation affected source.

(b) Except as provided in paragraph (c) of this section, the affected source is the collection of activities and equipment used to distribute organic liquids into, out of, or within a facility that is a major source of HAP. The affected source is composed of:

(1) All storage tanks storing organic liquids.

(2) All transfer racks at which organic liquids are loaded into or unloaded out of transport vehicles and/or containers.

(3) All equipment leak components in organic liquids service that are associated with pipelines, except as provided in paragraph (c)(2) of this section, and with storage tanks and transfer racks storing, loading, or unloading organic liquids.

(4) All transport vehicles while they are loading or unloading organic liquids at transfer racks.

(c) The equipment listed in paragraphs (c)(1) through (4) of this section and used in the identified operations is excluded from the affected source.

(1) Storage tanks, transfer racks, and equipment leak components that are part of an affected source under another 40 CFR part 63 national emission standards for hazardous air pollutants regulation (NESHAP).

(2) Equipment leak components associated with pipelines that transfer organic liquids directly to or from storage tanks subject to another 40 CFR part 63 NESHAP or to or from non-tank process unit components (*e.g.*, process reactors).

(3) Non-permanent storage tanks, transfer racks, and equipment leak components used in special situation distribution loading and unloading operations (such as maintenance or upset liquids management).

(4) Storage tanks, transfer racks, and equipment leak components used to conduct maintenance activities, such as stormwater management, liquid removal from tanks for inspections and maintenance, or changeovers to a different liquid stored in a storage tank.

(d) An affected source is a new affected source if you commenced construction of the affected source after April 2, 2002, and you meet the applicability criteria in § 63.2334 at the time you commenced operation.

(e) An affected source is reconstructed if you meet the criteria for reconstruction as defined in § 63.2.

(f) An affected source is existing if it is not new or reconstructed.

§ 63.2342 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to the schedule identified in paragraph (a)(1) or (2) of this section, as applicable.

(1)(i) Except as provided in paragraph (a)(1)(ii) of this section, if you startup your new affected source on or before February 3, 2004 or if you reconstruct your affected source on or before February 3, 2004, you must comply with the emission limitations, operating limits, and work practice standards for new and reconstructed sources in this subpart no later than February 3, 2004.

(ii) For any emission source listed in paragraph § 63.2338(b) at an affected source that commenced construction or reconstruction after April 2, 2002, but before February 3, 2004, that is required to be controlled based on the applicability criteria in this subpart, but:

(A) Would not have been required to be controlled based on the applicability criteria as proposed for this subpart, you must comply with the emission limitations, operating limits, and work practice standards for each such emission source based on the schedule found in paragraph (b) of this section or at startup, whichever is later; or

(B) Would have been subject to a less stringent degree of control requirement as proposed for this subpart, you must comply with the emission limitations, operating limits, and work practice standards in this subpart for each such emission source based on the schedule found in paragraph (b) of this section or at startup, whichever is later, and if you start up your affected new or reconstructed source before February 5, 2007, you must comply with the emission limitations, operating limits, and work practice standards for each such emission source as proposed for this subpart, until you are required to comply with the emission limitations, operating limits, and work practice standards in this subpart for each such emission source based on the schedule found in paragraph (b) of this section.

(2) If you commence construction of or reconstruct your affected source after February 3, 2004, you must comply with the emission limitations, operating limits, and work practice standards for new and reconstructed sources in this subpart upon startup of your affected source.

(b)(1) If you have an existing affected source, you must comply with the emission limitations, operating limits, and work practice standards for existing affected sources no later than February 5, 2007, except as provided in paragraph (b)(2) of this section.

(2) Floating roof storage tanks at existing affected sources must be in compliance with the work practice standards in Table 4 to this subpart, item 1, at all times after the next degassing and cleaning activity or within 10 years after February 3, 2004, whichever occurs first. If the first degassing and cleaning activity occurs during the 3 years following February 3, 2004, the compliance date is February 5, 2007.

(c) If you have an area source that does not commence reconstruction but increases its emissions or its potential to

emit such that it becomes a major source of HAP emissions and an existing affected source subject to this subpart, you must be in compliance by 3 years after the area source becomes a major source.

(d) You must meet the notification requirements in § 63.2382(a) according to the schedules in § 63.2382(a) and (b)(1) through (3) and in subpart A of this part. Some of these notifications must be submitted before the compliance dates for the emission limitations, operating limits, and work practice standards in this subpart.

Emission Limitations, Operating Limits, and Work Practice Standards

§ 63.2346 What emission limitations, operating limits, and work practice standards must I meet?

(a) *Storage tanks.* For each storage tank storing organic liquids that meets the tank capacity and liquid vapor pressure criteria for control in Table 2 to this subpart, items 1 through 5, you must comply with paragraph (a)(1), (2), or (3) of this section. For each storage tank storing organic liquids that meets the tank capacity and liquid vapor pressure criteria for control in Table 2 to this subpart, item 6, you must comply with paragraph (a)(1) of this section.

(1) Meet the emission limits specified in Table 2 to this subpart and comply with the applicable requirements specified in 40 CFR part 63, subpart SS, for meeting emission limits, except substitute the term ''storage tank'' at each occurrence of the term ''storage vessel'' in subpart SS.

(2) Route emissions to fuel gas systems or back into the process as specified in 40 CFR part 63, subpart SS.

(3) Comply with 40 CFR part 63, subpart WW (control level 2).

(b) *Transfer racks.* For each transfer rack that meets the facility-level organic liquid loading volume and transfer rack organic HAP content criteria for control in Table 2 to this subpart, items 7 through 9, you must comply with paragraph (b)(1), (2), or (3) of this section.

(1) Meet the emission limits specified in Table 2 to this subpart and comply with the applicable requirements for transfer racks specified in 40 CFR part 63, subpart SS, for meeting emission limits.

(2) Route emissions to fuel gas systems or back into the process as specified in 40 CFR part 63, subpart SS.

(3) Use a vapor balancing system that routes organic HAP vapors displaced from the loading of organic liquids into transport vehicles to the appropriate storage tank.

(c) *Equipment leak components.* For each pump, valve, and sampling connection that operates in organic liquids service for at least 300 hours per year, you must comply with the applicable requirements under 40 CFR part 63, subpart TT (control level 1), subpart UU (control level 2), or subpart H. Pumps, valves, and sampling connectors that are insulated to provide protection against persistent sub-freezing temperatures are subject to the ''difficult to monitor'' provisions in the applicable subpart selected by the owner or operator. This paragraph only applies if the affected source has at least one storage tank or transfer rack that meets the applicability criteria for control in Table 2 to this subpart.

(d) *Transport vehicles.* For each transport vehicle equipped with vapor collection equipment, you must comply with paragraph (d)(1) of this section. For each transport vehicle without vapor collection equipment, you must comply with paragraph (d)(2) of this section.

(1) Follow the steps in 40 CFR 60.502(e) to ensure that organic liquids are loaded only into vapor-tight transport vehicles and comply with the provisions in 40 CFR 60.502(f) through (i), except substitute the term ''transport vehicle'' at each occurrence of the term ''tank truck'' or ''gasoline tank truck'' in those paragraphs.

(2) Ensure that organic liquids are loaded only into transport vehicles that have a current certification in accordance with the U.S. Department of Transportation (DOT) pressure test requirements in 49 CFR part 180 for cargo tanks or 49 CFR 173.31 for tank cars.

(e) *Operating limits.* For each high throughput transfer rack, you must meet each operating limit in Table 3 to this subpart for each control device used to comply with the provisions of this subpart whenever emissions from organic liquids are routed to the control device. For each storage tank and low throughput transfer rack, you must comply with the requirements for monitored parameters as specified in subpart SS of this part for storage vessels and low throughput transfer racks, respectively. Alternatively, you may comply with the operating limits in Table 3 to this subpart.

(f) If you elect to demonstrate compliance with a percent reduction requirement in Table 2 to this subpart using total organic compounds (TOC) rather than organic HAP, you must first demonstrate, subject to approval of the Administrator, that TOC is an appropriate surrogate for organic HAP in your case; that is, for your storage tank(s) and/or transfer rack(s), the percent destruction of organic HAP is equal to or higher than the percent destruction of TOC. This demonstration must be conducted prior to or during the initial compliance test.

(g) As provided in § 63.6(g), you may request approval from the Administrator to use an alternative to the emission limitations, operating limits, and work practice standards in this section. You must follow the procedures in § 63.177(b) through (e) in applying for permission to use such an alternative. If you apply for permission to use an alternative to the emission limitations, operating limits, and work practice standards in this section, you must submit the information described in § 63.6(g)(2).

(h) Emission sources that are part of the affected source as specified in § 63.2338, but which are not subject to the provisions of paragraphs (a) through (d) of this section, are only subject to the requirements specified in § 63.2386(d).

(i) Opening of a safety device is allowed at any time that it is required to avoid unsafe operating conditions.

(j) If you elect to comply with this subpart by combining emissions from different emission sources subject to this subpart in a single control device, then you must comply with the provisions specified in § 63.982(f).

General Compliance Requirements

§ 63.2350 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations, operating limits, and work practice standards in this subpart at all times when the equipment identified in § 63.2338(b)(1) through (4) is in OLD operation.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You must develop and implement a written startup, shutdown, and malfunction (SSM) plan according to the provisions in § 63.6(e)(3).

Testing and Initial Compliance Requirements

§ 63.2354 What performance tests, design evaluations, and performance evaluations must I conduct?

(a)(1) For each performance test that you conduct, you must use the procedures specified in subpart SS of this part and the provisions specified in paragraph (b) of this section.

(2) For each design evaluation you conduct, you must use the procedures specified in subpart SS of this part.

(3) For each performance evaluation of each continuous monitoring system (CMS) you conduct, you must follow the requirements in § 63.8(e).

(b)(1) For nonflare control devices, you must conduct each performance test according to the requirements in § 63.7(e)(1), and either § 63.988(b), § 63.990(b), or § 63.995(b), using the procedures specified in § 63.997(e).

(2) You must conduct three separate test runs for each performance test on a nonflare control device as specified in §§ 63.7(e)(3) and 63.997(e)(1)(v). Each test run must last at least 1 hour, except as provided in § 63.997(e)(1)(v)(A) and (B).

(3)(i) In addition to EPA Method 25 or 25A of 40 CFR part 60, appendix A, to determine compliance with the organic HAP or TOC emission limit, you may use EPA Method 18 of 40 CFR part 60, appendix A. If you use EPA Method 18 to measure compliance with the percentage efficiency limit, you must first determine which organic HAP are present in the inlet gas stream (*i.e.,* uncontrolled emissions) using knowledge of the organic liquids or the screening procedure described in EPA Method 18. In conducting the performance test, you must analyze samples collected as specified in EPA Method 18, simultaneously at the inlet and outlet of the control device. Quantify the emissions for the same organic HAP identified as present in the inlet gas stream for both the inlet and outlet gas streams of the control device.

(ii) If you use EPA Method 18 of 40 CFR part 60, appendix A, to measure compliance with the emission concentration limit, you must first determine which organic HAP are present in the inlet gas stream using knowledge of the organic liquids or the screening procedure described in EPA Method 18. In conducting the performance test, analyze samples collected as specified in EPA Method 18 at the outlet of the control device. Quantify the control device outlet emission concentration for the same organic HAP identified as present in the inlet or uncontrolled gas stream.

(4) If a principal component of the uncontrolled or inlet gas stream to the control device is formaldehyde, you may use EPA Method 316 of appendix A of this part instead of EPA Method 18 of 40 CFR part 60, appendix A, for measuring the formaldehyde. If formaldehyde is the predominant organic HAP in the inlet gas stream, you may use EPA Method 316 alone to measure formaldehyde either at the inlet and outlet of the control device using the formaldehyde control efficiency as a surrogate for total organic HAP or TOC efficiency, or at the outlet of a combustion device for determining compliance with the emission concentration limit.

(5) You may not conduct performance tests during periods of SSM, as specified in § 63.7(e)(1).

(c) To determine the HAP content of the organic liquid, you may use EPA Method 311 of 40 CFR part 63, appendix A, or other method approved by the Administrator. In addition, you may use other means, such as voluntary consensus standards, material safety data sheets (MSDS), or certified product data sheets, to determine the HAP content of the organic liquid. If the method you select to determine the HAP content provides HAP content ranges, you must use the upper end of each HAP content range in determining the total HAP content of the organic liquid. The EPA may require you to test the HAP content of an organic liquid using EPA Method 311 or other method approved by the Administrator. If the results of the EPA Method 311 (or any other approved method) are different from the HAP content determined by another means, the EPA Method 311 (or approved method) results will govern.

§ 63.2358 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) You must conduct initial performance tests and design evaluations according to the schedule in § 63.7(a)(2), or by the compliance date specified in any applicable State or Federal new source review construction permit to which the affected source is already subject, whichever is earlier.

(b)(1) For storage tanks and transfer racks at existing affected sources complying with the emission limitations listed in Table 2 to this subpart, you must demonstrate initial compliance with the emission limitations within 180 days after February 5, 2007.

(2) For storage tanks and transfer racks at reconstructed or new affected sources complying with the emission limitations listed in Table 2 to this subpart, you must conduct your initial compliance demonstration with the emission limitations within 180 days after the initial startup date for the affected source or February 3, 2004, whichever is later.

(c)(1) For storage tanks at existing affected sources complying with the work practice standard in Table 4 to this subpart, you must conduct your initial compliance demonstration the next time the storage tank is emptied and degassed, but not later than 10 years after February 3, 2004.

(2) For transfer racks and equipment leak components at existing affected sources complying with the work practice standards in Table 4 to this subpart, you must conduct your initial compliance demonstration within 180 days after February 5, 2007.

(d) For storage tanks, transfer racks, and equipment leak components at reconstructed or new affected sources complying with the work practice standards in Table 4 to this subpart, you must conduct your initial compliance demonstration within 180 days after the initial startup date for the affected source.

§ 63.2362 When must I conduct subsequent performance tests?

(a) For nonflare control devices, you must conduct subsequent performance testing required in Table 5 to this subpart, item 1, at any time the EPA requests you to in accordance with section 114 of the CAA.

(b)(1) For each transport vehicle that you own that is equipped with vapor collection equipment and loads organic liquids at an affected transfer rack, you must perform the vapor tightness testing required in Table 5 to this subpart, item 2, on that transport vehicle at least once per year.

(2) For transport vehicles that you own that do not have vapor collection equipment, you must maintain current certification in accordance with the U.S. DOT pressure test requirements in 49 CFR part 180 for cargo tanks or 49 CFR 173.31 for tank cars.

§ 63.2366 What are my monitoring installation, operation, and maintenance requirements?

(a) You must install, operate, and maintain a CMS on each control device required in order to comply with this subpart. If you use a continuous parameter monitoring system (CPMS) (as defined in § 63.981), you must comply with the applicable requirements for CPMS in subpart SS of this part for the control device being used. If you use a continuous emissions monitoring system (CEMS), you must comply with the requirements in § 63.8.

(b) For nonflare control devices controlling storage tanks and low throughput transfer racks, you must submit a monitoring plan according to the requirements in subpart SS of this part for monitoring plans.

§ 63.2370 How do I demonstrate initial compliance with the emission limitations, operating limits, and work practice standards?

(a) You must demonstrate initial compliance with each emission limitation and work practice standard

that applies to you as specified in Tables 6 and 7 to this subpart.

(b) You demonstrate initial compliance with the operating limits requirements specified in § 63.2346(e) by establishing the operating limits during the initial performance test or design evaluation.

(c) You must submit the results of the initial compliance demonstration in the Notification of Compliance Status according to the requirements in § 63.2382(b).

Continuous Compliance Requirements

§ 63.2374 When do I monitor and collect data to demonstrate continuous compliance and how do I use the collected data?

(a) You must monitor and collect data according to subpart SS of this part and paragraphs (b) and (c) of this section.

(b) When using a control device to comply with this subpart, you must monitor continuously or collect data at all required intervals at all times that the emission source and control device are in OLD operation, except for CMS malfunctions (including any malfunction preventing the CMS from operating properly), associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments).

(c) Do not use data recorded during CMS malfunctions, associated repairs, required quality assurance or control activities, or periods when emissions from organic liquids are not routed to the control device in data averages and calculations used to report emission or operating levels. Do not use such data in fulfilling a minimum data availability requirement, if applicable. You must use all of the data collected during all other periods, including periods of SSM, in assessing the operation of the control device.

§ 63.2378 How do I demonstrate continuous compliance with the emission limitations, operating limits, and work practice standards?

(a) You must demonstrate continuous compliance with each emission limitation, operating limit, and work practice standard in Tables 2 through 4 to this subpart that applies to you according to the methods specified in subpart SS of this part and in Tables 8 through 10 to this subpart, as applicable.

(b) You must follow the requirements in § 63.6(e)(1) and (3) during periods of startup, shutdown, malfunction, or nonoperation of the affected source or any part thereof. In addition, the provisions of paragraphs (b)(1) through (3) of this section apply.

(1) The emission limitations in this subpart apply at all times except during periods of nonoperation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies. The emission limitations of this subpart apply during periods of SSM, except as provided in paragraphs (b)(2) and (3) of this section. During periods of SSM, the owner or operator must follow the applicable provisions of the SSM plan required by § 63.2350(c). However, if a SSM, or period of nonoperation of one portion of the affected source does not affect the ability of a particular emission source to comply with the emission limitations to which it is subject, then that emission source is still required to comply with the applicable emission limitations of this subpart during the startup, shutdown, malfunction, or period of nonoperation.

(2) The owner or operator must not shut down control devices or monitoring systems that are required or utilized for achieving compliance with this subpart during periods of SSM while emissions are being routed to such items of equipment if the shutdown would contravene requirements of this subpart applicable to such items of equipment. This paragraph (b)(2) does not apply if the item of equipment is malfunctioning. This paragraph (b)(2) also does not apply if the owner or operator shuts down the compliance equipment (other than monitoring systems) to avoid damage due to a contemporaneous SSM of the affected source or portion thereof. If the owner or operator has reason to believe that monitoring equipment would be damaged due to a contemporaneous SSM of the affected source of portion thereof, the owner or operator must provide documentation supporting such a claim in the next Compliance report required in Table 11 to this subpart, item 1. Once approved by the Administrator, the provision for ceasing to collect, during a SSM, monitoring data that would otherwise be required by the provisions of this subpart must be incorporated into the SSM plan.

(3) During SSM, you must implement, to the extent reasonably available, measures to prevent or minimize excess emissions. For purposes of this paragraph (b)(3), the term ''excess emissions'' means emissions greater than those allowed by the emission limits that apply during normal operational periods. The measures to be taken must be identified in the SSM plan, and may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the affected source. Back-up control devices are not required, but may be used if available.

(c) Periods of planned routine maintenance of a control device used to control storage tanks or transfer racks, during which the control device does not meet the emission limits in Table 2 to this subpart, must not exceed 240 hours per year.

(d) If you elect to route emissions from storage tanks or transfer racks to a fuel gas system or to a process, as allowed by § 63.982(d), to comply with the emission limits in Table 2 to this subpart, the total aggregate amount of time during which the emissions bypass the fuel gas system or process during the calendar year without being routed to a control device, for all reasons (except SSM or product changeovers of flexible operation units and periods when a storage tank has been emptied and degassed), must not exceed 240 hours.

Notifications, Reports, and Records

§ 63.2382 What notifications must I submit and when and what information should be submitted?

(a) You must submit each notification in subpart SS of this part, Table 12 to this subpart, and paragraphs (b) through (d) of this section that applies to you. You must submit these notifications according to the schedule in Table 12 to this subpart and as specified in paragraphs (b) through (d) of this section.

(b)(1) *Initial Notification.* If you startup your affected source before February 3, 2004, you must submit the Initial Notification no later than 120 calendar days after February 3, 2004.

(2) If you startup your new or reconstructed affected source on or after February 3, 2004, you must submit the Initial Notification no later than 120 days after initial startup.

(c) If you are required to conduct a performance test, you must submit the Notification of Intent to conduct the test at least 60 calendar days before it is initially scheduled to begin as required in § 63.7(b)(1).

(d)(1) *Notification of Compliance Status.* If you are required to conduct a performance test, design evaluation, or other initial compliance demonstration as specified in Table 5, 6, or 7 to this subpart, you must submit a Notification of Compliance Status.

(2) The Notification of Compliance Status must include the information required in § 63.999(b) and in paragraphs (d)(2)(i) through (viii) of this section.

(i) The results of any applicability determinations, emission calculations, or analyses used to identify and quantify organic HAP emissions from the affected source.

(ii) The results of emissions profiles, performance tests, engineering analyses, design evaluations, flare compliance assessments, inspections and repairs, and calculations used to demonstrate initial compliance according to Tables 6 and 7 to this subpart. For performance tests, results must include descriptions of sampling and analysis procedures and quality assurance procedures.

(iii) Descriptions of monitoring devices, monitoring frequencies, and the operating limits established during the initial compliance demonstrations, including data and calculations to support the levels you establish.

(iv) Listing of all operating scenarios.

(v) Descriptions of worst-case operating and/or testing conditions for the control device(s).

(vi) Identification of emission sources subject to overlapping requirements described in § 63.2396 and the authority under which you will comply.

(vii) The applicable information specified in § 63.1039(a)(1) through (3) for all pumps and valves subject to the work practice standards for equipment leak components in Table 4 to this subpart, item 3.

(viii) If you are complying with the vapor balancing work practice standard for transfer racks according to Table 4 to this subpart, item 2.a, include a statement to that effect, and a statement that the pressure vent settings on the affected storage tanks are greater than or equal to 2.5 pounds per square inch gauge (psig).

§ 63.2386 What reports must I submit and when and what information is to be submitted in each?

(a) You must submit each report in subpart SS of this part, Table 11 to this subpart, Table 12 to this subpart, and in paragraphs (c) through (e) of this section that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report according to Table 11 to this subpart and by the dates shown in paragraphs (b)(1) through (3) of this section, by the dates shown in subpart SS of this part, and by the dates shown in Table 12 to this subpart, whichever are applicable.

(1)(i) The first Compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.2342 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your affected source in § 63.2342.

(ii) The first Compliance report must be postmarked no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.2342.

(2)(i) Each subsequent Compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(ii) Each subsequent Compliance report must be postmarked no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(3) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 71.6(a)(3)(iii)(A), you may submit the first and subsequent Compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) *First Compliance report.* The first Compliance report must contain the information specified in paragraphs (c)(1) through (10) of this section.

(1) Company name and address.

(2) Statement by a responsible official, including the official's name, title, and signature, certifying that, based on information and belief formed after reasonable inquiry, the statements and information in the report are true, accurate, and complete.

(3) Date of report and beginning and ending dates of the reporting period.

(4) Any changes to the information listed in § 63.2382(d)(1) that have occurred since the submittal of the Notification of Compliance Status.

(5) If you had a SSM during the reporting period and you took actions consistent with your SSM plan, the Compliance report must include the information described in § 63.10(d)(5)(i).

(6) If there are no deviations from any emission limitation or operating limit that applies to you and there are no deviations from the requirements for work practice standards, a statement that there were no deviations from the emission limitations, operating limits, or work practice standards during the reporting period.

(7) If there were no periods during which the CMS was out of control as specified in § 63.8(c)(7), a statement that there were no periods during which the CMS was out of control during the reporting period.

(8) For closed vent systems and control devices used to control emissions, the information specified in paragraphs (c)(8)(i) and (ii) of this section for those planned routine maintenance activities that would require the control device to not meet the applicable emission limit.

(i) A description of the planned routine maintenance that is anticipated to be performed for the control device during the next 6 months. This description must include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

(ii) A description of the planned routine maintenance that was performed for the control device during the previous 6 months. This description must include the type of maintenance performed and the total number of hours during those 6 months that the control device did not meet the applicable emission limit due to planned routine maintenance.

(9) A listing of all emission sources that are part of the affected source but are not subject to any of the emission limitations, operating limits, or work practice standards of this subpart.

(10) A listing of all transport vehicles into which organic liquids were loaded at affected transfer racks during the previous 6 months for which vapor tightness documentation as required in § 63.2390(d) was not on file at the facility.

(d) *Subsequent Compliance reports.* Subsequent Compliance reports must contain the information in paragraphs (c)(1) through (10) of this section and, where applicable, the information in paragraphs (d)(1) through (3) of this section.

(1) For each deviation from an emission limitation occurring at an affected source where you are using a CMS to comply with an emission limitation in this subpart, you must include in the Compliance report the applicable information in paragraphs (d)(1)(i) through (xii) of this section. This includes periods of SSM.

(i) The date and time that each malfunction started and stopped.

(ii) The dates and times that each CMS was inoperative, except for zero (low-level) and high-level checks.

(iii) For each CMS that was out of control, the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of SSM, or during another period.

(v) A summary of the total duration of the deviations during the reporting period, and the total duration as a percentage of the total emission source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of CMS downtime during the reporting period, and the total duration of CMS downtime as a percentage of the total emission source operating time during that reporting period.

(viii) An identification of each organic HAP that was potentially emitted during each deviation based on the known organic HAP contained in the liquid(s).

(ix) A brief description of the emission source(s) at which the CMS deviation(s) occurred.

(x) A brief description of each CMS that was out of control during the period.

(xi) The date of the latest certification or audit for each CMS.

(xii) A brief description of any changes in CMS, processes, or controls since the last reporting period.

(2) Include in the Compliance report the information in paragraphs (d)(2)(i) through (iii) of this section, as applicable.

(i) For each storage tank and transfer rack subject to control requirements, include periods of planned routine maintenance during which the control device did not comply with the applicable emission limits in Table 2 to this subpart.

(ii) For each storage tank controlled with a floating roof, include a copy of the inspection record (required in § 63.1065(b)) when inspection failures occur.

(iii) If you elect to use an extension for a floating roof inspection in accordance with § 63.1063(c)(2)(iv)(B) or (e)(2), include the documentation required by those paragraphs.

(3) Include in the Compliance report each new operating scenario which has occurred since the time period covered by the last Compliance report. For each new operating scenario, you must provide verification that the established operating conditions for any associated control device have not been exceeded and that any required calculations and engineering analyses have been performed.

(e) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 71.6(a)(3)(iii)(A). If an affected source submits a Compliance report pursuant to Table 11 to this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 71.6(a)(3)(iii)(A), and the Compliance report includes all required information concerning deviations from any emission limitation in this subpart, we will consider submission of the Compliance report as satisfying any obligation to report the same deviations in the semiannual monitoring report. However, submission of a Compliance report will not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the applicable title V permitting authority.

§ 63.2390 What records must I keep?

(a) You must keep all records identified in subpart SS of this part and in Table 12 to this subpart that are applicable, including records related to notifications and reports, SSM, performance tests, CMS, and performance evaluation plans.

(b) You must keep the records required to show continuous compliance, as required in subpart SS of this part and in Tables 8 through 10 to this subpart, with each emission limitation, operating limit, and work practice standard that applies to you.

(c) For each transport vehicle into which organic liquids are loaded at an affected transfer rack, you must keep the applicable records in paragraphs (c)(1) and (2) of this section.

(1) For transport vehicles equipped with vapor collection equipment, the documentation described in 40 CFR 60.505(b), except that the test title is: Transport Vehicle Pressure Test-EPA Reference Method 27.

(2) For transport vehicles without vapor collection equipment, current certification in accordance with the U.S. DOT pressure test requirements in 49 CFR part 180 for cargo tanks or 49 CFR 173.31 for tank cars.

(3) You must keep records of the actual annual facility-level organic liquid loading volume through transfer racks out of the facility to document the applicability of the emission limitations in Table 2, items 7 through 10, to this subpart.

§ 63.2394 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious inspection and review according to § 63.10(b)(1). In addition, on-site records may be stored in electronic form at a separate location from the site provided they can be accessed and printed at the site within 1 hour after a request by the applicable title V permitting authority.

(b) As specified in § 63.10(b)(1), you must keep your files of all information (including all reports and notifications) for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records off site for the remaining 3 years.

Other Requirements and Information

§ 63.2396 What compliance options do I have if part of my plant is subject to both this subpart and another subpart?

(a) *Compliance with other regulations for storage tanks.*

(1)(i) After the compliance dates specified in § 63.2342, if you have a storage tank that is subject to 40 CFR part 60, subpart Kb, not as the result of another 40 CFR part 63 subpart, and that storage tank is in OLD operation, you must meet all of the requirements of this subpart for that storage tank when the storage tank is in OLD operation.

(ii) If you have a storage tank that is in compliance with 40 CFR part 60, subpart Kb, as the result of complying with another 40 CFR part 63 subpart, that storage tank is not subject to this subpart.

(2) After the compliance dates specified in § 63.2342, if you have a storage tank that is subject to 40 CFR part 61, subpart Y, and that storage tank is in OLD operation, you must meet all of the requirements of this subpart for that storage tank when the storage tank is in OLD operation.

(b) *Compliance with other regulations for transfer racks.* After the compliance dates specified in § 63.2342, if you have a transfer rack that is subject to 40 CFR part 61, subpart BB, and that transfer rack is in OLD operation, you must meet the all of the requirements of this subpart for that transfer rack when the transfer rack is in OLD operation.

(c) *Compliance with other regulations for equipment leak components.*

(1) After the compliance dates specified in § 63.2342, if you have pumps, valves, or sampling connections that are subject to a 40 CFR part 60 subpart, and those pumps, valves, and sampling connections are in OLD operation and in organic liquids service,

as defined in this subpart, you must comply with the provisions of each subpart for those equipment leak components.

(2) After the compliance dates specified in § 63.2342, if you have pumps, valves, or sampling connections subject to 40 CFR part 63, subpart GGG, and those pumps, valves, and sampling connections are in OLD operation and in organic liquids service, as defined in this subpart, you may elect to comply with the provisions of this subpart for all such equipment leak components. You must identify in the Notification of Compliance Status required by § 63.2382(b) the provisions with which you will comply.

(d) [*Reserved*]

(e) *Overlap with other regulations for monitoring, recordkeeping, or reporting with respect to control devices.* After the compliance dates specified in § 63.2342, if any control device subject to this subpart is also subject to monitoring, recordkeeping, and reporting requirements of another 40 CFR part 63 subpart, the owner or operator must be in compliance with the monitoring, recordkeeping, and reporting requirements of this subpart EEEE. If complying with the monitoring, recordkeeping, and reporting requirements of the other subpart satisfies the monitoring, recordkeeping, and reporting requirements of this subpart, the owner or operator may elect to continue to comply with the monitoring, recordkeeping, and reporting requirements of the other subpart. In such instances, the owner or operator will be deemed to be in compliance with the monitoring, recordkeeping, and reporting requirements of this subpart. The owner or operator must identify the other subpart being complied with in the Notification of Compliance Status required by § 63.2382(b).

§ 63.2398 What parts of the General Provisions apply to me?

Table 12 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.2402 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. Environmental Protection Agency (U.S. EPA) or a delegated authority such as your State, local, or eligible tribal agency. If the EPA Administrator has delegated authority to your State, local, or eligible tribal agency, then that agency, as well as the EPA, has the authority to implement and enforce this subpart. You should contact your EPA Regional Office (see list in § 63.13) to find out if this subpart is delegated to your State, local, or eligible tribal agency.

(b) In delegating implementation and enforcement authority for this subpart to a State, local, or eligible tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraphs (b)(1) through (4) of this section are retained by the EPA Administrator and are not delegated to the State, local, or eligible tribal agency.

(1) Approval of alternatives to the nonopacity emission limitations, operating limits, and work practice standards in § 63.2346(a) through (c) under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.2406 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in § 63.2, and in this section. If the same term is defined in another subpart and in this section, it will have the meaning given in this section for purposes of this subpart.

Actual annual average temperature, for organic liquids, means the temperature determined using the following methods:

(1) For heated or cooled storage tanks, use the calculated annual average temperature of the stored organic liquid as determined from a design analysis of the storage tank.

(2) For ambient temperature storage tanks:

(i) Use the annual average of the local (nearest) normal daily mean temperatures reported by the National Climatic Data Center; or

(ii) Use any other method that the EPA approves.

Annual average true vapor pressure means the equilibrium partial pressure exerted by the total organic HAP in the stored or transferred organic liquid. For the purpose of determining if a liquid meets the definition of an organic liquid, the vapor pressure is determined using standard conditions of 77 degrees F and 29.92 inches of mercury. For the purpose of determining whether an organic liquid meets the applicability criteria in Table 2, items 1 through 6, to this subpart, use the actual annual average temperature as defined in this subpart. The vapor pressure value in either of these cases is determined:

(1) In accordance with methods described in American Petroleum Institute Publication 2517, Evaporative Loss from External Floating-Roof Tanks (incorporated by reference, see § 63.14);

(2) Using standard reference texts;

(3) By the American Society for Testing and Materials Method D2879–83, 96 (incorporated by reference, see § 63.14); or

(4) Using any other method that the EPA approves.

Cargo tank means a liquid-carrying tank permanently attached and forming an integral part of a motor vehicle or truck trailer. This term also refers to the entire cargo tank motor vehicle or trailer. For the purpose of this subpart, vacuum trucks used exclusively for maintenance or spill response are not considered cargo tanks.

Closed vent system means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and, if necessary, flow-inducing devices that transport gas or vapors from an emission point to a control device. This system does not include the vapor collection system that is part of some transport vehicles or the loading arm or hose that is used for vapor return. For transfer racks, the closed vent system begins at, and includes, the first block valve on the downstream side of the loading arm or hose used to convey displaced vapors.

Combustion device means an individual unit of equipment, such as a flare, oxidizer, catalytic oxidizer, process heater, or boiler, used for the combustion of organic emissions.

Container means a portable unit in which a material can be stored, transported, treated, disposed of, or otherwise handled. Examples of containers include, but are not limited to, drums and portable cargo containers known as ''portable tanks'' or ''totes.''

Control device means any combustion device, recovery device, recapture device, or any combination of these devices used to comply with this subpart. Such equipment or devices include, but are not limited to, absorbers, adsorbers, condensers, and combustion devices. Primary condensers, steam strippers, and fuel gas systems are not considered control devices.

Crude oil means any of the naturally occurring liquids commonly referred to as crude oil, regardless of specific physical properties. Only those crude oils downstream of the first point of custody transfer after the production field are considered crude oils in this subpart.

Custody transfer means the transfer of hydrocarbon liquids after processing and/or treatment in the producing operations, or from storage tanks or

automatic transfer facilities to pipelines or any other forms of transportation.

Design evaluation means a procedure for evaluating control devices that complies with the requirements in § 63.985(b)(1)(i).

Deviation means any instance in which an affected source subject to this subpart, or portion thereof, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart, and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during SSM.

Emission limitation means an emission limit, opacity limit, operating limit, or visible emission limit.

Equipment leak component means each pump, valve, and sampling connection system used in organic liquids service at an OLD operation. Valve types include control, globe, gate, plug, and ball. Relief and check valves are excluded.

Gasoline means any petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals (4.0 pounds per square inch absolute (psia)) or greater which is used as a fuel for internal combustion engines. Aviation gasoline is included in this definition.

In organic liquids service means that an equipment leak component contains or contacts organic liquids having 5 percent by weight or greater of the organic HAP listed in Table 1 to this subpart.

On-site or *on site* means, with respect to records required to be maintained by this subpart or required by another subpart referenced by this subpart, that records are stored at a location within a major source which encompasses the affected source. On-site includes, but is not limited to, storage at the affected source to which the records pertain, storage in central files elsewhere at the major source, or electronically available at the site.

Organic liquid means:

(1) Any non-crude oil liquid or liquid mixture that contains 5 percent by weight or greater of the organic HAP listed in Table 1 to this subpart, as determined using the procedures specified in § 63.2354(c).

(2) Any crude oils downstream of the first point of custody transfer.

(3) Organic liquids for purposes of this subpart do not include the following liquids:

(i) Gasoline (including aviation gasoline), kerosene (No. 1 distillate oil), diesel (No. 2 distillate oil), asphalt, and heavier distillate oils and fuel oils;

(ii) Any fuel consumed or dispensed on the plant site directly to users (such as fuels for fleet refueling or for refueling marine vessels that support the operation of the plant);

(iii) Hazardous waste;

(iv) Wastewater;

(v) Ballast water: or

(vi) Any non-crude oil liquid with an annual average true vapor pressure less than 0.7 kilopascals (0.1 psia).

Organic liquids distribution (OLD) operation means the combination of activities and equipment used to store or transfer organic liquids into, out of, or within a plant site regardless of the specific activity being performed. Activities include, but are not limited to, storage, transfer, blending, compounding, and packaging.

Permitting authority means one of the following:

(1) The State Air Pollution Control Agency, local agency, or other agency authorized by the EPA Administrator to carry out a permit program under 40 CFR part 70; or

(2) The EPA Administrator, in the case of EPA-implemented permit programs under title V of the CAA (42 U.S.C. 7661) and 40 CFR part 71.

Plant site means all contiguous or adjoining surface property that is under common control, including surface properties that are separated only by a road or other public right-of-way. Common control includes surface properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination.

Research and development facility means laboratory and pilot plant operations whose primary purpose is to conduct research and development into new processes and products, where the operations are under the close supervision of technically trained personnel, and which are not engaged in the manufacture of products for commercial sale, except in a *de minimis* manner.

Responsible official means responsible official as defined in 40 CFR 70.2 and 40 CFR 71.2, as applicable.

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device that functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event.

Shutdown means the cessation of operation of an OLD affected source, or portion thereof, required or used to comply with this subpart, or the emptying and degassing of a storage tank. Shutdown as defined here includes, but is not limited to, events that result from periodic maintenance, replacement of equipment, or repair.

Startup means the setting in operation of an OLD affected source, or portion thereof, for any purpose. Startup also includes the placing in operation of any individual piece of equipment required or used to comply with this subpart including, but not limited to, control devices and monitors.

Storage tank means a stationary unit that is constructed primarily of nonearthen materials (such as wood, concrete, steel, or reinforced plastic) that provide structural support and is designed to hold a bulk quantity of liquid. Storage tanks do not include:

(1) Units permanently attached to conveyances such as trucks, trailers, rail cars, barges, or ships;

(2) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere;

(3) Bottoms receiver tanks;

(4) Surge control vessels;

(5) Vessels storing wastewater; or

(6) Reactor vessels associated with a manufacturing process unit.

Tank car means a car designed to carry liquid freight by rail, and including a permanently attached tank.

Transfer rack means a single system used to load organic liquids into transport vehicles. It includes all loading arms, pumps, meters, shutoff valves, relief valves, and other piping and equipment necessary for the transfer operation. Transfer equipment and operations that are physically separate (*i.e.*, do not share common piping, valves, and other equipment) are considered to be separate transfer racks.

Transport vehicle means a cargo tank or tank car.

Vapor balancing system means a piping system that collects organic HAP vapors displaced from transport vehicles during loading and routes the collected vapors to the storage tank from which the liquid being loaded originated or compresses the vapors for feeding into a chemical manufacturing process unit.

Vapor collection system means any equipment located at the source (*i.e.*, at the OLD operation) that is not open to

the atmosphere; that is composed of piping, connections, and, if necessary, flow-inducing devices; and that is used for containing and conveying vapors displaced during the loading of transport vehicles to a control device or for vapor balancing. This does not include any of the vapor collection equipment that is installed on the transport vehicle.

Vapor-tight transport vehicle means a transport vehicle that has been demonstrated to be vapor-tight. To be considered vapor-tight, a transport vehicle equipped with vapor collection equipment must undergo a pressure change of no more than 250 pascals (1 inch of water) within 5 minutes after it is pressurized to 4,500 pascals (18 inches of water). This capability must be demonstrated annually using the procedures specified in EPA Method 27 of 40 CFR part 60, appendix A. For all other transport vehicles, vapor tightness is demonstrated by performing the U.S. DOT pressure test procedures for tank cars and cargo tanks.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the CAA.

Tables to Subpart EEEE of Part 63

You must use the organic HAP information listed in the following table to determine which of the liquids handled at your facility meet the HAP content criteria in the definition of Organic Liquid in § 63.2406.

TABLE 1 TO SUBPART EEEE OF PART 63.—ORGANIC HAZARDOUS AIR POLLUTANTS

Compound name	CAS No.[1]
2,4-D salts and esters	94–75–7
Acetaldehyde	75–07–0
Acetonitrile	75–05–8
Acetophenone	98–86–2
Acrolein	107–02–8
Acrylamide	79–06–1
Acrylic acid	79–10–7
Acrylonitrile	107–13–1
Allyl chloride	107–05–1
Aniline	62–53–3
Benzene	71–43–2
Biphenyl	92–52–4
Butadiene (1,3-)	106–99–0
Carbon tetrachloride	56–23–5
Chloroacetic acid	79–11–8
Chlorobenzene	108–90–7
2-Chloro-1,3-butadiene (Chloroprene)	126–99–8
Chloroform	67–66–3
m-Cresol	108–39–4
o-Cresol	95–48–7
p-Cresol	106–44–5
Cresols/cresylic acid	1319–77–3
Cumene	98–82–8
Dibenzofurans	132–64–9
Dibutylphthalate	84–74–2
Dichloroethane (1,2-) (Ethylene dichloride) (EDC)	107–06–2
Dichloropropene (1,3-)	542–75–6
Diethanolamine	111–42–2
Diethyl aniline (N,N-)	121–69–7
Diethylene glycol monobutyl ether	112–34–5
Diethylene glycol monomethyl ether	111–77–3
Diethyl sulfate	64–67–5
Dimethyl formamide	68–12–2
Dimethylhydrazine (1,1-)	57–14–7
Dioxane (1,4-) (1,4-Diethyleneoxide)	123–91–1
Epichlorohydrin (1-Chloro-2,3-epoxypropane)	106–89–8
Epoxybutane (1,2-)	106–88–7
Ethyl acrylate	140–88–5
Ethylbenzene	100–41–4
Ethyl chloride (Chloroethane)	75–00–3
Ethylene dibromide (Dibromomethane)	106–93–4
Ethylene glycol	107–21–1
Ethylene glycol dimethyl ether	110–71–4
Ethylene glycol monomethyl ether	109–86–4
Ethylene glycol monomethyl ether acetate	110–49–6
Ethylene glycol monophenyl ether	122–99–6
Ethylene oxide	75–21–8
Ethylidene dichloride (1,1-Dichloroethane)	75–34–3
Formaldehyde	50–00–0
Hexachloroethane	67–72–1
Hexane	110–54–3
Hydroquinone	123–31–9
Isophorone	78–59–1
Maleic anhydride	108–31–6
Methanol	67–56–1
Methyl chloride (Chloromethane)	74–87–3

TABLE 1 TO SUBPART EEEE OF PART 63.—ORGANIC HAZARDOUS AIR POLLUTANTS—Continued

Compound name	CAS No.[1]
Methylene chloride (Dichloromethane)	75–09–2
Methylenedianiline (4,4'-)	101–77–9
Methylene diphenyl diisocyanate	101–68–8
Methyl ethyl ketone (2-Butanone) (MEK)	78–93–3
Methyl hydrazine	60–34–4
Methyl isobutyl ketone (Hexone) (MIBK)	108–10–1
Methyl methacrylate	80–62–6
Methyl tert-butyl ether (MTBE)	1634–04–4
Naphthalene	91–20–3
Nitrobenzene	98–95–3
Phenol	108–9–52
Phthalic anhydride	85–44–9
Polycyclic organic matter	50–32–8
Propionaldehyde	123–38–6
Propylene dichloride (1,2-Dichloropropane)	78–87–5
Propylene oxide	75–56–9
Quinoline	91–22–5
Styrene	100–42–5
Styrene oxide	96–09–3
Tetrachloroethane (1,1,2,2-)	79–34–5
Tetrachloroethylene (Perchloroethylene)	127–18–4
Toluene	108–88–3
Toluene diisocyanate (2,4-)	584–84–9
o-Toluidine	95–53–4
Trichlorobenzene (1,2,4-)	120–82–1
Trichloroethane (1,1,1-) (Methyl chloroform)	71–55–6
Trichloroethane (1,1,2-) (Vinyl trichloride)	79–00–5
Trichloroethylene	79–01–6
Triethylamine	121–44–8
Trimethylpentane (2,2,4-)	540–84–1
Vinyl acetate	108–05–4
Vinyl chloride (Chloroethylene)	75–01–4
Vinylidene chloride (1,1-Dichloroethylene)	75–35–4
Xylene (m-)	108–38–3
Xylene (o-)	95–47–6
Xylene (p-)	106–42–3
Xylenes (isomers and mixtures)	1330–20–7

[1] CAS numbers refer to the Chemical Abstracts Services registry number assigned to specific compounds, isomers, or mixtures of compounds.

As stated in § 63.2346, you must comply with the emission limits for the organic liquids distribution emission sources as follows:

TABLE 2 TO SUBPART EEEE OF PART 63.—EMISSION LIMITS

If you own or operate . . .	And if . . .	Then you must . . .
1. A storage tank at an existing affected source with a capacity ≥18.9 cubic meters (5,000 gallons) and <189.3 cubic meters (50,000 gallons).	a. The stored organic liquid is not crude oil and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥27.6 kilopascals (4.0 psia) and <76.6 kilopascals (11.1 psia).	i. Reduce emissions of organic HAP (or, upon approval, TOC) by 95 weight-percent or, as an option, to an exhaust concentration less than or equal to 20 parts per million by volume, on a dry basis corrected to 3% oxygen for combustion devices using supplemental combustion air, by venting emissions through a closed vent system to any combination of control devices meeting the applicable requirements of 40 CFR part 63, subpart SS; OR ii. Comply with the work practice standards specified in Table 4 to this subpart, item 1.a, for tanks storing the liquids described in that table.
	b. The stored organic liquid is crude oil.	i. See the requirement in item 1.a.i or 1.a.ii of this table.
2. A storage tank at an existing affected source with a capacity ≥189.3 cubic meters (50,000 gallons).	a. The stored organic liquid is not crude oil and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is <76.6 kilopascals (11.1 psia).	i. See the requirement in item 1.a.i or 1.a.ii of this table.
	b. The stored organic liquid is crude oil.	i. See the requirement in item 1.a.i or 1.a.ii of this table.

TABLE 2 TO SUBPART EEEE OF PART 63.—EMISSION LIMITS—Continued

If you own or operate . . .	And if . . .	Then you must . . .
3. A storage tank at a reconstructed or new affected source with a capacity ≥18.9 cubic meters (5,000 gallons) and <37.9 cubic meters (10,000 gallons).	a. The stored organic liquid is not crude oil and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥27.6 kilopascals (4.0 psia) and <76.6 kilopascals (11.1 psia).	i. See the requirement in item 1.a.i or 1.a.ii of this table.
	b. The stored organic liquid is crude oil.	i. See the requirement in item 1.a.i or 1.a.ii of this table.
4. A storage tank at a reconstructed or new affected source with a capacity ≥37.9 cubic meters (10,000 gallons) and <189.3 cubic meters (50,000 gallons).	a. The stored organic liquid is not crude oil and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥0.7 kilopascals (0.1 psia) and <76.6 kilopascals (11.1 psia).	i. See the requirement in item 1.a.i or 1.a.ii of this table.
	b. The stored organic liquid is crude oil.	i. See the requirement in item 1.a.i or 1.a.ii of this table.
5. A storage tank at a reconstructed or new affected source with a capacity ≥189.3 cubic meters (50,000 gallons).	a. The stored organic liquid is not crude oil and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is <76.6 kilopascals (11.1 psia).	i. See the requirement in item 1.a.i or 1.a.ii of this table.
	b. The stored organic liquid is crude oil.	i. See the requirement in item 1.a.i or 1.a.ii of this table.
6. A storage tank at an existing, reconstructed, or new affected source meeting the capacity criteria specified in Table 2, items 1 through 5 of this subpart.	a. The stored organic liquid is not crude oil and if the annual average true vapor pressure of the total Table 1 organic HAP in the stored organic liquid is ≥76.6 kilopascals (11.1 psia).	i. Reduce emissions of organic HAP (or, upon approval, TOC) by 95 weight-percent or, as an option, to an exhaust concentration less than or equal to 20 parts per million by volume, on a dry basis corrected to 3% oxygen for combustion devices using supplemental combustion air, by venting emissions through a closed vent system to any combination of control devices meeting the applicable requirements of 40 CFR part 63, subpart SS.
7. A transfer rack at an existing facility where the total actual annual facility-level organic liquid loading volume through transfer racks out of the facility is between 800,000 gallons and less than 10 million gallons.	a. The organic HAP content of the organic liquid through the transfer rack is at least 98% by weight.	i. Reduce emissions of organic HAP (or, upon approval, TOC) from the loading of organic liquids by venting emissions through a closed vent system to any combination of control devices achieving 98 weight-percent HAP reduction, or as an option to an exhaust concentration less than or equal to 20 parts per million by volume, on a dry basis corrected to 3% oxygen for combustion devices using supplemental combustion air; AND ii. Vent emissions through a closed vent system to any combination of control devices meeting the applicable requirements of 40 CFR part 63, subpart SS, AND iii. Comply with the work practice standards specified in Table 4 to this subpart, item 2.
8. A transfer rack at an existing facility where the total actual annual facility-level organic liquid loading volume through transfer racks out of the facility is ≥10 million gallons.		i. See the requirements in items 7.a.i through 7.a.iii of this table.
9. A transfer rack at a new facility where the total actual annual facility-level organic liquid loading volume through transfer racks out of the facility is less than 800,000 gallons.	a. The organic HAP content of the organic liquid through the transfer rack is at least 25% by weight and the transfer rack is used for transferring organic liquids into transport vehicles.	i. See the requirements in items 7.a.i through 7.a.iii of this table.
	b. The transfer rack is used for the filling of containers with a capacity equal to or greater than 55 gallons.	i. Comply with the provisions of §§ 63.924 through 63.927 of 40 CFR part 63, Subpart PP—National Emission Standards for Containers, Container Level 3 controls.
10. A transfer rack at a new facility where the total actual annual facility-level organic liquid loading volume through transfer racks out of the facility is equal to or greater than 800,000 gallons.	a. The transfer rack is used for transferring organic liquids into transport vehicles.	i. See the requirements in items 7.a.i through 7.a.iii of this table.
	b. The transfer rack is used for the filling of containers with a capacity equal to or greater than 55 gallons.	i. Comply with the provisions of §§ 63.924 through 63.927 of 40 CFR part 63, Subpart PP—National Emission Standards for Containers, Container Level 3 controls.

As stated in § 63.2346(e), you must comply with the operating limits for existing, reconstructed, or new affected sources as follows:

TABLE 3 TO SUBPART EEEE OF PART 63.—OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS

For each existing, each reconstructed, and each new affected source using . . .	You must . . .
1. A thermal oxidizer to comply with an emission limit in Table 2 to this subpart.	Maintain the daily average fire box or combustion zone temperature greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.
2. A catalytic oxidizer to comply with an emission limit in Table 2 to this subpart.	a. Replace the existing catalyst bed before the age of the bed exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND b. Maintain the daily average temperature at the inlet of the catalyst bed greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND c. Maintain the daily average temperature difference across the catalyst bed greater than or equal to the minimum temperature difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.
3. An absorber to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the absorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR b. Maintain the daily average scrubbing liquid temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND c. Maintain the difference between the specific gravities of the saturated and fresh scrubbing fluids greater than or equal to the difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.
4. A condenser to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds at the condenser exit less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR b. Maintain the daily average condenser exit temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.
5. An adsorption system with adsorbent regeneration to comply with an emission limit in Table 2 to this subpart	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR b. Maintain the total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the reference stream mass flow established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND c. Before the adsorption cycle commences, achieve and maintain the temperature of the adsorption bed after regeneration less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND d. Achieve a pressure reduction during each adsorption bed regeneration cycle greater than or equal to the pressure reduction established during the design evaluation or performance test that demonstrated compliance with the emission limit.
6. An adsorption system without adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR b. Replace the existing adsorbent in each segment of the bed with an adsorbent that meets the replacement specifications established during the design evaluation or performance test before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND c. Maintain the temperature of the adsorption bed less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.
7. A flare to comply with an emission limit in Table 2 to this subpart.	a. Comply with the equipment and operating requirements in § 63.987(a); AND b. Conduct an initial flare compliance assessment in accordance with § 63.987(b); AND c. Install and operate monitoring equipment as specified in § 63.987(c).
8. Another type of control device to comply with an emission limit in Table 2 to this subpart.	Submit a monitoring plan as specified in §§ 63.995(c) and 63.2366(c), and monitor the control device in accordance with that plan.

As stated in § 63.2346, you may elect to comply with one of the work practice standards for existing, reconstructed, or new affected sources in the following table. If you elect to do so, . . .

TABLE 4 TO SUBPART EEEE OF PART 63.—WORK PRACTICE STANDARDS

For each . . .	You must . . .
1. Storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 through 5.	a. Comply with the requirements of 40 CFR part 63, subpart WW (control level 2), if you elect to meet 40 CFR part 63, subpart WW (control level 2), requirements as an alternative to the emission limit in Table 2 to this subpart, items 1 through 5; OR b. Comply with the requirements of § 63.984 in 40 CFR part 63, subpart SS, for routing emissions to a fuel gas system or back to the process.
2. Transfer rack at an existing, reconstructed, or new affected source meeting the facility-level organic liquid loading volume and transfer rack HAP content for organic liquids specified in Table 2 to this subpart, items 7 through 9.	a. If the option of a vapor balancing system is selected, install and operate a system that meets the requirements in Table 7 to this subpart, item 3.b; OR b. Comply with the requirements of § 63.984 in 40 CFR part 63, subpart SS, for routing emissions to a fuel gas system or back to the process.
3. Pump, valve, and sampling connection that operates in organic liquids service at least 300 hours per year at an existing, reconstructed, or new affected source.	Comply with the requirements for pumps, valves, and sampling connections in 40 CFR part 63, subpart TT (control level 1), subpart UU (control level 2), or subpart H.
4. Transport vehicles equipped with vapor collection equipment,	Follow the steps in 40 CFR 60.502(e) to ensure that organic liquids are loaded only into vapor-tight transport vehicles, and comply with the provisions in 40 CFR § 60.502(f), (g), (h), and (i), except substitute the term transport vehicle at each occurrence of tank truck or gasoline tank truck in those paragraphs.
5. Transport vehicles without vapor collection equipment,	Ensure that organic liquids are loaded only into transport vehicles that have a current certification in accordance with the U.S. DOT pressure test requirements in 49 CFR 180 (cargo tanks) or 49 CFR 173.31 (tank cars).

As stated in §§ 63.2354(a) and 63.2362, you must comply with the requirements for performance tests and design evaluations for existing, reconstructed, or new affected sources as follows:

TABLE 5 TO SUBPART EEEE OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS AND DESIGN EVALUATIONS

For . . .	You must conduct . . .	According to . . .	Using . . .	To determine . . .	According to the following requirements . . .
1. Each existing, each reconstructed, and each new affected source using a nonflare control device to comply with an emission limit in Table 2 to this subpart, items 1 through 9.	a. A performance test to determine the organic HAP (or, upon approval, TOC) control efficiency of each nonflare control device, OR the exhaust concentration of each combustion device; OR	i. § 63.985(b)(1)(ii), § 63.988(b), § 63.990(b), or § 63.995(b).	(1) EPA Method 1 or 1A in appendix A of 40 CFR part 60, as appropriate.	(A) Sampling port locations and the required number of traverse points.	(i) Sampling sites must be located at the inlet and outlet of each control device if complying with the control efficiency requirement or at the outlet of the control device if complying with the exhaust concentration requirement; AND (ii) The outlet sampling site must be located at each control device prior to any releases to the atmosphere.
			(2) EPA Method 2, 2A, 2C, 2D, 2F, or 2G in appendix A of 40 CFR part 60, as appropriate.	(A) Stack gas velocity and volumetric flow rate.	See the requirements in items 1.a.i.(1)(A) (i) and (ii) of this table.
			(3) EPA Method 3 or 3B in appendix A of 40 CFR part 60, as appropriate.	(A) Concentration of CO_2 and O_2 and dry molecular weight of the stack gas.	See the requirements in items 1.a.i.(1)(A) (i) and (ii) of this table.
			(4) EPA Method 4 in appendix A of 40 CFR part 60.	(A) Moisture content of the stack gas.	See the requirements in items 1.a.i.(1)(A) (i) and (ii) of this table.

TABLE 5 TO SUBPART EEEE OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS AND DESIGN EVALUATIONS—Continued

For . . .	You must conduct . . .	According to . . .	Using . . .	To determine . . .	According to the following requirements . . .
			(5) EPA Method 18, 25, or 25A in appendix A of 40 CFR part 60, as appropriate, or EPA Method 316 in appendix A of 40 CFR part 63 for measuring formaldehyde.	(A) Total organic HAP (or, upon approval, TOC), or formaldehyde emissions.	(i) The organic HAP used for the calibration gas for EPA Method 25A must be the single organic HAP representing the largest percent by volume of emissions; AND (ii) During the performance test, you must establish the operating parameter limits within which total organic HAP (or, upon approval, TOC) emissions are reduced by the required weight-percent or, as an option for nonflare combustion devices, to 20 ppmv exhaust concentration.
	b. A design evaluation (for nonflare control devices) to determine the organic HAP (or, upon approval, TOC) control efficiency of each nonflare control device, or the exhaust concentration of each combustion control device.	§ 63.985(b)(1)(i).			During a design evaluation, you must establish the operating parameter limits within which total organic HAP, (or, upon approval, TOC) emissions are reduced by at least 95 weight-percent or as an option to 20 ppmv exhaust concentration.
2. Each transport vehicle that you own or operate that is equipped with vapor collection equipment and loads organic liquids at an affected transfer rack at an existing, reconstructed, or new affected source.	A performance test to determine the vapor tightness of the tank and then repair as needed until it passes the test.		EPA Method 27 in appendix A of 40 CFR part 60.	vapor tightness.	The pressure change in the tank must be no more than 250 pascals (1 inch of water) in 5 minutes after it is pressurized to 4,500 pascals (18 inches of water).

As stated in §§ 63.2370(a) and 63.2382(b), you must show initial compliance with the emission limits for existing, reconstructed, or new affected sources as follows:

TABLE 6 TO SUBPART EEEE OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS

For each . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Storage tank at an existing, reconstructed, or new affected source meeting either set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 through 6	Reduce total organic HAP (or, upon approval, TOC) emissions by at least 95 weight-percent, or as an option for combustion devices to an exhaust concentration of ≤20 ppmv.	Total organic HAP (or, upon approval, TOC) emissions, based on the results of the performance testing or design evaluation specified in Table 5 to this subpart, item 1.a or 1.b, respectively, are reduced by at least 95 weight-percent or as an option to an exhaust concentration ≤20 ppmv.
2. Transfer rack at an existing, reconstructed, or new affected source meeting the facility-level organic liquid loading volume and transfer rack HAP content for organic liquids criteria specified in Table 2 to this subpart, items 7 through 9.	Reduce total organic HAP (or, upon approval, TOC) emissions by at least 98 weight-percent, or as an option for combustion devices to an exhaust concentration of ≤20 ppmv.	Total organic HAP (or, upon approval, TOC) emissions, based on the results of the performance testing or design evaluation specified in Table 5 to this subpart, item 1.a or 1.b, respectively, are reduced by at least 98 weight-percent or as an option for combustion devices to an exhaust concentration of ≤20 ppmv.

TABLE 7 TO SUBPART EEEE OF PART 63.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS

For each . . .	If you . . .	You have demonstrated initial compliance if . . .
1. Storage tank at an existing affected source meeting either set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 or 2.	a. Install a floating roof or equivalent control that meets the requirements in Table 4 to this subpart, item 1.a.	i. After emptying and degassing, you visually inspect each internal floating roof before the refilling of the storage tank and perform seal gap inspections of the primary and secondary rim seals of each external floating roof within 90 days after the refilling of the storage tank.
	b. Route emissions to a fuel gas system or back to the process.	i. You meet the requirements in § 63.984(b) and submit the statement of connection required by § 63.984(c).
2. Storage tank at a reconstructed or new affected source meeting any set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 3 through 5.	a. Install a floating roof or equivalent control that meets the requirements in Table 4 to this subpart, item 1.a.	i. You visually inspect each internal floating roof before the initial filling of the storage tank, and perform seal gap inspections of the primary and secondary rim seals of each external floating roof within 90 days after the initial filling of the storage tank.
	b. Route emissions to a fuel gas system or back to the process.	i. See item 1.b.i of this table.
3. Transfer rack at an existing, reconstructed, or new affected source that meets the facility-level organic liquid loading volume and transfer rack HAP content for organic liquids criteria specified in Table 2 to this subpart, items 7 through 9.	a. Load organic liquids only into transport vehicles having current vapor tightness certification as described in Table 4 to this subpart, item 4.a and item 5.a.	i. You comply with the provisions specified in Table 4 to this subpart, item 4.a and item 5.a, as applicable.
	b. Install and operate a vapor balancing system.	i. You design and operate the vapor balancing system to route organic HAP vapors displaced from loading of organic liquids into transport vehicles to the appropriate storage tank or process unit.
4. Equipment leak component, as defined in § 63.2406, that operates in organic liquids service ≥ 300 hours per year at an existing, reconstructed, or new affected source.	a. Carry out a leak detection and repair program or equivalent control according to one of the subparts listed in Table 4 to this subpart, item 3.a.	i. You specify which one of the control programs listed in Table 4 to this subpart you have selected, OR ii. Provide written specifications for your equivalent control approach.

As stated in §§ 63.2378(a) and (b) and 63.2390(b), you must show continuous compliance with the emission limits for existing, reconstructed, or new affected sources according to the following table:

TABLE 8 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS

For each . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
1. Storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and liquid organic HAP vapor pressure criteria specified in Table 2 to this subpart, items 1 through 6.	a. Reduce total organic HAP (or, upon approval, TOC) emissions from the closed vent system and control device by 95 weight-percent or greater, or as an option to 20 ppmv or less of total organic HAP (or, upon approval, TOC) in the exhaust of combustion devices.	i. Performing CMS monitoring and collecting data according to §§ 63.2366, 63.2374, and 63.2378; AND ii. Maintaining the operating limits established during the design evaluation or performance test.
2. Transfer rack at an existing, reconstructed, or new affected source that meets the facility-level organic liquid loading volume and transfer rack HAP content for organic liquids criteria specified in Table 2, to this supbart items 7 through 9.	Reduce total organic HAP (or, upon approval, TOC) emissions from the closed vent system and control device by 98 weight-percent or greater, or as an option to 20 ppmv or less of organic HAP (or, upon approval, TOC) in the exhaust of combustion devices.	See the compliance demonstration in items 1.a.i and ii of this table.

As stated in § 63.2378(a) and (b) and 63.2390(b), you must show continuous compliance with the operating limits for existing, reconstructed, or new affected sources according to the following table:

TABLE 9 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS

For each existing, reconstructed, and each new affected source using . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
1. A thermal oxidizer to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average fire box or combustion zone, as applicable, temperature greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Continuously monitoring and recording fire box or combustion zone, as applicable, temperature every 15 minutes and maintaining the daily average fire box temperature greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
2. A catalytic oxidizer to comply with an emission limit in Table 2 to this subpart.	a. Replace the existing catalyst bed before the age of the bed exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Replacing the existing catalyst bed before the age of the bed exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
	b. Maintain the daily average temperature at the inlet of the catalyst bed greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Continuously monitoring and recording the temperature at the inlet of the catalyst bed at least every 15 minutes and maintaining the daily average temperature at the inlet of the catalyst bed greater than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
	c. Maintain the daily average temperature difference across the catalyst bed greater than or equal to the minimum temperature difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Continuously monitoring and recording the temperature at the outlet of the catalyst bed every 15 minutes and maintaining the daily average temperature difference across the catalyst bed greater than or equal to the minimum temperature difference established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
3. An absorber to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the absorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR	Continuously monitoring the organic concentration in the absorber exhaust and maintaining the daily average concentration less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit.
	b. Maintain the daily average scrubbing liquid temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND	Continuously monitoring the scrubbing liquid temperature and maintaining the daily average temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND
	c. Maintain the difference between the specific gravities of the saturated and fresh scrubbing fluids greater than or equal to the difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.	Maintaining the difference between the specific gravities greater than or equal to the difference established during the design evaluation or performance test that demonstrated compliance with the emission limit.

TABLE 9 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS—Continued

For each existing, reconstructed, and each new affected source using . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
4. A condenser to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds at the exit of the condenser less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR	Continuously monitoring the organic concentration at the condenser exit and maintaining the daily average concentration less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit.
	b. Maintain the daily average condenser exit temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Continuously monitoring and recording the temperature at the exit of the condenser at least every 15 minutes and maintaining the daily average temperature less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND
		ii. Keeping the applicable records required in § 63.998.
5. An adsorption system with adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Continuously monitoring the daily average organic concentration in the adsorber exhaust and maintaining the concentration less than or equal to the reference concentration; AND
		ii. Keeping the applicable records required in § 63.998.
	b. Maintain the total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the reference stream mass flow established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND	Maintaining the total regeneration stream mass flow during the adsorption bed regeneration cycle greater than or equal to the reference stream mass flow established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND
	c. Before the adsorption cycle commences, achieve and maintain the temperature of the adsorption bed after regeneration less than or equal to the reference temperature established during the design evaluation or performance test AND	Maintaining the temperature of the adsorption bed after regeneration less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit AND
	achieve greater than or equal to the pressure reduction during the adsorption bed regeneration cycle established during the design evaluation or performance test that demonstrated compliance with the emission limit.	Achieving greater than or equal to the pressure reduction during the regeneration cycle established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND
		ii. Keeping the applicable records required in § 63.998.
6. An adsorption system without adsorbent regeneration to comply with an emission limit in Table 2 to this subpart.	a. Maintain the daily average concentration level of organic compounds in the adsorber exhaust less than or equal to the reference concentration established during the design evaluation or performance test that demonstrated compliance with the emission limit; OR Continuously monitoring the organic concentration in the adsorber exhaust and maintaining the concentration less than or equal to the reference concentration.	
	b. Replace the existing adsorbent in each segment of the bed before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND	i. Replacing the existing adsorbent in each segment of the bed before the age of the adsorbent exceeds the maximum allowable age established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND
		ii. Keeping the applicable records required in § 63.998.

TABLE 9 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—HIGH THROUGHPUT TRANSFER RACKS—Continued

For each existing, reconstructed, and each new affected source using . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
	c. Maintain the temperature of the adsorption bed less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit.	i. Maintaining the temperature of the adsorption bed less than or equal to the reference temperature established during the design evaluation or performance test that demonstrated compliance with the emission limit; AND ii. Keeping the applicable records required in § 63.998.
7. A flare to comply with an emission limit in Table 2 to this subpart.	a. Maintain a pilot flame in the flare at all times that vapors may be vented to the flare (§ 63.11(b)(5)).	i. Continuously operating a device that detects the presence of the pilot flame; AND ii. Keeping the applicable records required in § 63.998.
	b. Maintain a flare flame at all times that vapors are being vented to the flare (§ 63.11(b)(5)).	i. Maintaining a flare flame at all times that vapors are being vented to the flare; AND ii. Keeping the applicable records required in § 63.998.
	c. Operate the flare with no visible emissions, except for up to 5 minutes in any 2 consecutive hours (§ 63.11(b)(4)).	i. Operating the flare with no visible emissions exceeding the amount allowed; AND ii. Keeping the applicable records required in § 63.998.
	d. Operate the flare with an exit velocity that is within the applicable limits in § 63.11(b)(6), (7), and (8).	i. Operating the flare within the applicable exit velocity limits; AND ii. Keeping the applicable records required in § 63.998.
	e. Operate the flare with a net heating value of the gas being combusted greater than the applicable minimum value in § 63.11(b)(6)(ii).	i. Operating the flare with the gas net heating value within the applicable limit; AND ii. Keeping the applicable records required in § 63.998.
8. Another type of control device to comply with an emission limit in Table 2 to this subpart.	Submit a monitoring plan as specified in §§ 63.995(c) and 63.2366(c), and monitor the control device in accordance with that plan.	Submitting a monitoring plan and monitoring the control device according to that plan.

As stated in §§ 63.2378(a) and (b) and 63.2386(c)(6), you must show continuous compliance with the work practice standards for existing, reconstructed, or new affected sources according to the following table:

TABLE 10 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS

For each . . .	For the following standard . . .	You must demonstrate continuous compliance by . . .
1. Internal floating roof (IFR) storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and vapor pressure criteria specified in Table 2 to this subpart, items 1 through 5.	a. Install a floating roof designed and operated according to the applicable specifications in § 63.1063(a) and (b).	i. Visually inspecting the floating roof deck, deck fittings, and rim seals of each IFR: once per year, and each time the storage tank is completely emptied and degassed, or every 10 years, whichever occurs first (§ 63.1063(c)(1), (d), and (e)); AND ii. Keeping the tank records required in § 63.1065.
2. External floating roof (EFR) storage tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and vapor pressure criteria specified in Table 2 to this subpart, items 1 through 5.	a. See the standard in item 1.a of this table.	i. Visually inspecting the floating roof deck, deck fittings, and rim seals of each EFR each time the storage tank is completely emptied and degassed, or every 10 years, whichever occurs first (§ 63.1063(c)(2), (d), and (e)); AND ii. Performing seal gap measurements on the secondary seal of each EFR at least once every year, and on the primary seal of each EFR at least every 5 years (§ 63.1063(c)(2), (d), and (e)); AND iii. Keeping the tank records required in $63.1065.
3. IFR or EFR tank at an existing, reconstructed, or new affected source meeting any set of tank capacity and vapor pressure criteria specified in Table 2 to this subpart, items 1 through 5.	a. Repair the conditions causing storage tank inspection failures (§ 63.1063(e)).	i. Repairing conditions causing inspection failures: before refilling the storage tank with organic liquid, or within 45 days (or up to 105 days with extensions) for a tank containing organic liquid; AND ii. Keeping the tank records required in § 63.1065(b).

TABLE 10 TO SUBPART EEEE OF PART 63.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS—Continued

For each . . .	For the following standard . . .	You must demonstrate continuous compliance by . . .
4. Transfer rack at an existing, reconstructed, or new affected source that meets the facility-level organic liquid loading volume and transfer rack HAP content for organic liquids criteria specified in Table 2 to this subpart, items 7 through 9.	a. Ensure that organic liquids are loaded into transport vehicles in accordance with the requirements in Table 4 to this subpart, items 2.a, 2.b, and 2.c.	i. Ensuring that organic liquids are loaded into transport vehicles in accordance with the requirements in Table 4 to this subpart, items 2.a, 2.b, and 2.c.
	b. Install and operate a vapor balancing system.	i. Monitoring each potential source of vapor leakage in the system quarterly during the loading of a transport vehicle using the methods and procedures described in the rule requirements selected for the work practice standard for equipment leak components as specified in Table 4 to this subpart, item 3. An instrument reading of 500 ppmv defines a leak. Repair of leaks is performed according to the repair requirements specified in your selected equipment leak standards.
5. Equipment leak component, as defined in § 63.2406, that operates in organic liquids service at least 300 hours per year.	a. Comply with the requirements of 40 CFR part 63, subpart TT, UU, or H.	i. Carrying out a leak detection and repair program in accordance with one of the subparts listed in item 5.a of this table.
6. Storage tank at an existing, reconstructed, or new affected source meeting any of the tank capacity and vapor pressure criteria specified in Table 2 to this subpart, items 1 through 6.	a. Route emissions to a fuel gas system or back to the process.	i. Continuing to meet the requirements specified in § 63.984(b).

As stated in § 63.2386(a), (b), and (f), you must submit compliance reports and startup, shutdown, and malfunction reports according to the following table:

TABLE 11 TO SUBPART EEEE OF PART 63.—REQUIREMENTS FOR REPORTS

You must submit a(n) . . .	The report must contain . . .	You must submit the report . . .
1. Compliance report, or Periodic Report.	a. The information specified in § 63.2386(c), (d), and (e). If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your SSM plan, the report must also include the information in § 63.10(d)(5)(i).	Semiannually, and it must be postmarked by January 31 or July 31, in accordance with § 63.2386(b).
	b. The information required by 40 CFR part 63, subpart TT, UU, or H, as applicable, for pumps, valves, and sampling connections.	See the submission requirement in item 1.a of this table.
	c. The information required by § 63.999(c).	See the submission requirement in item 1.a of this table.
	d. The information specified in § 63.1066(b) including: notification of inspection, inspection results, requests for alternate devices, and requests for extensions, as applicable.	See the submission requirement in item 1.a of this table.
2. Immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period, and you took an action that was not consistent with your SSM plan.	a. The information required in § 63.10(d)(5)(ii).	i. By FAX or telephone within 2 working days after starting actions inconsistent with the plan; AND ii. By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority (§ 63.10(d)(5)(ii)).

As stated in §§ 63.2382 and 63.2398, you must comply with the applicable General Provisions requirements as follows:

TABLE 12 TO SUBPART EEEE OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEE

Citation	Subject	Brief description	Applies to subpart EEEE
§ 63.1	Applicability	Initial applicability determination; Applicability after standard established; Permit requirements; Extensions, Notifications.	Yes.
§ 63.2	Definitions	Definitions for part 63 standards	Yes.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards	Yes.
§ 63.4	Prohibited Activities and Circumvention.	Prohibited activities; Circumvention, Severability	Yes.

TABLE 12 TO SUBPART EEEE OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEE—Continued

Citation	Subject	Brief description	Applies to subpart EEEE
§ 63.5	Construction/Reconstruction	Applicability; Applications; Approvals	Yes.
§ 63.6(a)	Compliance with Standards/ O&M Applicability.	GP apply unless compliance extension; GP apply to area sources that become major.	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed Sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes.
§ 63.6(b)(6)	[Reserved].		
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were an area source.	Yes.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources.	Comply according to date in this subpart, which must be no later than 3 years after effective date; for section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes.
§ 63.6(c)(3)–(4)	[Reserved].		
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Area sources that become major must comply with major source standards by date indicated in this subpart or by equivalent time period (*e.g.*, 3 years).	Yes.
§ 63.6(d)	[Reserved].		
§ 63.6(e)(1)	Operation & Maintenance	Operate to minimize emissions at all times; correct malfunctions as soon as practicable; and operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes.
§ 63.6(e)(2)	[Reserved].		
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction (SSM) Plan.	Requirement for SSM plan; content of SSM plan; actions during SSM.	Yes; however, the 2-day reporting requirement in paragraph § 63.6(e)(3)(iv) does not apply.
§ 63.6(f)(1)	Compliance Except During SSM.	You must comply with emission standards at all times except during SSM.	Yes.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard	Yes.
§ 63.6(h)(1)	Compliance with Opacity/ Visible Emission (VE) Standards.	You must comply with opacity/VE standards at all times except during SSM.	No.
§ 63.6(h)(2)(i)	Determining Compliance with Opacity/VE Standards.	If standard does not state test method, use EPA Method 9 for opacity in appendix A of part 60 of this chapter and EPA Method 22 for VE in appendix A of part 60 of this chapter.	No.
§ 63.6(h)(2)(ii)	[Reserved].		
§ 63.6(h)(2)(iii)	Using Previous Tests to Demonstrate Compliance with Opacity/VE Standards.	Criteria for when previous opacity/VE testing can be used to show compliance with this subpart.	No.
§ 63.6(h)(3)	[Reserved].		
§ 63.6(h)(4)	Notification of Opacity/VE Observation Date.	Must notify Administrator of anticipated date of observation.	No.
§ 63.6(h)(5)(i), (iii)–(v)	Conducting Opacity/VE Observations.	Dates and schedule for conducting opacity/VE observations.	No.
§ 63.6(h)(5)(ii)	Opacity Test Duration and Averaging Times.	Must have at least 3 hours of observation with thirty 6-minute averages.	No.
§ 63.6(h)(6)	Records of Conditions During Opacity/VE Observations.	Must keep records available and allow Administrator to inspect.	No.
§ 63.6(h)(7)(i)	Report Continuous Opacity Monitoring System (COMS) Monitoring Data from Performance Test.	Must submit COMS data with other performance test data.	No.
§ 63.6(h)(7)(ii)	Using COMS Instead of EPA Method 9.	Can submit COMS data instead of EPA Method 9 results even if rule requires EPA Method 9 in appendix A of part 60 of this chapter, but must notify Administrator before performance test.	No.
§ 63.6(h)(7)(iii)	Averaging Time for COMS During Performance Test.	To determine compliance, must reduce COMS data to 6-minute averages.	No.

TABLE 12 TO SUBPART EEEE OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEE—Continued

Citation	Subject	Brief description	Applies to subpart EEEE
§ 63.6(h)(7)(iv)	COMS Requirements	Owner/operator must demonstrate that COMS performance evaluations are conducted according to § 63.8(e); COMS are properly maintained and operated according to § 63.8(c) and data quality as § 63.8(d).	No.
§ 63.6(h)(7)(v)	Determining Compliance with Opacity/VE Standards.	COMS is probable but not conclusive evidence of compliance with opacity standards, even if EPA Method 9 observation shows otherwise. Requirements for COMS to be probable evidence-proper maintenance, meeting Performance Specification 1 in appendix B of part 60 of this chapter, and data have not been altered.	No.
§ 63.6(h)(8)	Determining Compliance with Opacity/VE Standards.	Administrator will use all COMS, EPA Method 9 (in appendix A of part 60 of this chapter), and EPA Method 22 (in appendix A of part 60 of this chapter) results, as well as information about operation and maintenance to determine compliance.	Yes.
§ 63.6(h)(9)	Adjusted Opacity Standard	Procedures for Administrator to adjust an opacity standard.	Yes.
§ 63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§ 63.6(j)	Presidential Compliance Exemption.	President may exempt any source from requirement to comply with this subpart.	Yes.
§ 63.7(a)(2)	Performance Test Dates	Dates for conducting initial performance testing; must conduct 180 days after compliance date.	Yes.
§ 63.7(a)(3)	Section 114 Authority	Adminsitrator may require a performance test under CAA section 114 at any time.	Yes.
§ 63.7(b)(1)	Notification of Performance Test.	Must notify Administrator 60 days before the test	Yes.
§ 63.7(b)(2)	Notification of Rescheduling	If you have to reschedule performance test, must notify Administrator of rescheduled date as soon as practicable and without delay.	Yes.
§ 63.7(c)	Quality Assurance (QA)/ Test Plan.	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with; test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions; cannot conduct performance tests during SSM.	Yes.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to this subpart and EPA test methods unless Administrator approves alternative.	Yes.
§ 63.7(e)(3)	Test Run Duration	Must have three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; conditions when data from an additional test run can be used.	Yes; however, for transfer racks per §§ 63.987(b)(3)(i)(A)–(B) and 63.997(e)(1)(v)(A)–(B) provide exceptions to the requirement for test runs to be at least 1 hour each.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an intermediate or major change, or alternative to a test method.	Yes.
§ 63.7(g)	Performance Test Data Analysis.	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the notification of compliance status; keep data for 5 years.	Yes.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in standard	Yes.
§ 63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of 40 CFR part 60 apply.	Yes.
§ 63.8(a)(3)	[Reserved].		
§ 63.8(a)(4)	Monitoring of Flares	Monitoring requirements for flares in § 63.11	Yes; however, monitoring requirements in § 63.987(c) also apply.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.

TABLE 12 TO SUBPART EEEE OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEE—Continued

Citation	Subject	Brief description	Applies to subpart EEEE
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing monitoring systems; must install on each affected source or after combined with another affected source before it is released to the atmosphere provided the monitoring is sufficient to demonstrate compliance with the standard; if more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)–(iii)	Routine and Predictable SSM.	Follow the SSM plan for routine repairs; keep parts for routine repairs readily available; reporting requirements for SSM when action is described in SSM plan.	Yes.
§ 63.8(c)(2)–(3)	Monitoring System Installation.	Must install to get representative emission or parameter measurements; must verify operational status before or at performance test.	Yes.
§ 63.8(c)(4)	CMS Requirements	CMS must be operating except during breakdown, out-of control, repair, maintenance, and high-level calibration drifts; COMS must have a minimum of one cycle of sampling and analysis for each successive 10-second period and one cycle of data recording for each successive 6-minute period; CEMS must have a minimum of one cycle of operation for each successive 15-minute period.	Yes; however, COMS are not applicable.
§ 63.8(c)(5)	COMS Minimum Procedures.	COMS minimum procedures	No.
§ 63.8(c)(6)–(8)	CMS Requirements	Zero and high level calibration check requirements. Out-of-control periods.	Yes.
§ 63.8(d)	CMS Quality Control	Requirements for CMS quality control, including calibration, etc.; must keep quality control plan on record for 5 years; keep old versions for 5 years after revisions.	Yes.
§ 63.8(e)	CMS Performance Evaluation.	Notification, performance evaluation test plan, reports	Yes.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method.	Procedures for Administrator to approve alternative monitoring.	Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Procedures for Administrator to approve alternative relative accuracy tests for CEMS.	Yes.
§ 63.8(g)	Data Reduction	COMS 6-minute averages calculated over at least 36 evenly spaced data points; CEMS 1 hour averages computed over at least 4 equally spaced data points; data that cannot be used in average.	Yes; however, COMS are not applicable.
§ 63.9(a)	Notification Requirements	Applicability and State delegation	Yes.
§ 63.9(b)(1)–(2), (4)–(5)	Initial Notifications	Submit notification within 120 days after effective date; notification of intent to construct/reconstruct, notification of commencement of construction/reconstruction, notification of startup; contents of each.	Yes.
§ 63.9(c)	Request for Compliance Extension.	Can request if cannot comply by date or if installed best available control technology or lowest achievable emission rate (BACT/LAER).	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Sources.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.
§ 63.9(e)	Notification of Performance Test.	Notify Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of VE/Opacity Test.	Notify Administrator 30 days prior	No.
§ 63.9(g)	Additional Notifications When Using CMS.	Notification of performance evaluation; notification about use of COMS data; notification that exceeded criterion for relative accuracy alternative.	Yes; however, there are no opacity standards.
§ 63.9(h)(1)–(6)	Notification of Compliance Status.	Contents due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after; when to submit to Federal vs. State authority.	Yes; however, there are no opacity standards.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Procedures for Administrator to approve change in when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information.	Must submit within 15 days after the change	Yes.
§ 63.10(a)	Recordkeeping/Reporting	Applies to all, unless compliance extension; when to submit to Federal vs. State authority; procedures for owners of more than one source.	Yes.

TABLE 12 TO SUBPART EEEE OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEE—Continued

Citation	Subject	Brief description	Applies to subpart EEEE
§ 63.10(b)(1)	Recordkeeping/Reporting	General requirements; keep all records readily available; keep for 5 years.	Yes.
§ 63.10(b)(2)(i)–(iv)	Records Related to Startup, Shutdown, and Malfunction.	Occurrence of each for operations (process equipment); occurrence of each malfunction of air pollution control equipment; maintenance on air pollution control equipment; actions during SSM.	Yes.
§ 63.10(b)(2)(vi)–(xi)	CMS Records	Malfunctions, inoperative, out-of-control periods	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test	Yes.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting initial notification and notification of compliance status.	Yes.
§ 63.10(b)(3)	Records	Applicability determinations	Yes.
§ 63.10(c)	Records	Additional records for CMS	Yes.
§ 63.10(d)(1)	General Reporting Requirements.	Requirement to report	Yes.
§ 63.10(d)(2)	Report of Performance Test Results.	When to submit to Federal or State authority	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations.	What to report and when	Yes.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§ 63.10(d)(5)	SSM Reports	Contents and submission	Yes.
§ 63.10(e)(1)–(2)	Additional CMS Reports	Must report results for each CEMS on a unit; written copy of CMS performance evaluation; 2–3 copies of COMS performance evaluation.	Yes; however, COMS are not applicable.
§ 63.10(e)(3)(i)–(iii)	Reports	Schedule for reporting excess emissions and parameter monitor exceedance (now defined as deviations).	Yes; however, note that the title of the report is the compliance report; deviations include excess emissions and parameter exceedances.
§ 63.10(e)(3)(iv)–(v)	Excess Emissions Reports	Requirement to revert to quarterly submission if there is an excess emissions and parameter monitor exceedances (now defined as deviations); provision to request semiannual reporting after compliance for 1 year; submit report by 30th day following end of quarter or calendar half; if there has not been an exceedance or excess emissions (now defined as deviations), report contents in a statement that there have been no deviations; must submit report containing all of the information in §§ 63.8(c)(7)–(8) and 63.10(c)(5)–(13).	Yes.
§ 63.10(e)(3)(vi)–(viii)	Excess Emissions Report and Summary Report.	Requirements for reporting excess emissions for CMS (now called deviations); requires all of the information in §§ 63.10(c)(5)–(13) and 63.8(c)(7)–(8).	Yes.
§ 63.10(e)(4)	Reporting COMS Data	Must submit COMS data with performance test data	No.
§ 63.10(f)	Waiver for Recordkeeping/Reporting.	Procedures for Administrator to waive	Yes.
§ 63.11(b)	Flares	Requirements for flares	Yes; § 63.987 requirements apply, and the section references § 63.11(b).
§ 63.12	Delegation	State authority to enforce standards	Yes.
§ 63.13	Addresses	Addresses where reports, notifications, and requests are sent.	Yes.
§ 63.14	Incorporation by Reference	Test methods incorporated by reference	Yes.
§ 63.15	Availability of Information	Public and confidential information	Yes.

[FR Doc. 04–2227 Filed 2–2–04; 8:45 am]
BILLING CODE 6560–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804 and 1852

Conformance with Federal Acquisition Circular 2001–16

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This final rule revises the NASA FAR Supplement (NFS) by removing NASA specific coverage of Central Contractor Registration (CCR) which is no longer necessary as a result of CCR requirements established in the Federal Acquisition Regulation (FAR) by Federal Acquisition Circular (FAC) 2001–16.

EFFECTIVE DATE: February 3, 2004.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358–1645; e-mail: *Celeste.M.Dalton@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Item I of FAC 2001–16 revised the FAR to require registration of contractors in the Central Contractor Registration (CCR) database prior to award of any contract, basic agreement, basic ordering agreement, or blanket purchase agreement. As a result, NASA's specific coverage of CCR is no longer required. This final rule removes Subpart 1804.74—Central Contractor Registration and its associated clause at 1852.204–74.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This final rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. However, NASA will consider comments from small entities concerning the affected NFS Parts 1804 and 1852 in accordance with 5 U.S.C. 610.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1804 and 1852

Government Procurement.

Tom Luedtke,
Assistant Administrator for Procurement.

■ Accordingly, 48 CFR parts 1804 and 1852 are amended as follows:

■ 1. The authority citation for 48 CFR parts 1804 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

■ 2. Remove Subpart 1804.74.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Remove section 1852.204–74.

[FR Doc. 04–2072 Filed 2–2–04; 8:45 am]
BILLING CODE 7510–01–U

Proposed Rules

Federal Register
Vol. 69, No. 22
Tuesday, February 3, 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 HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

8 CFR Part 103

[CIS No. 2233–02]

RIN 1615–AA84

Adjustment of the Immigration Benefit Application Fee Schedule

AGENCY: Bureau of Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: This rule proposes to adjust the fee schedule of the Immigration Examinations Fee Account (IEFA) for immigration benefit applications and petitions, as well as the fee for capturing biometric information of applicants/petitioners who apply for certain immigration benefit applications and petitions. Fees collected from persons filing immigration benefit applications are deposited into the IEFA and used to fund the full cost of providing immigration benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to other immigrants, as specified in the regulation, at no charge. This rule proposes to adjust the immigration benefit application fees by approximately $55 per application, and increases the biometric fee by $20, in order to ensure sufficient funding to process incoming applications.

DATES: Written comments must be submitted on or before March 4, 2004.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Bureau of Citizenship and Immigration Services (BCIS), Department of Homeland Security, 425 I Street NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference CIS No. 2233–02 on your correspondence. You may also submit comments electronically at *rfs.regs@dhs.gov*. When submitting comments electronically, you must include CIS No. 2233–02 in the subject box so that your comments can be properly routed to the appropriate office. Comments and other docketed materials (including additional information regarding the rate-setting process) are available for public inspection at the above address by calling (202) 514–3206 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Paul L. Schlesinger, Acting Budget Director, Office of Budget, U.S. Citizenship and Immigration Services, 425 I Street NW., Room 5307, Washington, DC 20536, telephone (202) 514–3206.

SUPPLEMENTARY INFORMATION:

What Legal Authority Does BCIS Have To Charge Fees?

Section 286(m) of the Immigration and Nationality Act (INA) provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including the costs of providing similar services without charge to asylum applicants and other immigrants. [8 U.S.C. 1356(m).] The INA further states that the fees may recover administrative costs as well. This revenue remains available to provide immigration and naturalization benefits and the collection, safeguarding, and accounting for fees. [8 U.S.C. 1356(n).]

The BCIS must also conform to the requirements of the Chief Financial Officers Act of 1990 (CFO Act), Public Law No. 101–576, 104 Stat. 2838 (1990). Section 205(a)(8) of the CFO Act requires each agency's Chief Financial Officer to ''review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value.'' *Id.*, 104 Stat. at 2844, 31 U.S.C. 902(a)(8).

What Federal Cost Accounting and Fee Setting Standards and Guidelines Were Used in Developing These Fee Changes?

The authority provided by section 286(m) of the INA permits BCIS to recover the full costs of providing all immigration adjudication and naturalization services, including those services provided to individuals other than those paying fees. When developing fees for services, the BCIS also looks, to the extent applicable, to the cost accounting concepts and standards recommended by the Federal Accounting Standards Advisory Board (FASAB). The FASAB was established in 1990, and its purpose is to recommend accounting standards for the Federal Government. The FASAB defines ''full cost'' to include ''direct and indirect costs that contribute to the output, regardless of funding sources.'' Federal Accounting Standards Advisory Board, Statement of Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government 36 (July 31, 1995). To obtain full cost, FASAB identifies various classifications of costs to be included, and recommends various methods of cost assignment. *Id.* at 36–42. Full costs include, but are not limited to, an appropriate share of:

(a) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;

(b) Physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel and rents or imputed rents on land, buildings, and equipment; and,

(c) Management and supervisory costs.

Full costs are determined based upon the best available records of the agency.

How Is the Processing of Immigration Benefit Applications Funded and Supported?

In 1988, Congress established the IEFA. *See* Public Law No. 100–459, sec. 209, 102 Stat. at 2203. Since 1989, fees deposited into the IEFA have been the primary source of funding for providing immigration and naturalization benefits, and other benefits as directed by Congress. In subsequent legislation, Congress directed use of IEFA revenue to fund the cost of asylum processing and other services provided to immigrants at no charge. *See* Public Law No. 101–515, sec. 210(d)(2), 104 Stat. at 2121. Consequently, the immigration benefit application fees were increased to recover these additional costs.

The current immigration benefit application fees are based on the review conducted in 1997 adjusted for cost of living increases (most recently on

February 19, 2002) (66 FR 65811). The current fees also include a $5 per immigration benefit application surcharge to recover information technology and quality assurance costs. This surcharge allows BCIS to improve upon the delivery of services to its customers such as offering electronic filing for certain immigration benefit applications.

With reference to the biometric fee, the Department of Justice Appropriations Act, 1998, Public Law No. 105–119, 111 Stat. 2440, 2448 (1997), authorized the collection of a fee for fingerprinting applicants for certain immigration benefits. *Id.* The fees are deposited into the IEFA established by 8 U.S.C. 1356(m)–(p). The current fee is $50.

How Are the Application Fees Changing in This Rule?

A. National Security Enhancements

In processing immigration benefit applications, BCIS is making national security a high priority. Since July 2002, BCIS has added security checks to the processing of all immigration benefit applications to help ensure that those who receive immigration benefits have come to join the people of the United States in building a better society and not to do harm.

The process of performing security checks has been designed to compare information on applicants, petitioners, beneficiaries, derivatives and household members who apply for an immigration benefit on a BCIS immigration benefit application against various Federal lookout systems.

The purpose of conducting security checks is to help law enforcement agencies identify risks to the community and/or to national security and to prevent ineligible individuals from obtaining immigration benefits. BCIS performs two routine checks; one when the application is initially received, and one at the time of adjudication.

This change in the manner in which BCIS processes immigration benefit applications has increased processing costs because the costs of performing these checks were not factored into the initial fee schedule. As a result, existing resources have been diverted in order to perform the additional security checks until the fees could be adjusted to cover these costs.

To determine the impact on resources of the additional security checks, BCIS developed a methodology to identify the additional time or ''level of effort'' needed to perform the additional security checks by an adjudicator, since time is a key factor in determining immigration benefit application fees.

In identifying the average time for the additional security checks, BCIS employed a time and motion study through on-site visits to various field offices. To collect a representative sample, BCIS reviewed adjudications at small, medium, and large-sized field offices. To ensure the integrity of the process, BCIS personnel interviewed those who performed the security checks on various immigration benefit applications, validated the times through random observations, and revalidated those times with BCIS personnel.

BCIS calculated the total time requirements using average check times, average number of checks per application, as well as application volumes (using number of applications received for the initial check and number of applications completed for the adjudications check). The total time was then converted into the total cost of performing the additional security checks.

The analysis revealed an annual cost of about $140 million to recover the costs of security enhancements. This equates to a $21 per application charge.

B. Program Enhancements and New Activities

The rule proposes adjusting the fees to cover an annual cost of about $46 million to support other program enhancements and new activities. This equates to a $7 per application charge. A description of these activities follow.

Improving Refugee Processing. Currently, the BCIS Office of Refugee Affairs (ORA) has neither the workforce nor the management structure needed to meet the processing challenges facing BCIS overseas, particularly in the wake of the September 11, 2001 terrorist attacks and the resulting security mandates. ORA relies on temporary duty personnel borrowed from other BCIS programs, in particular the Asylum Program, to meet virtually all its processing responsibilities. When refugee processing was largely confined to well-defined caseloads at limited and easily accessible locations, small numbers of temporary duty personnel were usually able to generate enough refugee approvals to meet refugee admissions goals. However, as the U.S. Refugee Program (USRP) continues to focus on more diverse, at-risk populations and to attempt to increase the responsiveness of the USRP to these populations, it is increasingly difficult for it to meet its responsibilities with the limited flexibility and resources that can be provided by other programs with equally critical missions. Therefore, BCIS plans to establish a refugee corps with dedicated staff focused on this population.

This new structural and functional arrangement will greatly improve the quality of refugee adjudications and oversight, provide cost-effective immigration services, and significantly improve the nation's ability to secure our borders without compromising humanitarian objectives.

Providing Naturalization Services for Military Personnel. On November 24, 2003, the President signed the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136). Title XVII of this Act, among other things, removes the fees for individuals eligible for expedited naturalization through military service under sections 328 and 329 of the INA, 8 U.S.C. 1439 and 1440, effective October 1, 2004. The Congressional Budget Office (CBO) estimates two-thirds (over 30,000) of the eligible persons would apply for naturalization, including an additional twenty-five positions to provide naturalization services to military personnel in overseas locations, as also authorized by Title XVII. Therefore, the rule proposes to adjust the fees to recover these additional costs. A conforming change to the reference to the N–400 fee in the rule is also made in order to implement the fee limitation provided by Title XVII.

Office of Citizenship. Section 451(f) of the Homeland Security Act of 2002 states, ''There shall be a position of Chief of the Office of Citizenship and Immigration Services. The Chief of the Office of Citizenship and Immigration Services shall be responsible for promoting instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens of the United States, including the development of educational materials.''

Other Activities. BCIS is undergoing a significant competitive sourcing study for public-private job competitions of the functions performed by Immigration Information Officers and Contact Representatives. In addition, BCIS seeks to recover the annual costs of litigation settlements. These legal costs are not included in the current fee structure.

C. Administrative Support Costs

As previously stated, BCIS has authority under the INA to recover full costs of the program, including administrative costs. To date, these administrative costs have been funded through discretionary appropriations. In FY 2004, BCIS was appropriated $235 million of which $155 million

supported administrative costs (*e.g.* records management, forms management, human resources, procurement, budget, finance). Since these costs are associated with the processing of immigration benefit applications, BCIS proposes adjusting the fees to recover these costs in accordance with the INA. The annual amount, adjusted for FY 2004 and FY 2005, of $157 million equates to a $23 per application charge.

D. Cost of Living

To maintain current service levels, the current immigration benefit application fees were adjusted for cost of living increases for FY 2004 and FY 2005 based upon inflationary rates used for the President's annual budget request. This increase in the annual amount of $28 million equates to a $4 average per application charge.

How Is the Biometric Fee Changing in This Rule?

BCIS charges a fee to recover the operating costs of its fingerprinting program. The costs of the program have risen since 1999, the time of the last fee review. The annualized cost of the program is $96 million, which includes the capability to electronically capture and retain necessary biometrics (photo, signature, and press-print images) for certain immigration benefit applications at the time of the applicant/petitioner's first visit to a BCIS Application Support Center. This equates to an increase of $20. Therefore, the new biometric fee will be $70.

To better describe the services provided under this fee, the proposed rule refers to it as a biometric fee rather than a fingerprinting fee.

What Are the New Application Fees and How Do the New Fees Compare to the Current Fees?

The proposed new immigration benefit application fees and their dollar differences are displayed in Table 1.

TABLE 1.—CURRENT VERSUS NEW APPLICATION AND PETITION FEES

Form No.	Description	New fee	Current fee	Change
I–90	Application to Replace Permanent Resident Card	$185	$130	$55
I–102	Application for Replacement/Initial Nonimmigrant Arrival/Departure Record	155	100	55
I–129	Petition for a Nonimmigrant Worker	185	130	55
I–129F	Petition for Alien Fiancé(e)	165	110	55
I–130	Petition for Alien Relative	185	130	55
I–131	Application for Travel Document	165	110	55
I–140	Immigrant Petition for Alien Worker	190	135	55
I–191	Application for Permission to Return to an Unrelinquished Domicile	250	195	55
I–192	Application for Advance Permission to Enter as a Nonimmigrant	250	195	55
I–193	Application for Waiver of Passport and/or Visa	250	195	55
I–212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal.	250	195	55
I–360	Petition for Amerasian, Widow(er), or Special Immigrant	185	130	55
I–485	Application to Register Permanent Residence or to Adjust Status	315	255	60
I–526	Immigrant Petition by Alien Entrepreneur	465	400	65
I–539	Application to Extend/Change Nonimmigrant Status	195	140	55
I–600/600A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing or Orphan Petition.	525	460	65
I–601	Application for Waiver on Grounds of Excludability	250	195	55
I–612	Application for Waiver of the Foreign Residence Requirement	250	195	55
I–687	For Filing Application for Status as a Temporary Resident	240	185	55
I–690	Application for Waiver of Excludability	90	35	55
I–694	Notice of Appeal of Decision	105	50	55
I–695	Application for Replacement Employment Authorization or Temporary Residence Card	65	15	50
I–698	Application to Adjust Status from Temporary to Permanent Resident	175	120	55
I–751	Petition to Remove the Conditions on Residence	200	145	55
I–765	Application for Employment Authorization	175	120	55
I–817	Application for Family Unity Benefits	195	140	55
I–824	Application for Action on an Approved Application or Petition	195	140	55
I–829	Petition by Entrepreneur to Remove Conditions	455	395	60
I–881	NACARA—Suspension of Deportation or Application for Special Rule Cancellation of Removal.	275	215	60
I–914	Application for T Nonimmigrant Status	255	200	55
N–300	Application to File Declaration of Intention	115	60	55
N–336	Request for Hearing on a Decision in Naturalization Procedures	250	195	55
N–400	Application for Naturalization	320	260	60
N–470	Application to Preserve Residence for Naturalization Purposes	150	95	55
N–565	Application for Replacement Naturalization Citizenship Document	210	155	55
N–600	Application for Certification of Citizenship	240	185	55
N–600K	Application for Citizenship and Issuance of Certificate under Section 322	240	185	55

BCIS is also making a number of non-substantive stylistic corrections to the fee provisions amended by this rule, and updating the cross-reference to fee regulations under the Freedom of Information Act in 8 CFR 103.7(b)(2) to refer to Department of Homeland Security rather than Department of Justice regulations. Reference to Form I–700 has been deleted, as this form is no longer used.

Does BCIS Have the Authority To Waive Fees on a Case-By-Case Basis?

Yes, BCIS has the authority to waive fees on a case-by-case basis pursuant to 8 CFR 103.7(c). In all fee waiver requests, applicants are required to

demonstrate ''inability to pay.'' In determining ''inability to pay,'' BCIS officers will consider all factors, circumstances, and evidence supplied by the applicant including age, disability, household income, and qualification within the past 180 days for a Federal means tested benefit.

How Will BCIS Inform the Public of Future Fee Adjustments Based Solely on Inflation?

The proposed rule provides that in subsequent years, starting with FY 2006, BCIS will adjust the current immigration benefit application fees on October 1st each year based upon the inflation level enacted by Congress. If Congress has not enacted the inflationary rate by the start of the fiscal year, BCIS will use the anticipated inflation rates used in the President's annual budget request. BCIS will inform the public of the new fee schedule through a notice published in the **Federal Register** and on its Web site.

Regulatory Flexibility Act

This rule has been reviewed in accordance with 5 U.S.C. 605(b), and the Department of Homeland Security certifies that this rule will not have a significant economic impact on a substantial number of small entities. The majority of applications and petitions are submitted by individuals and not small entities as that term is defined in 5 U.S.C. 601(6).

BCIS acknowledges, however, that a number of small entities, particularly those filing business-related applications and petitions, such as Form I–140, Immigrant Petition for Alien Worker; Form I–526, Immigrant Petition by Alien Entrepreneur; and Form I–829, Petition by Entrepreneur to Remove Conditions, may be affected by this rule. For the FY 2004/2005 biennial time period, BCIS projects that approximately 190,000 Forms I–140, 435 Forms I–526, and 508 Forms I–829 will be filed. However, this volume represents petitions filed by a variety of businesses, ranging from large multinational corporations to small domestic businesses. BCIS does not collect data on the size of the businesses filing petitions, and therefore does not know the number of small businesses that may be affected by this rule. However, even if all of the employers applying for benefits met the definition of small businesses, the resulting degree of economic impact would not require a Regulatory Flexibility Analysis to be performed.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will result in an annual effect on the economy of more than $100 million, in order to generate the revenue necessary to fully fund the increased cost associated with the processing of immigration benefit applications and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to other immigrants, as specified in the regulation, at no charge. The increased costs will be recovered through the fees charged for various immigration benefit applications.

Executive Order 12866

This rule is considered by the Department of Homeland Security to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. The implementation of this interim rule would provide BCIS with an additional $232 million in FY 2004 and $394 million in FY 2005 in annual fee revenue, based on a projected annual fee-paying volume of 6.8 million, over the fee revenue that would be collected under the current fee structure. This increase in revenue will be used pursuant to subsections 286(m) and (n) of the INA to fund the full costs of processing immigration benefit applications and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to other immigrants at no charge. If BCIS does not adjust the current fees to recover the full costs of processing immigration benefit applications, the backlog will likely increase. The revenue increase is based on BCIS costs and projected volumes that were available at the time of the rule. Accordingly, this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule 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. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Homeland Security has determined that this rule does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law No. 104–13, 109 Stat. 163 (1995), all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

It should be noted that the changes to the fees will require changes to the application/petition forms to reflect the new fees. BCIS will submit a notification to OMB with respect to any such changes.

List of Subjects in 8 CFR Part 103

Administrative practice and procedures, Authority delegations (government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552(a); 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.7(b) is amended by:

a. Removing the entry ''For fingerprinting by the Service'' and adding the entry ''For capturing biometric information'' in its place, and by revising the entries for the following forms in paragraph (b)(1);

b. Adding the entry for ''Form N–600K'' in paragraph (b)(1);

c. Revising paragraph (b)(2); and by

d. Adding a new paragraph (b)(3).

The revisions and additions read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

For capturing biometric information. A service fee of $70 will be charged for any individual who is required to have biometric information captured in connection with an application or petition for certain immigration and naturalization benefits (other than asylum), and whose residence is in the United States.

* * * * *

Form I–90. For filing an application for a Permanent Resident Card (Form I–551) in lieu of an obsolete card or in lieu of one lost, mutilated, or destroyed, or for a change in name—$185.

* * * * *

Form I–102. For filing a petition for an application (Form I–102) for Arrival/Departure Record (Form I–94) or Crewman's Landing (Form I–95), in lieu of one lost, mutilated, or destroyed—$155.

Form I–129. For filing a petition for a nonimmigrant worker—$185.

Form I–129F. For filing a petition to classify a nonimmigrant as a fiancée or fiancé under section 214(d) of the Act—$165.

Form I–130. For filing a petition to classify status of an alien relative for issuance of an immigrant visa under section 204(a) of the Act—$185.

Form I–131. For filing an application for travel documents—$165.

Form I–140. For filing a petition to classify preference status of an alien on the basis of profession or occupation under section 204(a) of the Act—$190.

Form I–191. For filing an application for discretionary relief under section 212(c) of the Act—$250.

Form I–192. For filing an application for discretionary relief under section 212(d)(3) of the Act, except in an emergency case, or where the approval of the application is in the interest of the United States Government—$250.

Form I–193. For filing an application for waiver of passport and/or visa—$250.

Form I–212. For filing an application for permission to reapply for an excluded, deported or removed alien, an alien who has fallen into distress, an alien who has been removed as an alien enemy, or an alien who has been removed at government expense in lieu of deportation—$250.

* * * * *

Form I–360. For filing a petition for an Amerasian, Widow(er), or Special Immigrant—$185, except there is no fee for a petition seeking classification as an Amerasian.

Form I–485. For filing an application for permanent resident status or creation of a record of lawful permanent residence—$315 for an applicant 14 years of age or older; $215 for an applicant under the age of 14 years; no fee for an applicant filing as a refugee under section 209(a) of the Act.

* * * * *

Form I–526. For filing a petition for an alien entrepreneur—$465.

Form I–539. For filing an application to extend or change nonimmigrant status—$195.

* * * * *

Form I–600. For filing a petition to classify an orphan as an immediate relative for issuance of an immigrant visa under section 204(a) of the Act. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—$525.

Form I–600A. For filing an application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—$525.

Form I–601. For filing an application for waiver of ground of inadmissibility under section 212(h) or (i) of the Act. (Only a single application and fee shall be required when the alien is applying simultaneously for a waiver under both those subsections.)—$250.

Form I–612. For filing an application for waiver of the foreign-residence requirement under section 212(e) of the Act—$250.

Form I–687. For filing an application for status as a temporary resident under section 245A(a) of the Act. A fee of $240 for each application or $105 for each application for a minor child (under 18 years of age) is required at the time of filing with the Department of Homeland Security. The maximum amount payable by a family (husband, wife, and any minor children) shall be $585.

Form I–690. For filing an application for waiver of a ground of inadmissibility under section 212(a) of the Act as amended, in conjunction with the application under sections 210 or 245A of the Act, or a petition under section 210A of the Act—$90.

Form I–694. For appealing the denial of an application under sections 210 or 245A of the Act, or a petition under section 210A of the Act—$105.

Form I–695. For filing an application for replacement of temporary resident card (Form I–688)—$65.

Form I–698. For filing an application for adjustment from temporary resident status to that of lawful permanent resident under section 245A(b)(1) of the Act. For applicants filing within 31 months from the date of adjustment to temporary resident status, a fee of $135 for each application is required at the time of filing with the Department of Homeland Security. The maximum amount payable by a family (husband, wife, and any minor children (under 18 years of age living at home)) shall be $405. For applicants filing after thirty-one months from the date of approval of temporary resident status, who file their applications on or after July 9, 1991, a fee of $175 (a maximum of $525 per family) is required. The adjustment date is the date of filing of the application for permanent residence or the applicant's eligibility date, whichever is later.

* * * * *

Form I–751. For filing a petition to remove the conditions on residence, based on marriage—$200.

Form I–765. For filing an application for employment authorization pursuant to 8 CFR 274a.13—$175.

* * * * *

Form I–817. For filing an application for voluntary departure under the Family Unity Program—$195.

* * * * *

Form I–824. For filing for action on an approved application or petition—$195.

Form I–829. For filing a petition by entrepreneur to remove conditions—$455.

Form I–881. For filing an application for suspension of deportation or special rule cancellation of removal (pursuant to section 203 of Public Law 105–100):

—$275 for adjudication by the Department of Homeland Security, except that the maximum amount payable by family members (related as husband, wife, unmarried child under 21, unmarried son, or unmarried daughter) who submit applications at the same time shall be $550.

—$155 for adjudication by the Immigration Court (a single fee of $155 will be charged whenever applications are filed by two or more aliens in the same proceedings). The $155 fee is not required if the Form I–881 is referred to the Immigration Court by the Department of Homeland Security.

* * * * *

Form I–914. For filing an application to classify an alien as a nonimmigrant under section 101(a)(15)(T) of the Act

(victims of a severe form of trafficking in persons and their immediate family members)—$255. For each immediate family member included on the same application, an additional fee of $105 per person, up to a maximum amount payable per application of $510.

Form N–300. For filing an application for declaration of intention—$115.

Form N–336. For filing a request for hearing on a decision in naturalization proceedings under section 336 of the Act—$250.

Form N–400. For filing an application for naturalization (other than such application filed on or after October 1, 2004, by an applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service, for which no fee is charged)—$320.

* * * * *

Form N–470. For filing an application for benefits under section 316(b) or 317 of the Act—$150.

Form N–565. For filing an application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343(c) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(b) of the Act—$210.

Form N–600. For filing an application for a certificate of citizenship under section 309(c) or section 341 of the Act—$240, for applications filed on behalf of a biological child and $200 for applications filed on behalf of an adopted child.

Form N–600K. For filing an application for citizenship and issuance of certificate under section 322 of the Act—$240, for an application filed on behalf of a biological child and $200 for an application filed on behalf of an adopted child.

* * * * *

(2) Fees for production or disclosure of records under 5 U.S.C. 552 shall be charged in accordance with the regulations of the Department of Homeland Security, 6 CFR 5.11.

(3) The fees prescribed in paragraph (b)(1) of this section shall be adjusted at least annually on or after October 1, 2005, by publication of an inflation adjustment. The inflation adjustment will be announced by notice in the **Federal Register**, and shall be based upon the inflation rate enacted by Congress. If Congress has not enacted the inflation rate by the start of the year, BCIS will use the anticipated inflation rates used in the President's annual budget request. The prescribed fee or charge shall be the amount prescribed in paragraph (b)(1) of this section, as amended by the latest of any such inflation adjustment. The fees have been rounded to the nearest whole $5 increment in accordance with BCIS' standard practice.

* * * * *

Dated: January 30, 2004.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 04–2290 Filed 1–30–04; 2:44 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–16914; Airspace Docket No. 04–AAL–01]

Proposed Establishment of Class E Airspace; Akhiok, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Akhiok, AK. A new Standard Instrument Approach Procedure (SIAP) and a new Departure Procedure are being published for the Akhiok Airport. There is no existing Class E airspace to contain aircraft executing the new instrument approach at Akhiok, AK. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Akhiok, AK.

DATES: Comments must be received on or before March 19, 2004.

ADDRESSES: Send comments on the 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–2004–16914/ Airspace Docket No. 04–AAL–01, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.ctr.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–16914/Airspace Docket No. 04–AAL–01.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a

request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71) by establishing new Class E airspace at Akhiok, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. and 1,200 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Akhiok, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed a new SIAP and Departure Procedure for the Akhiok Airport. The new approach is Area Navigation (Global Positioning System) (RNAV GPS) A, original. The JOGMO ONE RNAV Departure, a new Departure Procedure, will also be established. New Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface within the Akhiok, Alaska area would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures for the Akhiok Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 14 CFR 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 to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Akhiok, AK [New]

Akhiok Airport, AK
(lat. 56°56′19″ N., long. 154°10′57″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Akhiok Airport and that airspace extending upward from 1,200 feet above the surface within an area bounded by 57°11′ N. 154°10′30″ W. to 56°47′ N. 153°36′ W. to 56°35′ N. 154°04′ W. to 56°35′ N. 154°25′ W. to 56°56′30″ N. 154°55′ W. to point of beginning.

* * * * *

Issued in Anchorage, AK, on January 22, 2004.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 04–2176 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16833; Airspace Docket No. 03–AAL–26]

Proposed Establishment of Class E Airspace; King Cove, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at King Cove, AK. A new Standard Instrument Approach Procedure (SIAP) and a Textual Departure Procedure are being published for the King Cove Airport. There is no existing Class E airspace to contain aircraft executing the new instrument approach at King Cove, AK. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) above the surface at King Cove, AK.

DATES: Comments must be received on or before March 19, 2004.

ADDRESSES: Send comments on the 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–2003–16833/ Airspace Docket No. 03–AAL–26, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.ctr.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16833/Airspace Docket No. 03–AAL–26.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71) by establishing new Class E airspace at King Cove, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at King Cove, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed a new SIAP and Textual Departure Procedure for the King Cove Airport. The new approach is Area Navigation (Global Positioning System) (RNAV GPS) A, original. New Class E controlled airspace extending upward from 700 ft. above the surface within the King Cove, Alaska area would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedure for the King Cove Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9L, *Airspace Designations and Reporting Points*, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 14 CFR 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 to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 King Cove, AK [New]

King Cove Airport, AK
(lat. 55°06′59″ N., long. 162°15′58″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the King Cove Airport and that airspace extending 1.2 miles either side of the 103° bearing from King Cove airport from the 6.5-mile radius out to 8.75 miles excluding that airspace within the Cold Bay Class E airspace area.

* * * * *

Issued in Anchorage, AK, on January 22, 2004.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 04–2177 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–16904; Airspace Docket 04 ASO–2]

Proposed Establishment of Class E Airspace; Jamestown, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Jamestown, KY. Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP) Runway (RWY) 17 and RWY 35 have been developed for Russell County Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and for Instrument Flight Rules (IFR) operations at Russell County Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

DATES: Comments must be received on or before March 4, 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–2004–16904 Airspace Docket No. 04–ASO–2, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–16904/Airspace Docket No. 04–ASO–2.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comment received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov.* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Jamestown, KY. Class E airspace designations for 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 would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth

* * * * *

ASO KY E5 Jamestown, KY [NEW]

Russell County Airport, KY
(lat. 37°00′32″ N, long. 85°06′10″ W)

That airspace extending upward from 700 feet above the surface within a 6.5—radius of Russell County Airport.

* * * * *

Issued in College Park, Georgia, on January 21, 2004.

Jeffrey U. Vincent,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 04–2190 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA 2004–16896; Airspace Docket 02–ANM–08]

Proposed Revision of Class E Airspace; Blanding, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would revise the Class E airspace at Blanding, UT. New Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) have been developed at Blanding Airport making it necessary to increase the area of controlled airspace. This additional Class E airspace extending upward from 1,200 feet above the surface of the earth is necessary for the safety of Instrument Flight Rules (IFR) aircraft executing these new SIAPs and transitioning between the terminal and en route environment.

DATES: Comments must be received on or before March 4, 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 Docket FAA–2004–16896; Airspace Docket 02–ANM–08, 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 dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone number 1 (800) 647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division, Northwest Mountain Region, Federal Aviation Administration, Airspace Branch ANM–520, 1601 Lind Avenue, SW., Renton, WA 98055.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting written data, views, or arguments, as they may desire. Comments that provide factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Communications should identify Docket FAA 2004–16896; Airspace Docket 02–ANM–08, and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket FAA 2004–16896; Airspace Docket 02–ANM–08.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA, 98055. Communications must identify both document numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

The Proposal

This action proposes to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Blanding, UT. New RNAV GPS SIAPs have been developed at Blanding Airport making it necessary to increase the area of controlled airspace. This additional Class E airspace extending upward from 1,200 feet above the surface of the earth is necessary for the safety of IFR aircraft executing these new SIAPs and transitioning to/from the en route environment.

Class E airspace designations 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 FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11013; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR 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 the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

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

* * * * *

ANM UT E5 Blanding, UT [Revised]

Blanding Municipal Airport, Blanding, UT (lat. 37°34′59″ N., long. 109°29′00″ W.

That airspace extending upward from 1,200 feet above the surface of the earth bounded by a line beginning at lat. 37°42′00″ N., long. 109°42′00″ W.; to lat. 37°42′00″ N.,

long. 109°20′30″ W.; to lat. 37°52′18″ N., long. 108°58′58″ W.; to Dove Creek VOR (DVC); to Cortez VOR (CEZ); to lat. 36°48′30″ N., long. 108°03′30″ W.; to lat. 36°41′30″ N., long. 108°09′15″ W.; to lat. 36°55′30″ N., long. 109°16′15″ W.; to lat. 36°26′45″ N., long. 109°36′30″ W.; to lat. 36°27′30″ N., long. 109°46′45″ W.; thence to point of origin; excluding that airspace within Federal Airways airspace area and previously established Class E airspace 700 feet above the surface of the earth.

* * * * *

Issued in Seattle, Washington, on January 22, 2004.

Raul C. Treviño,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 04–2194 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16676; Airspace Docket No. 03–ASO–16]

RIN 2120–AA66

Proposed Revision of VOR Federal Airway V–537

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking, (NPRM).

SUMMARY: This action proposes to modify Very High Frequency Omnidirectional Range (VOR) Federal airway V–537 by changing the origination point of the airway from the Vero Beach, FL, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) to the Palm Beach, FL, VORTAC. The proposed modification would extend V–537 by incorporating a route segment that air traffic control (ATC) frequently assigns to aircraft arriving the Palm Beach, FL, terminal area. The proposed change would enhance the management of aircraft in the Palm Beach, FL, area.

DATES: Comments must be received on or before March 19, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2003–16676 and Airspace Docket No. 03–ASO–16, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2003–16676 and Airspace Docket No. 03–ASO–16) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16676 and Airspace Docket No. 03–ASO–16.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

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

You may review the public docket containing the proposal; any comments received; and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Southern Region Headquarters, 1701 Columbia Avenue, College Park, Georgia 30337.

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

The Proposal

The FAA is proposing an amendment to title 14, Code of Federal Regulations (14 CFR) part 71 (part 71) to modify Federal airway V–537, by changing the origination point of the airway from the Vero Beach VORTAC to the Palm Beach VORTAC. The revision would incorporate the airway routing that is currently used by ATC when directing aircraft to Palm Beach, FL. Currently, Miami Air Route Traffic Control Center issues a clearance to aircraft destined for the Palm Beach terminal area by directing aircraft to proceed via the Vero Beach VORTAC, then along V–295 to STOOP intersection, then via V–492 to the Palm Beach VORTAC. The proposed modification would incorporate this routing as an extension to V–537. Extending V–537 as described above would significantly reduce pilot-controller communications, alleviate radio frequency congestion, reduce the potential for pilot readback errors, and enhance the management of aircraft operations in the Vero Beach-Palm Beach area.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory

evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–537 [Revised]

From Palm Beach, FL; INT Palm Beach 356° and Vero Beach, FL, 143° radials; Vero Beach; INT Vero Beach 318° and Orlando. FL, 140° radials; INT Orlando 40° and Melbourne, FL 298° radials; INT Melbourne 298° and Ocala, FL 145° radials; Ocala; Gators, FL; Greenville, FL; Moultrie, GA; to Macon, GA.

* * * * *

Issued in Washington, DC, on January 16, 2004.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 04–2179 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

Docket No. FAA–2003–16531; Airspace Docket No. 96–ASO–10

RIN 2120–AA66

Proposed Modification and Revocation of Restricted Areas 3007A, B, C, D, and E; Townsend, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This action proposes to reconfigure the existing restricted area (R–3007) over the Townsend Range, GA, by reducing the lateral size and raising the vertical limits of the area. Additionally, this action proposes to change the using agency of the area, and increase the time of designation. The FAA is proposing this action to better accommodate Department of Defense (DOD) training requirements and enable more efficient use of the airspace. This action supplements a previously published document.

DATES: Comments must be received on or before March 19, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2003–16531, and Airspace Docket No. 96–ASO–10, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2003–16531, and Airspace Docket No. 96–ASO–10) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2003–16531, and Airspace Docket No. 96–ASO–10.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking (NPRM)

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Southern Region Headquarters, 1701 Columbia Avenue, College Park, GA 30337.

Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 367–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On December 5, 1996, the FAA published an NPRM to modify the

restricted airspace area over Townsend Range, GA complex, by reducing the lateral size of the area, raising the vertical limits, and increasing the time of designation. In addition, the FAA proposed to change the using agency of the area (61 FR 64494). The comment period for this proposal closed on January 21, 1997. No comments were received in response to the notice.

On June 18, 1997, the proponent requested that the FAA suspend further action on this proposal pending the proponent's completion of additional airspace and environmental studies of the Coastal Military Operations Area proposal. Considering the extended time that has elapsed since the original NPRM was published, the FAA is now providing this supplemental notice in order to solicit additional public comment on the proposal.

The Proposal

The FAA is proposing an amendment to title 14 Code of Federal Regulations (14 CFR) part 73 (part 73) to modify Restricted Areas 3007A, B, C, D, and E (R–3007A, B, C, D, and E), at Townsend Range, GA, to better accommodate DOD training requirements, eliminate restricted airspace no longer required for military training, and enable more efficient use of airspace.

This proposed amendment would delete all restricted airspace currently contained in R–3007A, and approximately half of the restricted airspace currently described as R–3007B. The remaining existing restricted airspace would be redesignated as R–3007A, B, or C. Specifically, R–3007E would be revoked and its circular surface target area would be designated as R–3007A. The current R–3007D would be designated as R–3007B, and the existing R–3007C would be revised to incorporate the remaining portion of the former R–3007B.

A new restricted area, R–3007D, would be established above the proposed R–3007A, B, and C raising the ceiling of restricted airspace from 13,000 feet above sea level (MSL) to flight level (FL) 250. The purpose of the proposed R–3007D is to accommodate high altitude, high angle weapons delivery training.

This action also proposes a six hour daily increase in the time of designation for the revised Townsend Range complex from the current ''Monday–Friday, 0800–1700 local time, other times by NOTAM at least 24 hours in advance,'' to ''0700–2200 local time Monday–Friday, other times by NOTAM at least 24 hours in advance.'' This change is proposed to permit more flexible range utilization and accommodate increased night training requirements. Additionally, the proposed increase would more accurately inform other National Airspace System users of time periods when the range may be in use, as well as reduce NOTAM system workload.

Finally, the using agency name for all sub-areas would be changed from ''Savannah Air National Guard Training Site, Garden City, GA,'' to ''ANG, Savannah Combat Readiness Training Center, GA,'' to reflect the current organizational name. The Townsend Range complex will be a joint-use airspace and the restricted areas will be returned to the controlling agency on a real-time basis when not required for military activities.

Section 73.30 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8L dated October 7, 2003.

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

Environmental Review

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

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

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

PART 73—SPECIAL USE AIRSPACE

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

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

§ 73.30 [Amended]

2. § 73.30 is amended as follows:

* * * * *

R—3007A Townsend, GA (Revised)

Boundaries. A circular area with a 1.5–mile radius centered at lat. 31°33′16″ N., long. 81°34′44″ W.

Designated altitudes. Surface to but not including 13,000 feet MSL.

Time of designation. 0700–2200 local time, Monday–Friday; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency. ANG, Savannah Combat Readiness Training Center, GA.

R—3007B Townsend, GA (Revised)

Boundaries. Beginning at lat. 31°38′01″ N., long. 81°28′59″ W.;
to lat. 31°37′31″ N., long. 81°28′14″ W.;
to lat. 31°32′31″ N., long. 81°27′29″ W.;
to lat. 31°26′16″ N., long. 81°31′29″ W.;
to lat. 31°25′31″ N., long. 81°35′59″ W.;
to lat. 31°27′26″ N., long. 81°33′39″ W.;
to lat. 31°31′16″ N., long. 81°31′59″ W.;
thence along a 1 NM radius arc clockwise of a point centered at lat. 31°32′26″ N., long. 81°31′49″ W.;
to lat. 31°33′16″ N., long. 81°31′14″ W.;
to the point of beginning.

Designated altitudes. 1,200 feet AGL to but not including 13,000 feet MSL.

Time of designation. 0700–2200 local time, Monday–Friday; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency. ANG, Savannah Combat Readiness Training Center, GA.

R—3007C Townsend, GA (Revised)

Boundaries. Beginning at lat. 31°38′01″ N., long. 81°46′59″ W.;
to lat. 31°42′31″ N., long. 81°33′59″ W.;
to lat. 31°38′01″ N., long. 81°28′59″ W.;
to lat. 31°33′16″ N., long. 81°31′14″ W.;
thence along a 1 NM radius arc counterclockwise of a point centered at lat. 31°32′26″ N., long. 81°31′49″ W.;
to lat. 31°31′16″ N., long. 81°31′59″ W.;
to lat. 31°27′26″ N., long. 81°33′39″ W.;
to lat. 31°25′31″ N., long. 81°35′59″ W.;
thence west along the Altamaha River to the point of beginning; excluding R–3007A.

Designated altitudes. 100 feet AGL to but not including 13,000 feet MSL.

Time of designation. 0700–2200 local time, Monday–Friday; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency. ANG, Savannah Combat Readiness Training Center, GA.

R—3007D Townsend, GA (Revised)

Boundaries. Beginning at lat. 31°38′01″ N., long. 81°46′59″ W.;
to lat. 31°42′31″ N., long. 81°33′59″ W.;

to lat. 31°38′01″ N., long. 81°28′59″ W.;
to lat. 31°37′31″ N., long. 81°28′14″ W.;
to lat. 31°32′31″ N., long. 81°27′29″ W.;
to lat. 31°26′16″ N., long. 81°31′29″ W.;
to lat. 31°25′31″ N., long. 81°35′59″ W.;
thence northwest along the Altamaha River to the point of beginning.

Designated altitudes. 13,000 feet MSL to FL 250.

Time of designation. 0700–2200 local time, Monday–Friday; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency. ANG, Savannah Combat Readiness Training Center, GA.

R—3007E Townsend, GA (Remove)

* * * * *

Issued in Washington, DC, on January 20, 2004.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 04–2178 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 77

[Docket No. FAA–2004–16982; Notice No. 04–01]

Colo Void Clause Coalition; Antenna Systems Co-Location; Voluntary Best Practices

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This document announces the availability of a letter dated December 23, 2003, from the Colo Void Clause Coalition (CVCC) proposing ''voluntary best practices'' that would apply to the co-location of antenna systems, for certain designated frequencies, that are within one nautical mile of an FAA facility. The FAA seeks comments on the CVCC proposal.

DATES: Comments must be received on or before February 13, 2004.

ADDRESSES: You may send comments, identified by Docket Number FAA–2004–16982, using any of the following methods:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on this process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read the CVCC document and other pertinent documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Rene J. Balanga, Spectrum Policy and Management, ASR–100, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone number: (202) 267–3819.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to comment on the CVCC's proposed voluntary best practices document by submitting written comments, data, or views. We ask that you send us two copies of written comments.

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

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment 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 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Before adopting any policy changes based on the CVCC proposed voluntary best practices, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay.

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

Discussion

On December 23, 2003, the CVCC wrote to Marion C. Blakey, FAA Administrator, and attached a Voluntary Best Practices Agreement Regarding the Potential for Electromagnetic Interference Upon FAA Facilities (Best Practices Agreement). The CVCC is a coalition of wireless carriers, tower companies, and trade associations that currently own or manage a majority of the radio towers throughout the United States. The FAA is reviewing the submitted Best Practices Agreement and will consider all submitted comments in determining whether any changes are warranted to current FAA notification policies with respect to co-location of antenna systems, for certain designated frequencies, that are within one nautical mile of FAA facilities.

Issued in Washington, DC, on January 29, 2004.

Oscar Alvarez,

Acting Program Director, Spectrum Policy and Management.

[FR Doc. 04–2216 Filed 1–29–04; 4:36 pm]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–116664–01]

RIN 1545–BC15

Guidance Necessary To Facilitate Business Electronic Filing; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains corrections to a notice of proposed rulemaking by cross-reference to

temporary regulations (REG–116664–01), which was published in the **Federal Register** on Friday, December 19, 2003 (68 FR 70747), relating to the elimination of regulatory impediments to the electronic filing of certain business income tax returns and other forms.

FOR FURTHER INFORMATION CONTACT: Nathan Rosen at (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking by cross-reference to temporary regulations that is the subject of these corrections is under section 170A of the Internal Revenue Code.

Need for Correction

As published, REG–116664–01 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking by cross-reference to temporary regulations (REG–11664–01), which is the subject of FR Doc. 03–31239, is corrected as follows:

PART 1—INCOME TAXES

§ 1.1377–1 [Corrected]

1. On page 70749, column 1, instructional paragraph Par. 9., line 2, the language ''by revising paragraphs (b)(2)(iii),'' is corrected to read ''by revising paragraphs''.

§ 1.1502–21 [Corrected]

2. On page 70749, column 1, paragraph (b)(2)(iii), the language ''[The text of the proposed amendments to § 1.1502–21(b)(2)(iii) is the same as the text of § 1.1502–21T(b)(2)(iii) published elsewhere in this issue of the **Federal Register**].'' Is corrected to read ''(b) * * *''.

3. On page 70749, column 1, the five asterisks following paragraph (b)(2)(iii) are removed.

PART 301—PROCEDURE AND ADMINISTRATION

4. On page 70749, column 3, instructional paragraph Par. 13., line 2, the language ''301 continues to read as follows:'' is corrected to read ''301 continues to read in part as follows:''.

Cynthia E. Grigsby,

Acting Chief, Publications & Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedures & Administration).

[FR Doc. 04–2077 Filed 2–2–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[TX–051–FOR]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposes revisions to and additions of regulations regarding coal combustion by-products and coal combustion products. Texas intends to revise its program to clarify how the use and disposal of coal combustion by-products and coal combustion products are regulated at coal mine sites in Texas.

This document gives the times and locations that the Texas program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., c.s.t., March 4, 2004. If requested, we will hold a public hearing on the amendment on March 1, 2004. We will accept requests to speak at a hearing until 4 p.m., c.s.t. on February 18, 2004.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

You may review copies of the Texas program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430, Internet address: *mwolfrom@osmre.gov.*

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, Capitol Station, P.O. Box 12967, Austin, Texas 78711–2967, Telephone (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. Internet address: *mwolfrom@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Texas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program in the February 27, 1980, **Federal Register** (45 FR 12998). You can also find later actions concerning the Texas program and program amendments at 30 CFR 943.10, 943.15 and 943.16.

II. Description of the Proposed Amendment

By letter dated December 9, 2003 (Administrative Record No. TX–656), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Texas sent the amendment at its own initiative. Below is a summary of the changes proposed by Texas. The full text of the program amendment is

available for you to read at the locations listed above under **ADDRESSES**.

A. 16 Texas Administrative Code (TAC) Section 12.3 Definitions

Texas proposes to amend this section by adding new paragraphs (33) and (34) defining ''coal combustion by-products'' and ''coal combustion products,'' respectively. Texas also proposes to renumber existing paragraphs (33) through (193) as paragraphs (35) through (195).

B. 16 TAC Section 12.142 Operation Plan: Maps and Plans

Texas proposes to add new paragraph (2)(L) to require that each permit application contain maps and plans of the proposed permit and adjacent areas which show the approximate location of any area in which coal combustion by-products will be disposed.

C. 16 TAC Section 12.145 Reclamation Plan: General Requirements For Surface Mining

Texas proposes to add new paragraph (b)(10) to read as follows:

(10) a description of any planned use of coal combustion products designed to achieve approximate original contour or any proposal to dispose of coal combustion by-products in a manner that achieves approximate original contour. When additional time to conduct rough backfilling and grading is requested to allow for the use of coal combustion products or the disposal of coal combustion by-products, the description shall include a planned time frame for those activities. The proposed time frame may include extensions of the time frames under § 12.384(a) of this title (relating to Backfilling and Grading: General Requirements) to facilitate the cost-effective utilization of coal combustion products and by-products considering generation rates, transportation issues, market conditions, and other relevant factors. Ancillary features (*e.g.*, sediment control structures, roads, and other infrastructure) associated with the use of coal combustion products or coal combustion by-products shall be considered mining-related activities which the permittee may retain within the Commission's mining permit for the life of the reclamation project until final bond release.

D. 16 TAC Section 12.187 Reclamation Plan: General Requirements For Underground Mining

Texas proposes to add new paragraph (b)(10) to read as follows:

(10) a description of any planned use of coal combustion products designed to achieve approximate original contour or any proposal to dispose of coal combustion by-products in a manner that achieves approximate original contour. When additional time to conduct rough backfilling and grading is requested to allow for the use of coal combustion products or the disposal of coal combustion by-products, the description shall include a planned time frame for those activities. The proposed time frame may include extensions of the time frames under § 12.551(a) of this title (relating to Backfilling and Grading: General Requirements) to facilitate the cost-effective utilization of coal combustion products and by-products considering generation rates, transportation issues, market conditions, and other relevant factors. Ancillary features (*e.g.*, sediment control structures, roads, and other infrastructure) associated with the use of coal combustion products or coal combustion by-products shall be considered mining-related activities which the permittee may retain within the Commission's mining permit for the life of the reclamation project until final bond release.

E. 16 TAC Section 12.197 Operation Plan: Maps and Plans

Texas proposes to add new paragraph (2)(N) to require that each permit application contain maps and plans of the proposed permit and adjacent areas which show the approximate location of any area in which coal combustion by-products will be disposed.

F. 16 TAC Section 12.384 Backfilling and Grading: General Requirements

Texas proposes to revise paragraphs (a)(1) through (a)(4) to reference proposed new section 12.145(b)(10).

G. 16 TAC Section 12.385 Backfilling and Grading: General Grading Requirements

Texas proposes to add new paragraph (f) to read as follows:

(f) In the case of a reclamation plan in which coal combustion products are designed to achieve approximate original contour or coal combustion by-products are proposed to be disposed of in a manner that achieves approximate original contour, the following information shall be submitted as applicable:

(1) an affidavit from the generator certifying that any coal combustion products to be used are exempt from the definition of ''solid waste'' under 30 TAC § 335.1(131)(H) (relating to Definitions) or TCEQ letter-authorization as referenced in Table 1 of § 12.3(33) of this title (relating to Definitions);

(2) an affidavit from the generator certifying that any coal combustion by-product disposal operations are in compliance with 30 TAC § 335.2–335.8 (relating to Permit Required; Technical Guidelines; General Prohibitions; Deed Recordation of Waste Disposal; Notification Requirements; Financial Assurance Required; and Closure and Remediation) and 30 TAC Chapter 335, Subchapter R (relating to Waste Classification);

(3) documentation (*e.g.*, a signed lease or an affidavit from the landowner) that the landowner has consented to the use of coal combustion products or the disposal of coal combustion by-products on the landowner's property;

(4) chemical analyses of a representative sample of any coal combustion products planned to be used or any coal combustion by-products proposed to be disposed; and

(5) an estimated timeframe for the use of coal combustion products or the disposal of coal combustion by-products as part of the timetable submitted under § 12.145(b)(1) of this title (relating to Reclamation Plan: General Requirements for Surface Mining).

H. 16 TAC Section 12.552 Backfilling and Grading: General Grading Requirements

Texas proposes to add new paragraph (f) to read as follows:

(f) In the case of a reclamation plan in which coal combustion products are designed to achieve approximate original contour or coal combustion by-products are proposed to be disposed of in a manner that achieves approximate original contour, the following information shall be submitted as applicable:

(1) an affidavit from the generator certifying that any coal combustion products to be used are exempt from the definition of ''solid waste'' under 30 TAC § 335.1(131)(H) (relating to Definitions) or TCEQ letter-authorization as referenced in Table 1 of § 12.3(33) of this title (relating to Definitions);

(2) an affidavit from the generator certifying that any coal combustion by-product disposal operations are in compliance with 30 TAC § 335.2 ''335.8 (relating to Permit Required; Technical Guidelines; General Prohibitions; Deed Recordation of Waste Disposal; Notification Requirements; Financial Assurance Required; and Closure and Remediation) and 30 TAC Chapter 335, Subchapter R (relating to Waste Classification);

(3) documentation (*e.g.*, a signed lease or an affidavit from the landowner) that the landowner has consented to the use of coal combustion products or the disposal of coal combustion by-products on the landowner's property;

(4) chemical analyses of a representative sample of any coal combustion products planned to be used or any coal combustion by-products proposed to be disposed; and

(5) an estimated timeframe for the use of coal combustion products or the disposal of coal combustion by-products as part of the timetable submitted under § 12.187(b)(1) of this title (relating to Reclamation Plan: General Requirements for Underground Mining).

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should

be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Tulsa Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: TX–051–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Tulsa Field Office at (918) 581–6430.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.s.t. on February 18, 2004. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

The revisions made at the initiative of the State do not have Federal counterparts and have been reviewed and a determination made that they do not have takings implications. This determination is based on the fact that the provisions have no substantive effect on the regulated industry.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. This determination is based on the fact that the Texas program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Texas program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute

major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that the provisions in 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.*). This determination is based upon the fact that the provisions are not expected to have a substantive effect on the regulated industry.

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. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State provisions are not expected to have a substantive effect on the regulated industry.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State provisions are not expected to have a substantive effect on the regulated industry.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 30, 2003.

Charles E. Sandberg,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 04–2130 Filed 2–2–04; 8:45 am]

BILLING CODE 4310–05–U

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AT46

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2005–06 Subsistence Taking of Fish and Shellfish Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for fishing seasons, harvest limits, methods, and means related to taking of fish and shellfish for subsistence uses during the 2005–06 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. When final, this rulemaking would replace the fish and shellfish taking regulations included in the ''Subsistence Management Regulations for Public Lands in Alaska, Subpart DX—2004–05 Subsistence Taking of Fish and Wildlife Regulations,'' which expire on March 31, 2005. This rule would also amend the Customary and Traditional Use Determinations of the Federal Subsistence Board and the General Regulations related to the taking of fish and shellfish.

DATES: The Federal Subsistence Board must receive your written public comments and proposals to change this proposed rule no later than March 26, 2004. Federal Subsistence Regional Advisory Councils (Regional Councils) will hold public meetings to receive proposals to change this proposed rule from February 23, 2004–March 26, 2004. *See* **SUPPLEMENTARY INFORMATION** for additional information on the public meetings.

ADDRESSES: Please submit proposals electronically to *Subsistence@fws.gov. See* **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. You may also submit written comments and proposals to the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska 99503. The public meetings will be held at various locations in Alaska. *See* **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region, (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Public Review Process—Regulation Comments, Proposals, and Public Meetings

The Federal Subsistence Board (Board) will hold meetings on this proposed rule at the following locations in Alaska:

Region 1—Southeast Regional Council, Sitka, March 17, 2004.
Region 2—Southcentral Regional Council, Anchorage, March 9, 2004.
Region 3—Kodiak/Aleutians Regional Council, Larson Bay, March 18, 2004.
Region 4—Bristol Bay Regional Council, Naknek, February 26, 2004.
Region 5—Yukon-Kuskokwim Delta Regional Council, St. Mary's, March 3, 2004.
Region 6—Western Interior Regional Council, Ruby, March 9, 2004.
Region 7—Seward Peninsula Regional Council, Nome, February 18, 2004.
Region 8—Northwest Arctic Regional Council, Kotzebue, February 24, 2004.
Region 9—Eastern Interior Regional Council, Beaver, February 27, 2004.
Region 10—North Slope Regional Council, Barrow, March 3, 2004.

We will publish notice of specific dates, times, and meeting locations in local and statewide newspapers prior to the meetings. We may need to change locations and dates based on weather or local circumstances. The amount of work on each Regional Council's agenda will determine the length of the Regional Council meetings.

Electronic filing of comments (preferred method): Please submit electronic comments (proposals) and other data to *Subsistence@fws.gov.* Please submit as either WordPerfect or MS Word files, avoiding the use of any special characters and any form of encryption.

During May 2004, we will compile and distribute for additional public review the written proposals to change Subpart D fishing regulations and in Subpart C the customary and traditional use determinations. A 30-day public comment period will follow distribution of the compiled proposal packet. We will accept written public comments on

distributed proposals during the public comment period, which is presently scheduled to end on June 30, 2004.

We will hold a second series of Regional Council meetings in September and October 2004, to assist the Regional Councils in developing recommendations to the Board. You may also present comments on published proposals to change fishing and customary and traditional use determination regulations to the Regional Councils at those fall meetings.

The Board will discuss and evaluate proposed changes to the subsistence taking of fish and shellfish regulations during a public meeting to be held in Anchorage, January 2005. You may provide additional oral testimony on specific proposals before the Board at that time. The Board will then deliberate and take final action on proposals received that request changes to this proposed rule at that public meeting.

Note: The Board will not consider proposals for changes relating to hunting or trapping regulations at this time. The Board will be calling for proposed changes to those regulations in August 2004.

The Board's review of your comments and fish and shellfish proposals will be facilitated by you providing the following information: (a) Your name, address, and telephone number; (b) The section and/or paragraph of the proposed rule for which your change is being suggested; (c) A statement explaining why the change is necessary; (d) The proposed wording change; (e) Any additional information you believe will help the Board in evaluating your proposal. Proposals that fail to include the above information, or proposals that are beyond the scope of authorities in ____.24, Subpart C, and ____.24 ____.25, ____.27, or ____.28, Subpart D, may be rejected. The Board may defer review and action on some proposals if workload exceeds work capacity of staff, Regional Councils, or Board. These deferrals will be based on recommendations of the affected Regional Council, staff members, and on the basis of least harm to the subsistence user and the resource involved. Proposals should be specific to customary and traditional use determinations or to subsistence fishing seasons, harvest limits, and/or methods and means.

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114). Consistent with Subparts A, B, and C of these regulations, as revised May 7, 2002 (67 FR 30559), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

All Board members have reviewed this proposed rule and agree with its substance. Because this proposed rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this proposed rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 would apply to regulations found in this subpart.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (2002) and 50 CFR 100.11 (2002), and for the purposes identified therein, we divide Alaska into 10 subsistence resource regions, each of which is represented by a Regional Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils have a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, will present their Council's recommendations at the Board meeting in January 2005.

Proposed Changes from 2004–05 Seasons and Harvest Limit Regulations

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Customary and traditional use determinations (§ ____.24 of Subpart C) are also subject to an annual review process providing for modification each year. The text of the 2004–05 Subparts C and D final rule, without modification, serves as the foundation for the 2005–06 Subparts C and D proposed rule. Please see the final rule published in the Rules and Regulations section of this issue of the **Federal Register.** The amendments made to subparts C and D in that rule are the same as the amendments we are proposing in this rule. The regulations contained in this proposed rule would take effect on April 1, 2005, unless elements are changed by subsequent Board action following the public review process outlined herein.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance—A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available by contacting the office listed under **FOR FURTHER INFORMATION CONTACT.** The Secretary of the Interior with the concurrence of the Secretary of Agriculture determined that the expansion of Federal jurisdiction did not constitute a major Federal action, significantly affecting the human environment and has, therefore, signed a Finding of No Significant Impact.

Compliance with Section 810 of ANILCA—A section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

During the environmental assessment process, an evaluation of the effects of this rule was also conducted in accordance with Section 810. This evaluation supports the Secretaries' determination that the rule will not reach the Amay significantly restrict'' threshold for notice and hearings under ANILCA Section 810(a) for any subsistence resources or uses.

Paperwork Reduction Act—The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and assigned OMB control number 1018–0075, which expires August 31, 2006. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a current valid OMB control number.

Economic Effects—This rule is not a significant rule subject to OMB review under Executive Order 12866. This rulemaking will impose no significant costs on small entities; this rule does not restrict any existing sport or commercial fishery on the public lands, and subsistence fisheries will continue at essentially the same levels as they presently occur. The exact number of businesses and the amount of trade that will result from this Federal land related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as tackle, boat, and gasoline dealers. The number of small entities affected is unknown; however, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that 24 million pounds of fish (including 8.3 million pounds of salmon) are harvested by the local subsistence users annually and, if given a dollar value of $3.00 per pound for salmon [**Note:** $3.00 per pound is much higher than the current commercial value for salmon] and $0.58 per pound for other fish, would equate to about $34 million in food value Statewide.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant economic effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments certify based on the above figures that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and 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.

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

The Secretaries have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the

preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

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

Drafting Information—William Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Bob Gerhard, Alaska Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; and Steve Kessler, USDA-Forest Service provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend 36 CFR 242 and 50 CFR 100 for the 2005–06 regulatory year. The text of the amendments would be the same as the final rule amendments for the 2004–05 regulatory year published elsewhere in this issue of the **Federal Register.**

Dated: December 11, 2003.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: December 11, 2003.

Steve Kessler,

Subsistence Program Leader, USDA-Forest Service.

[FR Doc. 04–2098 Filed 2–2–04; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2003–15715]

RIN 2127–AH73

Request for Comments; Federal Motor Vehicle Safety Standards; Occupant Crash Protection

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

ACTION: Request for comments.

SUMMARY: This document is intended to inform the public about recent testing the agency has conducted in consideration of whether to propose a high speed frontal offset crash test requirement. NHTSA has been conducting research since the early to mid-1990s on developing a frontal offset crash test procedure. In fiscal year 1997, the U.S. House of Representatives directed the National Highway Traffic Safety Administration (NHTSA) to work toward ''establishing a federal motor vehicle safety standard for frontal offset crash testing.'' Since then, frontal offset crash tests have been adopted for New Car Assessment Programs in several countries worldwide. Additionally, in the U.S., the Insurance Institute for Highway Safety began a consumer crashworthiness ratings program in 1995 that included a fixed offset deformable barrier crash test.

Over the past several years, NHTSA has conducted testing to evaluate the feasibility of adopting a fixed offset deformable barrier crash test in Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant crash protection,'' for improving frontal crash protection. It was preliminarily determined that the benefits from such a crash test could lead to an annual reduction in approximately 1,300 to 8,000 MAIS 2+ lower extremity injuries. NHTSA also conducted vehicle-to-vehicle crash tests to investigate the potential for disbenefits from a fixed offset deformable barrier crash test requirement. The testing demonstrated that, for some sport utility vehicles, design changes that improved their performance in high speed frontal offset crash tests may also result in adverse effects on the occupants of their collision partners. This notice discusses additional tests the agency plans to conduct to further evaluate the potential disbenefits, and poses some alternative strategies that could be coupled with a frontal offset crash test requirement. The agency invites the public to comment on this notice and share information and views with the agency.

DATES: Comments must be received by April 5, 2004.

ADDRESSES: You may submit comments (identified by the docket number set forth above) by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site. Please note, if you are submitting petitions electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.[1]
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, *see* the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif

[1] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 can be contacted.

For non-legal issues: Mr. John Lee, Office of Crashworthiness Standards, NVS–112. Telephone: (202) 366–2264. Fax: (202) 493–2739. Electronic mail: *jlee@nhtsa.dot.gov.*

For legal issues: Rebecca MacPherson, Office of the Chief Counsel, NCC–20. Telephone: (202) 366–2992. Fax: (202) 366–3820.

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I. Introduction

Improving occupant protection in crashes is a major goal of the National Highway Traffic Safety Administration (NHTSA). Frontal crashes are the most significant cause of motor vehicle fatalities. In 1972, NHTSA promulgated FMVSS No. 208 to improve the crash protection provided to motor vehicle occupants. This standard has been amended many times. The main dynamic performance requirements in this standard have been vehicle-to-rigid barrier crash tests, at angles between perpendicular and ±30 degrees with both belted and unbelted dummies.[2] Occupant protection is evaluated based on data acquired from anthropomorphic test dummies positioned in the driver and right front passenger seats. Data collection instrumentation is mounted in the head, chest, femur and, more recently, neck of the test dummies.

With the mandated requirements for driver and right front passenger air bags in new vehicles, and the eventual disappearance of non-air bag equipped vehicles in the future, within a few years, nearly all passenger cars and light trucks on the road will have frontal air bags. However, NHTSA has estimated that over 8,000 fatalities and 100,000 moderate-to-severe injuries will continue to occur in frontal crashes even after all passenger cars and light trucks have frontal air bags. Consequently, NHTSA has focused on the development of performance tests not currently addressed by FMVSS No. 208, such as high severity frontal offset crashes that involve only partial engagement of a vehicle's front structure. These tests result in large amounts of occupant compartment intrusion and increased potential for lower leg injury.

FMVSS No. 208 does not currently have provisions in place to fully assess the potential for lower extremity injury in frontal crashes, specifically knee ligament, tibia, and ankle injuries. The 5th and 50th percentile adult Hybrid III dummies prescribed for use in FMVSS No. 208 are limited to axial instrumentation on the left and right femurs. On May 3, 2003, NHTSA published an Advance Notice of Proposed Rulemaking [67 FR 22381] requesting comments on two versions of lower leg instrumentation for use in full frontal and offset frontal vehicle crashes. NHTSA is currently evaluating the comments and assessing the merits of the two devices.

II. Background

A. European Frontal Offset Crash Test

In 1990, the European Experimental Vehicles Committee (EEVC) created a Working Group (WG–11) for the improvement of protection in frontal collisions. The EEVC is comprised of representatives from several European nations that jointly initiate research in automotive safety areas. In the interest of global harmonization, the EEVC invited NHTSA, the Japanese Ministry of Transport, Transport Canada, and the Australian Federal Office of Road Safety to participate in the WG–11 activities. Automotive experts from the U.S., Europe, and Japan also provided input to WG–11.

After examining available crash data, the WG–11 concluded that the most effective way to reduce deaths and serious injuries in frontal impacts was to introduce a crash test that simulated the dynamic conditions of frontal car-to-car impacts at 60 km/h or greater. The committee concluded that frontal impacts were still a major cause of severe and fatal injuries even in countries with high rates of safety belt usage. The WG–11 also found that many car-to-car impacts were offset impacts involving only part of the vehicle's frontal structure, and resulted in a large degree of intrusion.

The EEVC generally concurred with the WG–11's findings. However, the EEVC determined that the initial test speed should be 56 km/h until design methodologies were better understood at higher energies. The EEVC made a recommendation to the member states for a two-stage approach. The first stage was to be based on a 30-degree angled rigid barrier test with an anti-slide device, called ASD–30, and a future second stage was to be based on a fixed offset deformable barrier. Due to the high seat belt usage rates in Europe, the test dummies were tested in the restrained condition only, and new injury criteria were incorporated to address lower limb injury.

In December of 1996, the European Union (EU) adopted the EU Directive 96/79 EC[3] for frontal crash protection, which became effective in October of 1998 for new types and models of vehicles, and will become effective in October of 2003 for all new vehicles. The first stage angled rigid barrier test with ASD–30 was omitted and a 56 km/h, 40 percent offset, fixed deformable barrier test was required in the Directive.

B. Other Countries

Other countries and consumer rating programs have adopted the use of a fixed offset deformable barrier crash test procedure. Those that currently use a high speed offset deformable barrier (ODB) test include the European New Car Assessment Program (EuroNCAP), Australia (regulation and NCAP), and Japan (NCAP).

EuroNCAP was developed in the United Kingdom with the aim of bringing about vehicle improvements throughout the European Union. EuroNCAP has grown with sponsorship from other European countries, the European Commission, European consumer groups, and international motoring organizations. The frontal offset test is based on the EU Directive 96/79 EC, except that the impact speed is 64 km/h instead of 56 km/h. The impact speed of 64 km/h was chosen

[2] In March of 1997, NHTSA temporarily amended FMVSS No. 208 so that passenger cars and light trucks had the option of using a sled test for meeting the unrestrained dummy requirements. This option will be phased out as part of the advanced air bag rulemaking schedule.

[3] Directive 96/79 EC of the European Parliament and of the Council on the Protection of Occupants of Motor Vehicles in the Event of a Frontal Impact and Amending Directive 70/156/EEC, December 16, 1996.

based on crash data analyses conducted for the EEVC WG–11.

In 1992 Australia began a consumer information program called the Australian New Car Assessment Program (ANCAP). In 1994, ANCAP added the draft EU Directive 96/79 EC frontal offset crash test procedure, except that the impact speed was specified at 60 km/h; however, the impact speed was later increased to 64 km/h in 1995. In 1998, the Australians introduced a frontal offset occupant protection regulation for new passenger car model approvals starting from January 1, 2000. The impact speed was established at 56 km/h.

Japan does not currently have a high speed frontal offset crash test regulation. However, the National Organization for Automobile Safety has been conducting high speed fixed offset deformable barrier crash tests at 64 km/h for the New Car Assessment Program in Japan since 2000.

C. Insurance Institute for Highway Safety Crashworthiness Rating Program

In 1995, the Insurance Institute for Highway Safety (IIHS) began a vehicle crashworthiness evaluation program that included a 64 km/h, 40 percent offset deformable barrier crash test. The IIHS essentially adopted the EU offset crash test procedure, but raised the impact speed to 64 km/h. The purpose of the program is to provide consumer information about the safety potential of the subject vehicles in frontal offset crashes, particularly related to intrusion-induced lower leg injuries.

In the IIHS vehicle crashworthiness evaluations, three aspects of performance are rated: (1) Vehicle structure, (2) dummy injury measures, and (3) restraint system performance and dummy kinematics. To evaluate the first component, vehicle structure, the post-test vehicle is evaluated based on how well the front-end crush zone manages the crash energy and limits the damage to the occupant compartment. Pre-crash and post-crash measurements are taken at several points on the instrument panel and in the footwell area. Movement of the steering column and closure of the driver door opening is also monitored.

For the second component, the dummy injury criteria evaluation is based on the measurements obtained from the instrumentation mounted on the dummy head, neck, chest, left and right leg and left and right foot. The dummy is instrumented with Denton Hybrid III lower legs.

For the last component, restraint system and dummy kinematics, IIHS utilizes a number of observational criteria that monitor how well the driver dummy loads the seat belt and air bag, and rebounds into a normal seated position. For example, how well the air bag stayed between the occupant and the hard surfaces of the front structure is considered a performance criterion that is subjective. Door openings, partial head ejections, or head strikes with the door frame can also lead to lower ratings.

IIHS has evaluated the crashworthiness of more than 150 vehicle models using the 64 km/h, 40 percent ODB crash test since 1995. According to their results, many of the models originally tested have been redesigned and retested, with the majority producing better structural performance than their predecessors. They have also stated that in the past, fewer than one of every four model year (MY) 1995–1998 cars and passenger vans tested by IIHS earned a ''good'' overall crashworthiness evaluation based primarily on their performance in the offset test, whereas about half of all 1999–2001 models tested earned good ratings. IIHS researchers have stated that the large improvements in performance are principally due to the fact that vehicle structures have been redesigned to prevent major collapse of the occupant compartment.

III. Crash Tests To Assess the Benefits of Adopting a Fixed Offset Deformable Barrier Crash Test Requirement as Part of FMVSS No. 208

NHTSA initiated research in the early to mid-1990s to develop a frontal offset crash test procedure. Given the world-wide focus placed on the fixed offset deformable barrier crash test procedure, in fiscal year (FY) 1997, the U.S. House of Representatives directed NHTSA to work ''toward establishing a federal motor vehicle safety standard for frontal offset crash testing.'' NHTSA was further directed to consider the harmonization potential with other countries and to work with interested parties, including the automotive industry, under standard rulemaking procedures.

In 1997, NHTSA submitted a Report to Congress [4] on this program, providing a status report on the agency's efforts toward establishing a high speed frontal offset crash test standard. The agency made a preliminary assessment that the adoption of the EU 96/79 EC frontal offset test procedure, in addition to the current requirements of FMVSS No. 208, could yield benefits in terms of a reduction in lower limb injuries. To further assess this, a proposed matrix of tests was presented in the report.

In 1998, NHTSA completed the crash tests discussed in the Report to Congress. Tests were conducted with restrained 5th and 50th percentile dummies instrumented with Denton lower legs. The tests followed the EU 96/79 EC frontal offset test procedure, but the vehicle impact speed was increased to 60 km/h, since, at that time, the agency had thought that Europe would eventually increase their impact speed to 60 km/h. Occupant responses in the frontal offset crash tests were compared to those resulting from 48 km/h belted rigid barrier crash tests using the same vehicle model.

For the 5th percentile female dummy, it was found that the head and chest readings were approximately the same, or slightly greater in the full frontal rigid barrier crash tests. However, for the lower limb and neck areas, higher injury measures were found in the frontal offset crash tests. Overall, the 5th percentile dummy was also found to be more likely to experience higher normalized injury measures than the 50th percentile dummy in the same crash configuration. This was particularly true for neck injury.[5] The test results with the 50th percentile dummy suggested that additional safety benefits might be provided for the lower extremities using the frontal offset crash test configuration.

In 1999–2002, NHTSA conducted another 25 tests to support an assessment of benefits and feasibility of a fixed offset deformable barrier crash test. The trends in dummy injury measurements were similar to that observed in the previous series of tests. Therefore, it was preliminarily determined that the benefits from a high speed fixed offset deformable barrier crash test standard would lead to a reduction in leg injuries for all occupants, and potentially a reduction in neck injuries for those of small stature. Consequently, in a notice published July 18, 2000 (65 FR 44565), NHTSA proposed that frontal offset be one of its highest priority harmonization recommendations under the 1998 Global Agreement, and announced its adoption of full/offset frontal as an agency recommendation in a notice published on January 18, 2001 (66 FR 4893).

In the 2001–2002 timeframe, the agency continued research by comparing the response of two types of lower leg instrumentation in eight high

[4] Report to Congress ''Status Report on Establishing a Federal Motor Vehicle Safety Standard for Frontal Offset Crash Testing,'' April 1997.

[5] Docket NHTSA–1998–3332.

speed fixed offset deformable barrier crash tests with the 50th percentile adult male dummy. The two types of instrumentation included: the Hybrid III Denton legs and the Thor-Lx Hybrid III retrofit (Thor-Lx/HIIIr). Both lower leg instrumentation packages have been designed to fit the existing 50th percentile adult male Hybrid III dummy and to predict injury to the lower extremities. [Further discussion on the merits of the two types of lower leg instrumentation can be found in NHTSA Docket No. NHTSA–2002–11838].

In the test series, four vehicle models were crash tested twice, once with each of the two types of lower leg instrumentation, for comparison. The results showed that both the Denton legs and the Thor-LX/HIIIr legs were durable in the offset crash environment. The driver dummy head and chest injury measures with the two types of lower leg instrumentation were generally within the realm of crash test variability in the paired tests. The head and chest measures were, again, generally below the limits prescribed in FMVSS No. 208. However, the lower leg injury measures were exceeded in many of the tests, particularly with the Thor-LX.

IV. Crash Tests To Assess Potential Disbenefits of Adopting a Fixed Offset Deformable Barrier Crash Test Procedure

On December 7, 2001, John D. Graham, Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, wrote a letter to the Deputy Secretary of the U.S. Department of Transportation (DOT) asking DOT and NHTSA to consider giving greater priority to modifying its frontal occupant protection standard by establishing a high speed, frontal offset crash test requirement. If consideration was given, the letter suggested that refinements would need to be made in the estimates of the specific safety benefits that a new offset test would generate. This assessment would also need to include potential losses in existing safety benefits due to possible changes in vehicle structure and design. In response to this letter, NHTSA further examined the benefits and disbenefits of adopting a high speed frontal offset crash test procedure. Data from the 1995–2001 National Automotive Sampling System Crashworthiness Data System indicated that approximately 84,811 front seat vehicle occupants annually experience AIS 2+ skeletal and joint injuries to the lower extremities and hip in frontal offset crashes. Of these 84,811 vehicle occupants, 67,848 (80 percent) were drivers and 16,963 (20 percent) were front outboard passengers. Based on evaluating the agency's fixed offset deformable barrier crash tests conducted to date and those from IIHS, it was preliminarily determined that such a test requirement would have the potential of annually reducing 1,300 to 8,000 MAIS 2+ lower extremity injuries. The dummy head, chest, and femur injury measures were typically meeting the injury criteria in the fixed offset deformable barrier crash tests, so no additional benefits were projected in these areas beyond those already achieved through the FMVSS No. 208 advanced air bag final rule.

However, the high speed frontal offset crash test procedure did demonstrate that benefits could be achieved in the lower leg region. Many vehicles exceeded the provisional injury criteria for the lower legs, particularly with the Thor-Lx/HIIIr instrumentation. A test that led to new vehicle designs with improved crash protection to the lower extremities could result in substantial benefits, since NHTSA has found that lower leg injuries are typically associated with long-term recovery and significant economic cost.

The agency also conducted a few tests to assess the potential for any disbenefits that such a regulation might cause. Since the IIHS frontal offset crash test procedure has been conducted on vehicles of the U.S. fleet for over eight years, NHTSA has tried to assess the effect that vehicle design changes leading to better performance in the high speed offset test have had on overall benefits and disbenefits. For example, if a vehicle model was rated ''poor'' in the IIHS test in 1997, but improved its rating to ''good'' in 2002, NHTSA sought to understand how those design changes affected the injuries received by not only the vehicle's occupants, but also the occupants of the vehicle's collision partner.

To assess potential disbenefits, NHTSA used the vehicle-to-vehicle crash test configuration from the agency's vehicle compatibility program.[6] In this test configuration, both vehicles are moving at 56.3 km/h such that the subject vehicle impacts the left front corner of its collision partner at an offset of 50 percent and an impact angle of 30 degrees. Two vehicle-to-vehicle crash tests were conducted for each vehicle model under study, one from several years ago and one newer vehicle that had been redesigned. Both vehicles struck a MY 1997 Honda Accord. The two sets of dummy injury measurements for the driver of the MY 1997 Honda Accord were compared to determine which MY of the subject vehicle (*i.e.*, the new or old) imparted the higher injury numbers.

A. Chevrolet Blazer/Trailblazer Series

The first vehicle NHTSA examined was the General Motors (GM) Chevrolet Blazer sport utility vehicle (SUV). The 1997 MY Chevrolet Blazer received a ''poor'' overall crashworthiness rating in the IIHS frontal offset crash test program. However, in MY 2002, GM redesigned the Blazer, as the Chevrolet Trailblazer, and received an ''acceptable'' rating for its vehicle structure, but a ''marginal'' rating overall.

In June of 2002, NHTSA conducted two vehicle-to-vehicle crash tests.[7] The first used an older MY 1997 Chevrolet Blazer impacting a MY 1997 Accord. The second used a redesigned 2002 Chevrolet Trailblazer impacting a MY 1997 Honda Accord. The occupant of interest, the driver of the MY 1997 Honda Accord, was a Hybrid III 50th percentile adult male dummy with Denton lower leg instrumentation.

In the first crash test of the MY 1997 Chevrolet Blazer, the Honda Accord driver dummy slightly exceeded the head and leg injury criteria specified in FMVSS No. 208. However, the chest and neck injury criteria were met (*See* Table 1).

[6] Summers, Prasad, Hollowell, ''NHTSA's Vehicle Compatibility Research Program,'' Society of Automotive Engineers Paper No. 1999–01–0071, March 1999.

[7] Docket NHTSA–1998–3332.

TABLE 1.—DRIVER INJURY MEASURES FOR 1997 HONDA ACCORD

[Blazer/Trailblazer Series]

	HIC15	Chest Gs	Chest deflection (mm)	Nij	Max. femur (N)
FMVSS No. 208 Injury Criteria Perf. Limits	700	60	63	1.0	10,008
1997 Chevrolet Blazer Test	738	53	24	0.39	12,114
2002 Chevrolet TrailBlazer Test	3,310	81	85	0.85	16,859

In the second crash test, involving the MY 2002 Chevrolet Trailblazer, all FMVSS No. 208 injury criteria for the Honda Accord driver were exceeded with the exception of Nij. (The Nij was marginally below the performance limits, but was still higher than in the MY 1997 Chevrolet Blazer test). All other injury measures for the head, chest and femurs of the Honda Accord driver increased substantially when struck by the later MY vehicle. The driver head injury measurement for the Honda driver in the MY 2002 Chevrolet Trailblazer crash test was four times higher than that in the MY 1997 Chevrolet Blazer crash test.

NHTSA examined force-deflection profiles of the MY 1997 Blazer and MY 2002 Trailblazer vehicles to provide insight on how the vehicles crushed when impacting a rigid barrier under NCAP conditions. Due to the sharp-rising slope of the force-deflection profile and the reduced crush space in the MY 2002 Trailblazer, the vehicle model exhibited stiffer characteristics when compared to its predecessor. The MY 2002 Trailblazer also increased in mass by 227 kg (500 lbs).

On the other hand, the MY 2002 Chevrolet Trailblazer exhibited notable improvements in structural integrity, as demonstrated in the IIHS frontal offset crash test. The MY 1997 Blazer, in contrast, had a large amount of structural deformation to the A-pillar and driver door frame.

Overall, the crash test results showed that the MY 2002 Chevrolet Trailblazer slightly improved the crash protection provided to its own occupants in frontal offset crashes; however, it reduced the injury protection provided to its collision partner. The newer vehicle had increased stiffness and mass, and different geometry. It was difficult to assess how much of a contribution each of these factors made toward increasing the injury measures experienced by the Honda driver.

B. Mitsubishi Montero Sport Series

Following the Blazer/Trailblazer tests, the agency decided to conduct a second pair of tests to better assess the influence of structural stiffness versus mass and geometric effects. The vehicle model selected for study was the Mitsubishi Montero Sport SUV. In MY 1999, IIHS rated the crashworthiness of this vehicle as ''poor.'' However, after a redesign in MY 2001, the Montero Sport improved its rating to ''good.'' This vehicle had virtually no change in mass, and minimal change in front end geometry, during the course of the subject model years. Force-deflection measurements for the MY 1999 and MY 2001 vehicles were not available.

The Mitsubishi Montero Sport test series was conducted in November of 2002.[8] NHTSA used the same 30 degree frontal oblique test configuration from the Blazer/Trailblazer series. As before, the target vehicle was a 1997 Honda Accord with a 50th percentile male Hybrid III driver dummy with Denton lower leg instrumentation (Table 2).

TABLE 2.—DRIVER INJURY MEASURES FOR 1997 HONDA ACCORD

[Montero Sport Series]

	HIC15	Chest Gs	Chest deflection (mm)	Nij	Max. femur (N)
FMVSS No. 208 Injury Criteria Perf. Limits	700	60	63	1.0	10,008
1999 Mitsubishi Montero Sport Test	323	58	32	0.65	9,744
2001 Mitsubishi Montero Sport Test	480	71	58	0.61	10,903

The results demonstrated that injury measures for the head, chest, and femurs of the Honda Accord driver increased when struck by the redesigned MY 2001 Mitsubishi Montero Sport. Although, the increases in the injury measures were not as large in this test series, the test series exhibited the same trend toward increased injuries to the driver occupant of the crash partner from the later MY striking vehicle as was found in the Chevrolet Blazer/Trailblazer series.

C. Future Vehicle Crash Tests

The two series of vehicle-to-vehicle crash tests were indicative of the same general trend, but the magnitude of differences observed were very different. The later model year striking vehicle generally imparted higher injury numbers to the struck vehicle's driver dummy. Furthermore, the greatest increase in injury measures were in the body regions of the head and chest, which could largely offset any potential benefits gained by reducing injuries to lower legs of occupants of the striking vehicle. Consequently, NHTSA's two test series have raised questions about whether or not these results are representative of the effects on collision partner protection in the current fleet, and the extent to which disbenefits to crash partners are associated with design changes made to improve performance in a high speed frontal offset crash test.

Because of this, the agency has decided to study the performance of

[8] Docket NHTSA–1998–3332.

four additional vehicle models that have improved their IIHS crashworthiness rating from ''poor'' (or ''marginal'' in one case) to ''good'' over the course of a vehicle redesign. The vehicle models selected are the Cadillac Seville, the Toyota Avalon, the Dodge Ram 1500 and the Toyota Previa. Generally, these vehicle models received a ''poor'' or ''marginal'' crashworthiness rating in the 1993–1998 MY time period. However, more recently, these vehicle models improved their rating to ''good.'' While we previously studied two SUV models, we are now conducting the tests of other vehicle types to see if a similar trend is observed. We have broadened our selection to include two vehicle models from the other light truck and van (LTV) classes, specifically a pickup truck and a minivan. We have also selected two passenger cars, since load cell data collected in NHTSA's New Car Assessment Program has suggested that passenger cars have generally been getting stiffer during the past five years.[9]

Three of the vehicle models, the Cadillac Seville, the Dodge Ram 1500 and the Toyota Previa, improved their IIHS overall crashworthiness rating from ''poor'' to ''good'' during the course of a redesign without a significant increase in vehicle weight (less than 59 kg or 130 lb). The fourth vehicle, the Toyota Avalon, improved its rating from ''marginal'' to ''good,'' but had a 110 kg (243 lb.) increase in vehicle weight. Therefore, with the exception of the Avalon, increased mass should not be a relevant factor.

NHTSA plans to docket the results of these tests in Docket Number NHTSA–1998–3332, as they become available. We anticipate this will occur during the comment period for this notice. NHTSA does not know at this time what conclusions, if any, can be reached regarding potential benefits and disbenefits of a high speed frontal offset crash test requirement. Therefore, in addition to the tests described above, we would like to consider data and views from others in deciding on the next steps for our high speed frontal offset rulemaking. We will then proceed with a proposal or pursue potential alternative strategies, depending on the outcome of these tests and the comments received.

V. Potential Alternative Strategies

If there appears to be a trend of higher partner vehicle injury measures for new vehicles that have been redesigned to perform better in an offset frontal crash test, NHTSA may consider potential alternative strategies aimed at preserving the potential lower leg benefits from a high speed frontal offset crash test requirement, while minimizing the risk of increasing vehicle aggressivity in the fleet. The alternative strategies discussed in this section do not constitute an exhaustive list of options. NHTSA is seeking comments on others as well.

A. Exemption of Certain Vehicles

One strategy to reduce the potential disbenefits of a frontal offset crash test requirement would be to limit the vehicle classes or gross vehicle weight rating (GVWR) of the vehicles to which the potential regulation would apply. For example, NHTSA's initial disbenefits assessment tests were conducted on SUVs only. If tests with the Cadillac DeVille and Toyota Avalon passenger cars do not show the same trend as observed for the Blazer/Trailblazer and Montero Sport, one potential strategy would be to apply the high speed frontal offset requirement only to passenger cars. Excluding SUVs (or all LTVs) from the proposed frontal offset crash test requirement would not contribute to encouraging vehicle manufacturers to stiffen their front structures to comply with the test procedure. However, this option is not a panacea since it would exempt LTV manufacturers from being required to improve their compartment integrity. This is of particular concern since LTVs are a growing proportion of the U.S. passenger vehicle fleet.

Passenger car occupants, on the other hand, could benefit from a frontal offset crash test requirement since their vehicles would be required to maintain compartment integrity and provide better lower leg protection. Since passenger cars typically incur more intrusion when involved in frontal crashes with larger, stiffer LTVs, their occupants would largely be the benefactors from such a frontal offset regulation. NHTSA estimates that approximately 77 percent of the benefits of a high speed frontal offset regulation would accrue to passenger car occupants. In addition, passenger car occupants may also benefit from the LTV exclusion, since the LTVs striking them by may not be designed to be as stiff.

Overall, this approach would increase the self protection (*i.e.*, the protection a vehicle provides to its own occupants) of passenger cars, but would not address the self protection needs of LTV occupants. The approach may also create disbenefits to LTV occupants if future passenger car collision partners become significantly stiffer as a result of a frontal offset crash test requirement. LTVs could alternatively be addressed in a future rulemaking when a more comprehensive strategy for addressing fleet compatibility is developed.

B. Additional Performance Requirement

Another alternative under consideration would be to include a loading requirement that would limit the stiffness and/or energy management such that LTV/SUV's structural properties were more similar to those of passenger cars. There are a number of long term strategies to accomplish this. The potential strategies could include a fleet-representative moving deformable barrier-to-vehicle test, a fixed offset deformable barrier test with a mass-dependent impact speed, or a fixed offset deformable barrier test (with a constant impact speed) and either a load limit or a height requirement on the average force applied to the barrier face. However, NHTSA has collected only a very limited amount of load cell data in its frontal offset deformable barrier crash tests. A similar effort is described for partner protection in NHTSA's vehicle compatibility report,[10] but test results from the compatibility initiative will not be available for about a year, and do not include fixed offset deformable barrier testing. Thus, pursuing this alternative is viewed as a longer term effort, and is not consistent with establishing a high speed frontal offset crash test requirement in the near future. Comments on alternative loading requirements that have been developed and could be used in the near term are sought.

VI. Solicitation of Comments

To assist the agency in acquiring the information it needs, NHTSA is including a list of questions and requests for comments and data in this notice. For easy reference, the questions are numbered consecutively. NHTSA encourages commenters to provide specific responses for each question for which they have information or views. In order to facilitate tabulation of the written comments in sequence, please identify the number of each question to which you are responding.

NHTSA requests that the rationale for positions taken by commenters be very specific, including analysis of safety consequences. NHTSA encourages commenters to provide scientific

[9] Swanson, J., Rockwell, T., Beuse, N., Summers, L., Summers, S., Park, B., ''Evaluation of Stiffness Measures from the U.S. New Car Assessment Program,'' Proceedings of the 18th International Technical Conference on the Enhanced Safety of Vehicles, Nagoya, Japan, Paper 527.

[10] ''Initiatives to Address Vehicle Compatibility,'' June 2003, 68 FR 36534, and Docket NHTSA–2003–14622.

analysis and data relating to materials, designs, testing, manufacturing, and field experience.

The following is a list of questions for which the agency is requesting feedback. NHTSA also encourages commenters to provide any other data, analysis, arguments or views they believe are relevant.

1. Are NHTSA's anticipated safety benefits associated from a fixed offset deformable barrier crash test requirement provided in Section IV realistic? Please provide data to support any views.

2. In addition to potential disbenefits to the occupants of collision partners described in this notice, are there other potential disbenefits NHTSA should consider? Please provide data to support any views.

3. Is it necessary to stiffen the front corners of vehicles to do well in a fixed offset deformable barrier crash test? Please explain the answer. Also, is the answer to this question different for different vehicle classes? If so, please explain the answer for each vehicle class.

4. If stiffening the front corners of vehicles to do well in a fixed offset deformable barrier crash test is just one alternative for improving performance, what other types of countermeasures are available to achieve good performance in a fixed offset deformable barrier crash test? What are the costs and required lead-time associated with these countermeasures?

5. What are the constraints vehicle manufacturers must face in designing a vehicle to meet a high speed fixed offset deformable barrier crash test requirement? Which are the most difficult to overcome? What types of vehicles have the most constraints?

6. Is it necessary for the agency to consider alternative strategies to prevent vehicles from being too stiff or aggressively designed as a result of a fixed offset deformable barrier crash test requirement?

7. Are there certain vehicle classes or vehicle weights that should be exempted from a frontal offset crash test requirement? If so, please state the rationale for each vehicle class exemption or vehicle weight limitation.

8. This notice discussed one potential alternative strategy establishing an additional performance requirement to limit stiffness and/or energy management. Is this an appropriate strategy to pursue? If so, what requirement should be established?

9. Are there other alternative strategies, beyond those mentioned in this notice, which the agency should consider in conjunction with a fixed offset deformable barrier crash test requirement?

10. What optimum test speed should be employed in the fixed offset deformable barrier test so as to maximize occupant compartment integrity and at the same time ensure no undue stiffening of the fronts of large vehicles? What are the trade-offs between test speed and front-end stiffness of vehicles? Are the countermeasures dependent upon the test speed? If so, please explain the dependence.

VII. Public Participation

A. How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage the preparation of comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

B. How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

C. How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512.)

D. Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a proposed rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

E. How Can I Read the Comments Submitted by Other People?

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 April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also review the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on ''Simple Search.''

(3) On the next page, type in the five-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–12345,'' you would type ''12345.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You can then download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the

Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued: January 28, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–2206 Filed 2–2–04; 8:45 am]

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Notices

Federal Register

Vol. 69, No. 22

Tuesday, February 3, 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.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–042N]

Notice of Request for Extension and Revision of a Currently Approved Information Collection (Application for Inspection, Accreditation of Laboratories, and Exemptions)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, this notice announces the Food Safety and Inspection Service's (FSIS) intention to request an extension for and revision to a currently approved information collection package (ICP) regarding Application for Inspection, Accreditation of Laboratories, and Exemptions.

DATES: Comments on this notice must be received on or before April 5, 2004.

FOR FURTHER INFORMATION CONTACT: Contact John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 300 12th Street, SW., Room 112, Washington, DC 20250–3700, (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Application for Inspection, Accreditation of Laboratories, and Exemptions.

OMB Number: 0583–0082.

Expiration Date of Approval: 3/31/2004.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*). These statutes mandate that FSIS protect the public by taking regulatory actions to provide that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting an extension and revision to the ICP addressing paperwork and recordkeeping requirements regarding the application for inspection, accreditation of laboratories, and exemptions.

FSIS requires meat, poultry, and import establishments to apply for a grant of inspection before they can receive Federal inspection. FSIS also requires establishments that wish to receive voluntary inspection to apply for inspection. Establishments that wish to export or import product most also submit certain documents to the Agency.

The Federal Meat Inspection Act (21 U.S.C. 642), the Poultry Products Inspection Act (21 U.S.C. 460 (b)), and the Egg Products Inspection Act (21 U.S.C. 1040) require certain parties to keep records that fully and correctly disclose all transactions involved in their businesses related to relevant animal carcasses and parts and egg products.

FSIS requires FSIS accredited non-Federal analytical laboratories to maintain certain paperwork and records. The Agency uses this collected information to ensure that all meat and poultry establishments produce safe, wholesome, and unadulterated product, and that non-federal laboratories act in accordance with FSIS regulations.

In addition, FSIS also collects information to ensure that meat and poultry establishments exempted from Agency inspection do not commingle inspected and non-inspected meat and poultry products, and that establishments qualifying for a retail store exemption who have violated the provision of that exemption are no longer in violation.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .03 hours per response.

Respondents: Official establishments and plants; brokers, etc.

Estimated Number of Respondents: 16,720.

Estimated Number of Responses per Respondent: 202.

Estimated Total Annual Burden on Respondents: 114,558. Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 300 12th Street, SW., Room 112, Washington, DC 20250–3700, (202) 720–5627, (202) 720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; 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.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

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 Internet at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would

be of interest to our constituents/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 Internet 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 29, 2004.

Garry L. McKee,

Administrator.

[FR Doc. 04–2136 Filed 2–2–04; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–043N]

Notice of Request for Extension of a Currently Approved Information Collection (Procedures for Notification of New Technology)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, this notice announces the Food Safety and Inspection Service's (FSIS) intention to request an extension for a currently approved information collection package (ICP) regarding Procedures for Notification of New Technology.

DATES: Comments on this notice must be received on or before April 5, 2004.

Additional Information or Comments: Contact John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 300 12th Street, SW., Room 112, Washington, DC 20250–3700, (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Procedures for Notification of New Technology.

OMB Number: 0583–0127.

Expiration Date of Approval: 2/29/2004.

Type of Request: Extension of a currently approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*). These statutes mandate that FSIS protect the public by taking regulatory actions to provide that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting an extension to the ICP addressing paperwork and recordkeeping requirements regarding the procedures for notification of new technology.

FSIS has established procedures for notifying the Agency of any new technology intended for use in official establishments and plants. To follow the procedures, establishments, plants, and firms that manufacture and sell technology to official establishments and plants notify the Agency by submitting documents describing the operation and purpose of the new technology. The documents should explain why the new technology will not: adversely affect the safety of the product, jeopardize the safety of Federal inspection personnel, interfere with inspection procedures, or require a waiver to a regulation. In addition, if the new technology could adversely affect the safety of the product, jeopardize the safety of Federal inspection personnel, interfere with inspection procedures, or require a waiver to a regulation, submitters are to provide a protocol for an in-plant trial as part of a pre-use review. FSIS expects the submitter of a protocol to provide data to the Agency throughout the duration of the in-plant trial.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 25 hours per response.

Respondents: Official establishments and plants; firms that manufacture or sell technology.

Estimated Number of Respondents: 290.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 8,400. Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 300 12th Street, SW., Room 112, Washington, DC 20250–3700, (202) 720–5627, (202) 720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; 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.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

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 Internet at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/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 Internet 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 29, 2004.

Garry L. McKee,

Administrator.

[FR Doc. 04–2137 Filed 2–2–04; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–044N]

Codex Alimentarius Commission: Twenty-sixth Session of the Codex Committee on Methods of Analysis and Sampling

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, of the U.S. Department of Agriculture and the Food and Drug Administration, of the Department of Health and Human Services, are sponsoring a public meeting on February 10, 2004, to review the technical contents of the agenda item documents and to receive comments on all issues coming before the Twenty-sixth Session of the Codex Committee on Methods of Analysis and Sampling, which will be held in Budapest, Hungary, March 8–12, 2004.

DATES: The public meeting is scheduled for Tuesday, February 10, 2004 from 10 a.m. to 11:30 a.m.

ADDRESSES: The public meeting will be held in the Harvey Wiley Federal Building, 5100 Paint Branch Parkway, College Park, Maryland 20740, Conference Room 1A 002.

To receive copies of the documents relevant to this notice, contact the Food Safety and Inspection Service (FSIS) Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street SW., Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net.*

Send comments (an original and two copies) to the FSIS Docket Clerk and reference Docket #03–044N. All comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Syed Amjad Ali, International Issues Analyst, U.S. Codex Office, FSIS, Room 4861, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700, telephone (202) 205–7760; Fax (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Dr. Gregory Diachenko, Director, Division of Chemistry Research and Environmental Review, FDA, at telephone (301) 436–1898; Fax (301) 436–2634.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1962 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. The Codex Committee on Methods of Analysis and Sampling (CCMAS) performs multiple functions; defines criteria appropriate for Codex Methods of Analysis and Sampling; specifies reference methods of analysis and sampling; endorses methods of analysis and sampling proposed by Codex Committees; elaborates sampling plans; and considers specific sampling and analysis problems. The Government of Hungary hosts this committee and will chair the Committee meeting.

Issues To Be Discussed at the Public Meeting

The following specific issues will be discussed during the public meeting:

- Matters referred by the Codex Alimentarius Commission and other Codex Committees.
- Proposed Draft General Guidelines on Sampling.
- Proposed Draft Guidelines on Measurement Uncertainty.
- Proposed Draft Guidelines for Evaluating Acceptable Methods of Analysis.
- Proposed Draft Guidelines for Settling Disputes on Analytical (Test) Results.
- Criteria for Methods of Analysis for Foods Derived from Biotechnology.
- The Use of Analytical Results: Sampling, Relationship between the Analytical Results, the Measurement Uncertainty, Recovery Factors and the Provisions in Codex Standards.
- Endorsement of Methods of Analysis and Sampling, including General Methods Provisions in Codex Standards.

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 29, 2004.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 04–2132 Filed 2–2–04; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–045N]

Codex Alimentarius Commission: Thirty-sixth Session of the Codex Committee on Food Hygiene

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, of the U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), of the Department of Health and Human Services, are sponsoring a public meeting on February 24, 2004, to present and receive comment on draft United States positions on all issues coming before the Thirty-sixth Session of the Codex Committee on Food Hygiene (CCFH), which will be held in Washington, DC, March 29–April 3, 2004.

DATES: The public meeting is scheduled for Tuesday, February 24, 2004, from 1 p.m. to 5 p.m.

ADDRESSES: The public meeting will be held in the Harvey Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD, 20740, in Conference Room 1A003.

To receive copies of the documents relevant to this notice, contact the Food Safety and Inspection Service (FSIS) Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.fao.org/codexalimentarius.net.*

Send comments, (an original and two copies) to the FSIS Docket Clerk and reference Docket #03–045N. All comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Syed A. Ali, International Issues Analyst, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700, Telephone (202) 205–7760, Fax (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Mr. Ali at the above numbers.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1962 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. The Codex Committee on Food Hygiene was established to draft basic provisions on food hygiene for all foods. The Government of the United States hosts this Committee and will chair the Committee meeting.

Issues To Be Discussed at the Public Meeting

The following specific issues will be discussed during the public meeting:

1. Matters Referred by the Codex Alimentarius Commission and/or Other Codex Committees to the Food Hygiene Committee.

2. Endorsement of Hygiene Provisions in the Codex Standards and Codes of Practice:

- Proposed Draft Code of Practice for Fish and Fishery Products: Section 2.2 and 2.6 of Definitions, Section 6—Aquaculture and Section 10—Processing of Quick-Frozen Coated Fish Products.
- Draft Standard for Salted Atlantic Herring and Salted Sprat.

3. Proposed Draft Code of Hygienic Practice for Milk and Milk Products at Step 7.

4. Discussion Papers on the Management of the Work of the Committee:

- Proposed Draft Process by which the Committee on Food Hygiene Could Undertake its Work in Microbiological Risk Assessment/Risk Management.
- Discussion Paper on the Development of Process, Procedures and Criteria to Establish Priorities for the Work of the Codex Committee on Food Hygiene.
- Discussion Paper on the Development of Options for a Cross-Committee Interaction Process.

5. Proposed Draft Principles and Guidelines for the Conduct of Microbiological Risk Management at Step 4.

6. Proposed Draft Guidelines on the Application of General Principles of Food Hygiene to the [Management] of *Listeria Monocytogenes* in Foods at Step 4.

7. Proposed Draft Revision of the Code of Hygienic Practice for Egg Products (CAC/RCP 15–1976, amended 1985) at Step 4.

8. Proposed Draft Guidelines for the Validation of Food Hygiene Control Measures at Step 4.

9. Reports of the ad hoc Expert Consultations on Risk Assessment of Microbiological Hazards in Food and Related Matters:

- Discussion Paper on Risk Management Strategies for *Campylobacter* ssp. In Poultry.
- Risk Profile for Enterohemorragic *E. coli* Including the Identification of the Commodities of Concern, Including Sprouts, Ground Beef and Pork.
- Discussion Paper on Risk Management Strategies for *Samonella* ssp. In Poultry.

10. Discussion Paper on the Proposed Draft Revision of the Recommended International Code of Hygienic Practice for Foods for Infants and Children.

- Risk Profile for *E. sakazakii.*

11. Proposed Draft Guidelines for the Hygienic Reuse of Processing Water in Food Plants.

12. Discussion Paper on Proposed Draft Guidelines for Evaluating Objectionable Matter in Food.

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 FSIS 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 29, 2004.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 04–2133 Filed 2–2–04; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–046N]

Codex Alimentarius Commission: Sixth Session of the Codex Committee on Milk and Milk Products

AGENCY: Food Safety and Inspection, Service, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, and the Agricultural Marketing Service (AMS), of the U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), of the Department of Health and Human Services (DHHS), are sponsoring a public meeting on April 13, 2004, to review the technical content of the agenda item documents and receive comments on all issues coming before the Sixth Session of the Codex Committee on Milk and Milk Products, which will be held in Auckland, New Zealand, April 26–30, 2004.

DATES: The public meeting is scheduled for Tuesday, April 13, 2004, from 9 a.m. to 12 noon.

ADDRESSES: The public meeting will be held in Room 3501, South Agriculture Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC 20250.

To receive copies of documents relevant to this notice, contact the Food Safety and Inspection Service (FSIS) Docket Room, U.S. Department of Agriculture, FSIS, Room 102, Cotton Annex, 300 12th Street SW., Washington, DC 20250–3700. The documents will also become accessible via the World Wide Web at the following address: *http://www.fao.org/codexalimentarius.net.* Send comments, in triplicate, to the FSIS Docket Room and reference Docket #03–046N. All comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Syed Amjad Ali, International Issues Analyst; Telephone: (202) 205–7760; Fax: (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Mr. Ali at the above number.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration and correctly labeled.

The Codex Committee on Milk and Milk Products was established to elaborate codes and standards for Milk and Milk Products. The Government of New Zealand hosts this committee and will chair the committee meeting.

Issues To Be Discussed at the Public Meeting

The following specific issues will be discussed during the public meeting:

1. Matters referred by the Codex Alimentarius Commission and other Codex committees.
2. Review of the Proposed Draft and Draft Revised Standards: Dairy Spreads; Processed Cheese; Individual Cheeses; and Whey Cheeses.
3. Proposed Standards for Products in Which Milkfat is Substituted for by Vegetable Fat.
4. Model Export Certificate for Milk Products.
5. Review of Proposals for New Standards for ''Parmesan'', Fermented Milk Drinks/Products, ''Cheese Specialities'', and a proposal to revise the Codex Standard for Extra Hard Grating Cheese.

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 29, 2004.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 04–2134 Filed 2–2–04; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–047N]

Codex Alimentarius Commission: 36th Session of the Codex Committee on Food Additives and Contaminants

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, United States Department of Agriculture, and the Food and Drug Administration (FDA), Department of Health and Human Services, are sponsoring a public meeting on February 9, 2004, to provide information and receive public comments on agenda items that will be discussed at the meeting of the Codex Committee on Food Additives and Contaminants (CCFAC), which will be held in Rotterdam, the Netherlands, on March 22–26, 2004. The Under

Secretary and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the Thirty-sixth Session of the Additives and Contaminants Committee of the Codex Alimentarius Commission (Codex) and to address items on the Agenda for the 36th CCFAC.

DATES: The public meeting is scheduled for Monday, February 9, 2004 from 1 p.m. to 4 p.m.

ADDRESSES: The public meeting will be held in the Auditorium, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, Maryland. To receive copies of the documents referenced in the notice contact the FSIS Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street SW., Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp*. If you have comments, please send an original and two copies to the FSIS Docket Clerk and reference the Docket #03–047N. All comments submitted will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Contact Ellen Matten, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, Phone: (202) 205–7760, Fax: (202) 720–3157. Attendees are requested to pre-register as soon as possible by e-mail to (e-mail address: *ccfac@cfsan.fda.gov*).

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1962 by two United States organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for protecting the health and economic interests of consumers and encouraging fair international trade in food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, FDA, and the Environmental Protection Agency manage and carry out U.S. Codex activities.

The Codex Committee on Food Additives and Contaminants establishes or endorses maximum or guideline levels for individual food additives, for contaminants (including environmental contaminants) and for naturally occurring toxicants in foodstuffs and animal fees. In addition the Committee prepares priority lists of food additives and contaminants for toxicological evaluation by the Joint FAO/WHO Expert Committee on Food Additives; recommends specifications of identity and purity for food additives for adoption by the Commission; considers methods of analysis for the determination of food additives and contaminants in food; and considers and elaborates standards or codes for related subjects such as the labeling of food additives when sold as such, and food irradiation. The Committee is chaired by The Netherlands.

Issues To Be Discussed at the Public Meeting

Items on the Provisional Agenda of the 36th Session of CCFAC to be discussed during the public meeting:

Matters referred/of Interest to the Committee arising from the Codex Alimentarius Commission and other Codex Committees 61st Meeting of the Joint FAO/WHO Expert Committee on Food Additives (JECFA)
- (a) Summary Report
- (b) Action Required as a Result of Changes in the Acceptable Daily Intake (ADI) Status and other Toxicological Recommendations

Draft Risk Assessment Principles applied by the Codex Committee on Food Additives and Contaminants

Food Additives

Endorsement and/or Revision of Maximum Levels for Food Additives in Codex Standards

Consideration of the Codex General Standard for Food Additives (GSFA)
- (a) Report of the ad hoc Working Group on the Codex General Standard for Food Additives
- (b) Proposed draft revised Preamble of the Codex General Standard for Food Additives
- (c) Draft Food Category System of the Codex General Standard for Food Additives
- (d) Proposed draft and draft Revisions to Table 1 of the Codex General Standard for Food additives
- (i) Report of the GSFA Quality Control Working Group

Discussion Paper on Realistic Approaches and Recommendations on the Consideration of Processing Aids and Carriers

Proposed draft Code of Practice on the Safe Use of Active Chlorine

Specifications for the Identity and Purity of Food Additives
- (a) Specifications for the Identity and Purity of Food Additives arising from the 61st JECFA Meeting
- (b) Report of the *ad hoc* Working Group on Specifications

International Numbering System (INS) for Food Additives
- (a) Proposals for amendments to the International Numbering System for Food Additives
- (b) Report of the Working Group on International Numbering System
- (c) Discussion Paper on the Harmonization of Terms Used in Codex Food Additive Class Names and in the International Numbering System for Food Additives with those used by the Joint FAO/WHO Expert Committee on Food Additives

Contaminants

Endorsement and/or Revision of Maximum Levels for Contaminants in Codex Standards

Consideration of the Codex General Standard for Contaminants and Toxins in Foods (GSCT)
- (a) Report of the ad hoc Working Group on Contaminants and Toxins
- (b) Schedule 1 of the Proposed Draft Codex General Standard for Contaminants and Toxins in Foods
- (c) Draft Principles for Exposure Assessment of Contaminants and Toxins in Foods

Mycotoxins in Food and Feed
- (a) Maximum Level for Patulin in Apple Juice and Apple Juice Ingredients in Other Beverages—New data submitted
- (b) Draft Code of Practice for the Prevention and Reduction of Aflatoxin
- (c) Draft Code of Practice for the Prevention and Reduction of Aflatoxin
- (d) Discussion Paper on Aflatoxins in Tree Nuts (other than almonds, hazelnuts and pistachios), including information submitted on Aflatoxin Contamination and Methods of Analysis for the Determination of Alfatoxin in Tree Nuts
- (e) Maximum Levels for Aflatoxins in Tree Nuts (almonds, hazelnuts and pistachios)—comments
- (f) Draft Maximum Levels for Ochratoxin A in Raw Wheat, Barley and Rye and Derived Products
- (g) Proposals for Maximum Levels for Deoxynivalenol
- (h) Mycotoxin Contamination in

Sorghum—Comments

Industrial and Environmental Contaminants in Foods

(a) Draft Maximum Levels for Lead in Fish
(b) Draft Code of Practice for the Prevention and Reduction of Lead in Food
(c) Proposed draft Maximum Levels for Tin
(d) Proposed draft Code of Practice for the Prevention and Reduction of Tin Contamination in Foods
(e) Proposed draft Maximum Levels for Cadmium
(f) Proposed draft Code of Practice for Source Directed Measures to Reduce Dioxin and Dioxin Like PCB Contamination of Foods
(g) Position paper on Dioxins and Dioxin-like PCBs
(h) Position paper on Chloropropanols
(i) Discussion Paper on Acrylamide

Proposed draft revised Guideline Levels for Radionuclides in Foods Following Accidental Nuclear Contamination for Use in International Trade (CAC/GL 5–1989), including Guideline Levels for Radionuclides for Long-Term Use

General Issues

Priority List of Food Additives, Contaminants and Naturally Occurring Toxicants Proposed for evaluation by JECFA
(a) Comments
(b) Report of the Working Group on the Priority List

Other Business and Future Work

Each issue listed will be fully described in documents distributed, or to be distributed, by The Netherlands' Secretariat to the Meeting. Members of the public may access or request copies of these documents (*see* **ADDRESSES**).

Public Meeting

At the February 9, 2004 public meeting, the agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Comments may be sent to the FSIS Dock Room (*see* **ADDRESSES**). Written comments should state that they relate to activities of the 36th CCFAC (docket #03–047N).

Additional Public Notification

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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 29, 2004.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 04–2135 Filed 2–2–04; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ashley National Forest; Utah; Ashley-Dry Fork Grazing Allotments

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Ashley National Forest is analyzing a proposal to continue cattle grazing on the Black Canyon, Lake Mountain and Dry Fork Allotments located on the Vernal Ranger District, in Uintah County.

DATES: Comments concerning the scope of the analysis must be received my March 7, 2004. The draft environmental impact statement is expected in November 2004 and the final environmental impact statement is expected in April 2005.

ADDRESSES: Send written comments to Scott Steinberg, Vernal District Ranger, Vernal Ranger District, 355 N. Vernal Avenue, Vernal UT 84078 or e-mail *ssteinberg@fs.fed.us*. For further information mail correspondence to Scott Steinberg, Vernal District Ranger, Vernal Ranger District, 355 N. Vernal Avenue, Vernal UT, 84078.

FOR FURTHER INFORMATION CONTACT: William Stroh, ID Team Leader, Ashley National Forest, 355 N. Vernal Avenue, Vernal UT 84078, (435) 781–5179.

SUPPLEMENTARY INFORMATION: The Black Canyon Allotment includes 37,449 acres of National Forest System land. The original boundaries were established in the early 1970's by combining the former Cow Canyon Sheep and Dry Fork Cattle Allotments. Some additional acres were also added in Ashley Gorge and from the area known as the Sheep's Trail Allotment. An additional 1,280 acres were added in 2000 from the Lakeshore Basin Allotment.

The Lake Mountain Allotment includes 7,971 acres of National Forest System Land. The original boundaries were carved out of the Mosby Mountain Allotment in 1954. In 1977, the Lake Mountain Allotment was formed by combining the Lake Mountain-Flat Spring Allotment with parts of the former Mosby Canyon and Dry Fork Canyon Allotments.

The Dry Fork Allotment includes 17,918 acres of National Forest Service land. The allotment was established in 1977–78. The allotment was formed from all or parts of the Mosby Mountain, Mill Canyon, and Dry Fork Sheep and Goat Allotments. With the above allotments the number of cattle can be adjusted depending on variations in precipitation, plant readiness, and range condition.

Purpose and Need for Action

The original environmental analyses for these allotments were written in conjunction with the Allotment Management Plans in 1978. Since 1978, several wildlife and fish species have become imperiled and have either been listed by the U.S. Fish and Wildlife Service as threatened or have been addressed in Conservation Agreements or Management Guidelines. These species have been afforded additional protection by additional grazing requirements. Forest Service policy on grazing in riparian areas has also been implemented after the Allotment Management Plans were originally put into practice. The Ashley National Forest has implemented these requirements and policy by adaptive management and has used the Annual Operating Instructions as the vehicle for change.

The Ashley National Forest has decided there have been sufficient

changes in the physical characteristics of the allotments in addition to regulatory and policy changes, that an updated review of the allotments is warranted.

Proposed Action

This alternative would develop forage utilization standards for individual grazing allotments. Allotment Management Plans would be revised to meet utilization standards and additional environmental protection requirements that recent regulations and policy changes have required. This would include incorporation of mitigation identified in the following in the plan: the Canada Lynx Conservation Assessment and Strategy, the Conservation Strategy and Agreement for the Northern Goshawk Habitat in Utah, Guidelines to Manage Sage Grouse Populations and Their Habitats, the Colorado River Cutthroat Trout Conservation Agreement, and riparian management guidelines.

This Alternative would also analyze the changes in grazing strategy that have recently been incorporated in the Annual Operating Plans.

Possible Alternatives

The No Grazing Alternative would revoke grazing privileges for the allotment and permits would not be issued.

Responsible Official

The Vernal District Ranger, Scott Steinberg is the responsible official. The address is 355 North Vernal Avenue, Vernal, UT 84078.

Nature of Decision To Be Made

The decision to be made is: Should the Forest Service continue to allow grazing on the Black Canyon, Lake Mountain, and Dry Fork Allotments and along with this continued grazing should new forage utilization standards be developed?

Scoping Process

Public participation is especially important at several points during the analysis, particularly during initial scoping and review of the draft EIS. Individuals, organizations, federal, state, and local agencies who are interested in or affected by the decision are invited to participate in this scoping process. The information will be used in the preparation of the draft EIS.

Preliminary Issues

The following is a preliminary list of issues identified by the ID Team. Other issues raised during public involvement will also be discussed in this EIS. The preliminary issues include:

1. Effects on Water Quality; Soils; Long term Productivity and Nutrient Cycling.
2. Effects On Composition and Structure of Vegetation on Uplands as well as in Riparian Areas.
3. Effects of competition between wild ungulates and cattle.
4. Effects on Fisheries and aquatic habitats.
5. Effects on dispersed recreation.
6. Effects on grazing permittees and long established traditional grazing use.
7. Effects to other wildlife.
8. Effects to Sims Peak Natural Research Area.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: January 23, 2004.

Scott Steinberg,

District Ranger.

[FR Doc. 04–2140 Filed 2–2–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

West-Side Reservoir Post-Fire Project, Flathead National Forest, Flathead County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for a proposal to salvage dead and dying trees within the perimeters of the Beta, Doris, Doe, Wounded Buck, Blackfoot, and Ball fires (collectively referred to as the West-Side Reservoir Fires), which burned a total of approximately 30,000 acres on the Flathead National Forest from July to September of 2003. All fires burned on the Hungry Horse Ranger District except the Ball fire that burned on the Spotted Bear Ranger District; all of the burned acres occur on and are surrounded by National Forest System land. The Hungry Horse Reservoir is adjacent to the project area on the east. The Hungry Horse Dam, administered by the Bureau of Reclamation, is adjacent to the project area on the north. The city of Hungry Horse, Montana is located about four air miles to the northwest of the most northern portion of the project area.

DATES: Substantive comments concerning the scope of the analysis should be received in writing on or

before March 5, 2004. A public scoping meeting will be held in the town of Kalispell, Montana in February 2004. The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency and made available for public review in June of 2004. No date has yet been determined for filing the final environmental impact statement (FEIS).

ADDRESSES: Send written comments to either Jimmy DeHerrera, Hungry Horse District Ranger, or Deb Mucklow, Spotted Bear District Ranger. The mailing address for both Rangers is P.O. Box 190340, Hungry Horse, Montana 59919, or call them at (406) 387–3800. Comments may be e-mailed to *comments-northern-flathead-tally-lake@fs.fed.us.* Substantive comments are those within the scope of, are specific to, and have a direct relationship to the proposed action, and include supporting reasons that the Responsible Official should consider in reaching a decision. Comments received in response to this request will be available for public inspection and will be released in their entirety if requested pursuant to the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Bryan Donner, Planning Team Leader, (406) 863–5408.

SUPPLEMENTARY INFORMATION: The purpose and need for the action is to recover merchantable wood fiber affected by the West-Side Reservoir Fires in a timely manner to support local communities and contribute to the long-term yield of forest products.

Fire-killed trees do not typically maintain their merchantability as wood products for more than one to three years, depending on their species and size. Sapwood staining, checking, woodborer damage, and decay will deleteriously reduce timber volume after that time. Smaller-diameter trees typically will not be merchantable within a year. Larger-diameter trees can retain their merchantability as wood products for a longer period, but merchantability will deteriorate as time goes on. While considering ecological needs, salvage harvesting an appropriate amount of fire-affected trees in a timely manner to ensure their economic utilization and starting the reforestation process in the burned area will help facilitate meeting desired conditions within the area of the West-Side Reservoir Fires.

The proposed action includes salvage of trees from a range of approximately 6100 to 6300 acres, which represents about 20 percent of the area that burned in the 2003 West-Side Reservoir Fires. No salvage or road building is proposed within inventoried roadless lands, nor is it proposed within the Jewel Basin Hiking Area. Planting conifer seedlings and ensuring that Best Management Practices would be maintained on roads used for the salvage would also be included in this project.

Additionally, road and trail access would be changed in six grizzly bear subunits to respond to the Flathead Forest Plan's Amendment 19 ten-year goals and objectives relative to grizzly bear security. Approximately 20 miles of open yearlong/seasonally open road would be restricted to wheeled motorized use yearlong and approximately 43 miles of trail would also be restricted to wheeled motorized use only within the Doris Lost Johnny, Wounded Buck Clayton, Jewel Basin Graves, Wheeler Quintonkon, Kah Soldier, and Ball Branch grizzly bear subunits. Also, approximately 49 miles of road would be decommissioned in these same units. All of these 49 miles of road decommissioning are currently restricted to wheeled motorized use yearlong except for 0.8 miles that is currently open yearlong. The Flathead Forest Plan has open motorized access, total motorized access, and security core standards that would be amended with a project specific amendment in this project.

More detailed scoping information and maps can be accessed on the Flathead National Forest Internet site at *http://www.fs.fed.us/rl/flathead/.*

This EIS will tier to the Flathead National Forest Land and Resource Management Plan and EIS of January 1986, and its subsequent amendments, which provide overall guidance for land management activities on the Flathead National Forest.

Preliminary issues and concerns include effects of treatments on the following: soil, streams, riparian areas, old growth habitat, recreational motorized access, and threatened/endangered species such as bull trout and grizzly bears.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The Responsible Official is the Forest Supervisor of the Flathead National Forest, 1935 3rd Avenue East, Kalispell, Montana 59901. The Forest Supervisor will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the final EIS, and applicable laws, regulations, and policies. The decision and rationale for the decision will be documented in a Record of Decision. That decision will be subject to appeal under applicable Forest Service regulations.

Dated: January 29, 2004.

Cathy Barbouletos,

Forest Supervisor—Flathead National Forest.

[FR Doc. 04–2100 Filed 2–2–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

President's Export Council; Subcommittee on Export Administration; Notice of Partially Closed Meeting

The President's Export Council Subcommittee on Export Administration (PECSEA) will meet on February 25, 2004, 10 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Public Session:

1. Opening remarks by the Chairman.
2. Bureau of Industry and Security (BIS) and Export Administration update.
3. Export Enforcement update.
4. Presentation of papers or comments by the public.

Closed Session:

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the PECSEA. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSEA members, the PECSEA suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, OSIES/EA/BIS MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

A Notice of Determination to close meetings, or portions of meetings, of the PECSEA to the public on the basis of 5 U.S.C. 522(c)(1) was approved on October 8, 2003, in accordance with the Federal Advisory Committee Act.

For more information, call Ms. Carpenter on (202) 482–2583.

Dated: January 28, 2004.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 04–2112 Filed 2–2–04; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with section 351.213(2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of February 2004, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in February for the following periods:

	Period
ANTIDUMPING DUTY PROCEEDINGS	
Brazil: Stainless Steel Bar, A–351–825	2/1/03—1/31/04
France: Certain Cut-to-Length Carbon-Quality Steel Plate, A–427–816	2/1/03—1/31/04
France: Uranium, A–427–818	2/1/03—1/31/04
Germany: Sodium Thiosulfate, A–428–807	2/1/03—1/31/04
India: Certain Cut-to-Length Carbon-Quality Steel Plate, A–533–817	2/1/03—1/31/04
India: Forged Stainless Steel Flanges, A–533–809	2/1/03—1/31/04
India: Stainless Steel Bar, A–533–810	2/1/03—1/31/04
India: Certain Preserved Mushrooms, A–533–813	2/1/03—1/31/04
Indonesia: Certain Cut-to-Length Carbon-Quality Steel Plate, A–560–805	2/1/03—1/31/04
Indonesia: Certain Preserved Mushrooms, A–560–802	2/1/03—1/31/04
Italy: Certain Cut-to-Length Carbon-Quality Steel Plate, A–475–826	2/1/03—1/31/04
Italy: Stainless Steel Butt-Weld Pipe Fittings, A–475–828	2/1/03—1/31/04
Japan: Carbon Steel Butt-Weld Pipe Fittings, A–588–602	2/1/03—1/31/04
Japan: Certain Cut-to-Length Carbon-Quality Steel Plate, A–588–847	2/1/03—1/31/04
Japan: Mechanical Transfer Presses, A–588–810	2/1/03—1/31/04
Japan: Melamine In Crystal Form, A–588–056	2/1/03—1/31/04
Japan: Stainless Steel Bar, A–588–833	2/1/03—1/31/04
Malaysia: Stainless Steel Butt-Weld Pipe Fittings, A–557–809	2/1/03—1/31/04
Mexico: Welded Large Diameter Line Pipe, A–201–828	2/1/03—1/31/04
Philippines: Stainless Steel Butt-Weld Pipe Fittings, A–565–801	2/1/03—1/31/04
Republic of Korea: Certain Cut-to-Length Carbon-Quality Steel Plate, A–580–836	2/1/03—1/31/04
Republic of Korea: Stainless Steel Butt-Weld Pipe Fittings, A–580–813	2/1/03—1/31/04
Taiwan: Forged Stainless Steel Flanges, A–583–821	2/1/03—1/31/04
The People's Republic of China: Axes/adzes, A–570–803	2/1/03—1/31/04
The People's Republic of China: Bars/wedges, A–570–803	2/1/03—1/31/04

	Period
The People's Republic of China: Certain Preserved Mushrooms, A–570–851	2/1/03—1/31/04
The People's Republic of China: Coumarin, A–570–830	2/1/03—1/31/04
The People's Republic of China: Creatine Monohydrate, A–570–852	2/1/03—1/31/04
The People's Republic of China: Hammers/sledges, A–570–803	2/1/03—1/31/04
The People's Republic of China: Natural Bristle Paint Brushes and Brush Heads, A–570–501	2/1/03—1/31/04
The People's Republic of China: Picks/mattocks, A–570–803	2/1/03—1/31/04
The People's Republic of China: Sodium Thiosulfate, A–570–805	2/1/03—1/31/04
The United Kingdom: Sodium Thiosulfate, A–412–805	2/1/03—1/31/04
COUNTERVAILING DUTY PROCEEDINGS	
France: Certain Cut-to Length Carbon Quality Steel Plate, C–427–817	1/1/03—12/31/03
France: Low Enriched Uranium, C–427–819	1/1/03—12/31/03
Germany: Low Enriched Uranium, C–428–829	1/1/03—12/31/03
India: Certain Cut-to-Length Carbon-Quality Steel Plate, C–533–818	1/1/03—12/31/03
Indonesia: Certain Cut-to-Length Carbon-Quality Steel Plate, C–560–806	1/1/03—12/31/03
Italy: Certain Cut-to-Length Carbon-Quality Steel Plate, C–475–827 1/1/03—12/31/03.	
Netherlands: Low Enriched Uranium, C–421–809	1/1/03—12/31/03
Republic of Korea: Certain Cut-to-Length Carbon-Quality Steel Plate, C–580–837	1/1/03—12/31/03
The United Kingdom: Low Enriched Uranium, C–412–821	1/1/03—12/31/03

Suspension Agreements

None.

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act, may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 69 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration Web site at *http://www.ia.ita.doc.gov.*

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of February 2004. If the Department does not receive, by the last day of February 2004, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: January 29, 2004.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 04–2169 Filed 2–2–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–853]

Bulk Aspirin from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Partial Rescission of Third Administrative Review.

SUMMARY: On August 22, 2003, the Department of Commerce (''the Department'') published a notice of initiation of an administrative review of the antidumping duty order on bulk aspirin from the People's Republic of China (68 FR 50750). This review covers sales of bulk aspirin to the United States during the period July 1, 2002 through June 30, 2003. Based on a request for withdrawal of the review with respect to Jilin Henghe Pharmaceutical Company Ltd. (''Jilin''), we are rescinding, in part, the third administrative review.

EFFECTIVE DATE: February 3, 2004.

FOR FURTHER INFORMATION CONTACT: Julie H. Santoboni, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW.,

Washington DC 20230; telephone (202) 482–4194.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 2003, the Department published in the **Federal Register** a notice of the opportunity to request an administrative review in the above-cited segment of the antidumping duty proceeding (*see* 68 FR 39511). We received a timely filed request for review of Jilin and Shandong Xinhua Pharmaceutical Factory, Ltd. (''Shandong'') from Rhodia, Inc. (''Rhodia''), the petitioner in this case. On August 22, 2003, we initiated an administrative review of Jilin and Shandong (68 FR 50750).

On January 5, 2004, Rhodia withdrew its request for review of Jilin. Although this withdrawal was received by the Department after the regulatory deadline of November 20, 2003, 19 CFR 351.213(d)(1) permits the Department to extend the deadline if ''it is reasonable to do so.'' Because the petitioner was the only party to request the review, we find it is reasonable to extend the deadline to withdraw the review request.

Partial Rescission of Antidumping Administrative Review

In accordance with 19 CFR 351.213(d)(1), we are rescinding the administrative review with respect to Jilin.

Shandong remains a respondent in this administrative review.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For Jilin, from July 1, 2002 through September 29, 2002, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

Pursuant to a final court decision, which excluded Jilin from the order effective September 30, 2002, entries of subject merchandise from Jilin, entered or withdrawn from the warehouse on or after September 30, 2002, have been liquidated without regard to antidumping duties. *See Bulk Aspirin From the People's Republic of China: Notice of Amended Final Determination and Amended Order Pursuant to Final Court Decision*, 68 FR 75208 (December 30, 2003)(''Amended Order'').

The Department will issue appropriate assessment instructions directly to the CBP within 15 days of publication of this notice.

Cash Deposit Rates

As mentioned above in the assessment section of this notice, because Jilin is excluded from the order effective September 30, 2002 (*see Amended Order*), no cash deposit is required from Jilin.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i) of the Tariff Act of 1930, as amended and 19 CFR 351.213(d)(4).

Dated: January 28, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–2166 Filed 2–2–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–888]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Determination of Sales at Less Than Fair Value.

EFFECTIVE DATE: February 3, 2004.

FOR FURTHER INFORMATION CONTACT: Paige Rivas or Sam Zengotitabengoa, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–0651 or (202) 482–4195, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that floor-standing, metal-top ironing tables and certain parts thereof (ironing tables) from the People's Republic of China (PRC) are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 773 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

This investigation was initiated on July 21, 2003. *See Notice of Initiation of Antidumping Investigation: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China*, 68 FR 44040 (July 25, 2003) (*Initiation Notice*).[1] Since the initiation of the investigation, the following events have occurred.

On August 14, 2003, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of ironing tables from the PRC. *See Ironing Tables and Certain Parts Thereof From China*, 68 FR 50190 (August 20, 2003).

On July 31, 2003, the Department issued Section A of its non-market economy (NME) antidumping questionnaire[2] to all known companies[3]

[1] The petitioner in this investigation is Home Products International, Inc.

[2] Section A of the NME questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section C requests a complete listing of U.S. sales. Section D requests information on the factors of production of the merchandise sold in or to the United States. Section E requests information on further manufacturing.

[3] The Department gathered the following PRC company names from the June 30, 2003, petition and the country desk in Beijing. *See* Memorandum

Continued

that allegedly produced and/or exported ironing tables from the PRC. In the questionnaire, the Department requested the companies to provide quantity and value information of subject merchandise exports to the United States during the period of investigation (POI). On July 30, 2003, and July 31, 2003, respectively, the Department issued the antidumping questionnaire to the Embassy of the PRC in Washington, D.C., and to the PRC Ministry of Commerce, Fair Trade Bureau (MOC) in Beijing. The Department requested that MOC send the questionnaire to the companies who manufacture and export ironing tables to the United States, as well as to manufacturers who produce ironing tables for companies who were engaged in exporting subject merchandise to the United States during the POI.

As a result of our analysis of the quantity and value responses to the questionnaire, the Department selected two mandatory respondents, Since Hardware (Guangzhou) Co., Ltd. (Since Hardware) and Shunde Yongjian Housewares Co., Ltd. (Yongjian). On September 10, 2003, the Department issued Section C and D questionnaires to Since Hardware and Yongjian. In September 2003, Forever Holdings Ltd. (Forever Holdings), Harvest International Housewares Ltd. (Harvest), Lerado (Zhoong Shan) Industrial Co., Ltd. (Lerado), and Gaoming Lihe Daily Necessities Co., Ltd. (Lihe), responded to Section A of the Department's questionnaire, as non-mandatory respondents, for purposes of obtaining separate rates. By October 15, 2003, Since Hardware and Yongjian responded to Sections C and D of the Department's questionnaire. The Department issued supplemental questionnaires where appropriate.

On November 21, 2003, pursuant to section 733(c)(1)(A) of the Act, the Department postponed the preliminary determination of this investigation until January 26, 2004. *See Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation*, 68 FR 66816 (November 28, 2003).

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either: (1) a sample of exporters, producers, or types of products that is statistically valid, based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. We received quantity and value information from six known producers of the subject merchandise in the PRC. Since Hardware and Yongjian were the producers of subject merchandise accounting for the largest volume of exports to the United States during the POI. Therefore, we selected Since Hardware and Yongjian as mandatory respondents in this investigation. *See* Memorandum from Thomas F. Futtner, Acting Office Director, Office 4, to Holly A. Kuga, Acting Deputy Assistant Secretary, Group II, ''Respondent Selection Memorandum,'' dated September 10, 2003, on file in the Central Records Unit, Room B-099 of the Main Commerce Building (CRU).

Period of Investigation

The POI is October 1, 2002, through March 31, 2003. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (i.e., June 2003). See 19 CFR 351.204(b)(1).

Scope of Investigation

For purposes of this investigation, the product covered consists of floor-standing, metal-top ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. The subject tables are designed and used principally for the hand ironing or pressing of garments or other articles of fabric. The subject tables have full-height leg assemblies that support the ironing surface at an appropriate (often adjustable) height above the floor. The subject tables are produced in a variety of leg finishes, such as painted, plated, or matte, and they are available with various features, including iron rests, linen racks, and others. The subject ironing tables may be sold with or without a pad and/or cover. All types and configurations of floor-standing, metal-top ironing tables are covered by this investigation.

Furthermore, this investigation specifically covers imports of ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. For purposes of this investigation, the term ''unassembled'' ironing table means a product requiring the attachment of the leg assembly to the top or the attachment of an included feature such as an iron rest or linen rack. The term ''complete'' ironing table means a product sold as a ready-to-use ensemble consisting of the metal-top table and a pad and cover, with or without additional features, *e.g.* iron rest or linen rack. The term ''incomplete'' ironing table means a product shipped or sold as a ''bare board'' *i.e.*, a metal-top table only, without the pad and cover- with or without additional features, e.g. iron rest or linen rack. The major parts or components of ironing tables that are intended to be covered by this investigation under the term ''certain parts thereof'' consist of the metal top component (with or without assembled supports and slides) and/or the leg components, whether or not attached together as a leg assembly. The investigation covers separately shipped metal top components and leg components, without regard to whether the respective quantities would yield an exact quantity of assembled ironing tables.

Ironing tables without legs (such as models that mount on walls or over doors) are not floor-standing and are specifically excluded. Additionally, tabletop or counter top models with short legs that do not exceed 12 inches in length (and which may or may not collapse or retract) are specifically excluded.

The subject ironing tables were previously classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0010. Effective July 1, 2003, the subject ironing tables are classified under the new HTSUS subheading 9403.20.0011. The subject metal top and leg components are classified under HTSUS subheading 9403.90.8040. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope remains dispositive.

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from Sam Zengotitabengoa, International Trade Compliance Analyst, to the File, ''Listing of Chinese Ironing Board Producers & Exporters,'' dated August 4, 2003. These companies include: Eagle Metal Furniture Manufacturer Co., Ltd.; Fuyali Houseware Co., Ltd.; Gaoming Lihe Daily Necessities Co., Ltd.; Guangdong Ironing Board Factory; Hongfong Hardware Manufactory Co., Ltd.; Jiangmen Silk Import and Export Corporation of Guangdong; Shunde Wireking Group Wanrong Hardware Co., Ltd.; Since Hardware (Guangzhou) Co., Ltd.; Wireking Group; Lerado Industrial (Zhongshan) Co.; New Tech Integrated; He Bei Orient Hardware and Mesh Products Co., Ltd.; Guang Dong General Industry Development Co. Ltd.; Nan Hai Yan Bu Zhua Hai Hardware and Furniture Factory; Hai Tong Industrial Co. Ltd.; Hui Hui Tools Co., Ltd.; Jia Jun Ironing Board Factory; Jia Shan Ji Ji Ironing Board Factory; Guang Zhou Quanyong Novwoven Co., Ltd.; Shun De Yong Jian Housewares Co., Ltd.; Fu Gang Trade Co., Ltd.; and, Guang Dong Xin Hui Arts and Crafts Import and Export Co, Ltd.

Product Coverage

In accordance with the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27295, 27323 (May 19, 1997)) (Regulations Preamble), in our notice of initiation we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 days from the publication of the *Initiation Notice*. *See Initiation Notice*, 68 FR at 44041. No parties submitted comments.

Non-Market Economy Country Status

The Department has treated the PRC as an NME country in all its past antidumping investigations. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China*, 67 FR 36570, 36571 (May 24, 2002); and *Notice of Final Determination of Sales at Less Than Fair Value: Structured Steel Beams from the People's Republic of China*, 67 FR 35479, 35480 (May 20, 2000); and *Notice of Final Determination of Sales at Less Than Fair Value Certain: Folding Metal Tables and Chairs from the People's Republic of China*, 67 FR 20090 (April 24, 2002). In accordance with section 771(18)(C) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked. No party to this investigation has sought revocation of the NME status of the PRC. Therefore, pursuant to section 771(18)(C) of the Act, the Department will continue to treat the PRC as an NME country.

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs the Department to base normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the ''Normal Value'' section, below.

Separate Rates

In an NME proceeding, the Department presumes that all companies within the country are subject to governmental control and should be assigned a single antidumping duty rate unless the respondent demonstrates the absence of both *de jure* and *de facto* governmental control over its export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996) (*Bicycles from the PRC*). Since Hardware, Yongjian, Forever Holdings, Lerado, Harvest, and Lihe have provided the requested company-specific separate rates information and have indicated that there is no element of government ownership or control over their operations. We have considered whether these companies are eligible for a separate rate, as discussed below.

The Department's separate-rates test is not concerned, in general, with macroeconomic border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. Rather, the test focuses on controls over the decision-making process on export-related investment, pricing, and output at the individual firm level. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey From the People's Republic of China*, 60 FR 14725, 14727 (March 20, 1995).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as modified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22587 (May 2, 1994) (*Silicon Carbide*). Under this test, the Department assigns separate rates in NME cases only if an exporter can demonstrate the absence of both *de jure* and *de facto* governmental control over its export activities. *See Silicon Carbide and the Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

In order for the Department to determine whether a company is sufficiently independent to be entitled to a separate rate, the companies must establish that they exported the subject merchandise to the United States during the POI. In accordance with 19 CFR 351.401(i), the Department will normally use the date of invoice to identify the date of sale of the subject merchandise. However, the Department may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter establishes the material terms of sale. In this instance, the Department found all but one of the companies to have exported subject merchandise to the United States during the POI. The Department cannot consider Lerado an exporter who made subject merchandise sales to the United States during the POI because Lerado did not present satisfactory evidence establishing that it had sold subject merchandise to the United States during the POI. *See* 19 CFR 351.401(i); *see* Regulations Preamble, at 27349; *see* Memorandum from Sam Zengotitabengoa, International Trade Compliance Analyst, Office IV, to Thomas F. Futtner, Acting Office Director, Office IV, ''Separate Rates Analysis for the Preliminary Determination in the Antidumping Duty Investigation of Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China,'' dated concurrently with this notice (Separate Rates Memo), on file in the CRU.

Because we preliminarily find that Lerado did not export subject merchandise to the United States during the POI, we are not able to evaluate whether Lerado qualifies for a separate rate. See Titanium Sponge From the Russian Federation: Notice of Final Results of Antidumping Duty Administrative Review, 61 FR 58525, 58528 (November 15, 1996), (where the Department states that ''{A}lthough AVISMA made a separate rate claim, because there are no sales to the United States by AVISMA, we are not able to evaluate the company's separateness request.'')

1. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Since Hardware, Yongjian, Forever Holdings, Harvest, and Lihe have placed on the record a number of documents to demonstrate the absence of *de jure* control, including their business licenses and the ''Company Law of the People's Republic of China.'' Other than limiting these companies' operations to

the activities referenced in the license, we noted no restrictive stipulations associated with the license. In addition, in previous cases, the Department has analyzed the ''Company Law of the People's Republic of China'' and found that it establishes an absence of de jure control. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 54472, 54474 (October 24, 1995). We have no information in this proceeding which would cause us to reconsider this determination. Therefore, based on the foregoing, we have preliminarily found an absence of de jure control for these companies.

2. Absence of *De Facto* Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

With regard to the issue of *de facto* control, Since Hardware, Yongjian, Forever Holdings, Harvest, and Lihe have reported the following: (1) there is no government participation in setting export prices; (2) their managers have authority to bind sales contracts; (3) they do not have to notify any government authorities of their management selection, and (4) there are no restrictions on the use of their export revenue and they are responsible for financing their own losses. Furthermore, our analysis of these companies' questionnaire responses reveals no other information indicating governmental control of export activities. Therefore, based on the information provided, we preliminarily determine that there is an absence of *de facto* government control. Consequently, we preliminarily determine that Since Hardware, Yongjian, Forever Holdings, Harvest, and Lihe have met the criteria for the application of separate rates. For a more detailed discussion of this issue, *see* Separate Rates Memo.

Margins for Cooperative Exporters Not Selected

To those exporters: (1) who submitted a timely response to section A of the Department's questionnaire, but were not selected as mandatory respondents, and (2) for whom the section A response indicates that the exporter is eligible for a separate rate, we assigned a weighted-average of the rates of the fully analyzed companies, excluding any rates that were zero, *de minimis*, or based entirely on facts available. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China*, 67 FR 36570, 36571 (May 24, 2002) (*Welded Steel Pipe*). Companies receiving this rate are identified by name in the ''Suspension of Liquidation'' section of this notice.

The PRC-Wide Rate

In all NME cases, the Department makes a rebuttable presumption that all exporters located in the NME country comprise a single exporter under common government control, the ''NME entity.'' *See Bicycles From the PRC*. Although the Department provided all known PRC exporters of the subject merchandise with the opportunity to respond to our initial questionnaire, only Since Hardware, Yongjian, Forever, Harvest, Lerado, and Lihe responded. However, because other PRC companies did not submit a response to the Department's Section A quantity and value question, as discussed above in the ''Case History'' section of this notice, and thus did not demonstrate their entitlement to a separate rate, we have implemented the Department's rebuttable presumption that these exporters constitute a single enterprise under common control by the PRC government, and we are applying adverse facts available to determine the single antidumping duty rate, the PRC-wide rate, applicable to all other PRC exporters comprising this single enterprise. *See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China*, 65 FR 25706, 25707 (May 3, 2000).

Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. As explained above, some exporters of the subject merchandise failed to respond to the Department's request for information. The failure of these exporters to respond significantly impedes this proceeding. Thus, pursuant to section 776(a) of the Act, in reaching our preliminary determination, we have based the PRC-wide rate on total facts available.

In applying facts otherwise available, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See Statement of Administrative Action SAA accompanying the Uruguay Round Agreements Act*, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994).Furthermore, ''affirmative evidence of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' *See Antidumping Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997). In this case, the complete failure of these exporters to respond to the Department's requests for information constitutes a failure to cooperate to the best of their ability.

For our preliminary determination, as adverse facts available, we have used the highest rate calculated for a respondent, *i.e.*, the rate calculated for Yongjian. *See Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330 (Fed. Cir. 2002) (affirming Commerce's application of adverse facts available and use of an adverse inference, resulting in the application of the highest available dumping margin to an uncooperative respondent). In an investigation, if the Department chooses as facts available a calculated dumping margin of another respondent, the Department will consider information reasonably at its disposal as to whether there are circumstances that would indicate that using that rate is inappropriate. In this investigation, there is no indication that Yongjian's calculated margin is inappropriate to use as adverse facts available.

Accordingly, for the preliminary determination, the PRC-wide rate is 153.76 percent. Because this is a preliminary margin, the Department

will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate final PRC-wide margin.

Fair Value Comparison

To determine whether Since Hardware's and Yongjian's sales of ironing tables to customers in the United States were made at LTFV, we compared Export Price (EP) to NV, using our NME methodology, as described in the ''Export Price'' and ''Normal Value'' sections of this notice below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold), before the date of importation, by the producer or exporter of the subject merchandise to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).

We used an EP methodology in accordance with section 772(a) of the Act because Since Hardware and Yongjian sold subject merchandise to unaffiliated U.S. customers prior to importation and because a constructed export price methodology was not otherwise warranted. We calculated EP based on the packed, freight-on-board port-of-export price charged to the first unaffiliated customer for exportation to the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and brokerage and handling. Where foreign inland freight and brokerage and handling were provided by NME companies, we used surrogate values from India to value these expenses. See Memorandum from Sam Zengotitabengoa, International Trade Compliance Analyst, to the File, ''Surrogate Country Factors of Production Values in the Preliminary Determination of the Antidumping Duty Investigation on Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China, dated concurrently with this notice (FOP Valuation Memo), on file in the CRU.

Normal Value

1. Surrogate Country

Section 773(c)(4) of the Act requires that the Department value the NME producer's factors of production, to the extent possible, based on the prices or costs of factors of production in one or more market economy countries that are: 1) at a level of economic development comparable to that of the NME country; and 2) significant producers of comparable merchandise. The Department's Office of Policy initially identified five countries that are at a level of economic development comparable to the PRC in terms of per-capita gross national product and the national distribution of labor. Those countries are India, Pakistan, Indonesia, Sri Lanka, and the Philippines. *See* Memorandum from Ron Lorentzen, Acting Director, Office of Policy, to Thomas F. Futtner, Acting Office Director, Office 4, ''Request for a List of Surrogate Countries,'' dated September 4, 2003, on file in the CRU. Among these countries, India is the most significant producer of comparable merchandise. Therefore, we have preliminarily calculated NV by applying Indian values to Since Hardware's and Yongjian's factors of production.

2. Factors of Production

In their questionnaire responses, Since Hardware and Yongjian reported factors of production for the manufacture of the subject merchandise during the POI. The factors of production include: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. *See* Section 773(c)(3) of the Act. To calculate NV, we multiplied the reported per-unit quantities by publicly available surrogate values from India.

Generally, the surrogate values employed in the valuation of the factors of production were selected because of their quality, specificity, and contemporaneity. We modified those values not contemporaneous with the POI using wholesale price indices (WPI) published by the Office of the Economic Adviser to the Government of India, Ministry of Commerce and Industry, to account for inflation or deflation between the effective period and the POI. As appropriate, we included freight costs in input prices to make them delivered prices. Specifically, we added to the surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic input supplier to the factory processing subject merchandise or the distance from the nearest seaport to the relevant factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997).

To value inputs and packing materials that derived from market economy countries, we used the reported prices. We valued all other material inputs and packing materials using publicly available Indian import statistics from the appropriate Indian Harmonized Tariff Schedule classification, obtained from the Government of India, Ministry of Commerce and Industry, Director General, Commercial Intelligence and Statistics, as published in the World Trade Atlas (WTA). *See* FOP Valuation Memo. Because the Department has determined that Indonesia, South Korea, and Thailand maintain broadly available, non-industry specific export subsidies which may benefit all exporters to all export markets, we eliminated the quantities and values of imports from these countries from the import statistics used to calculate the surrogate values. *See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002). In addition, the Department eliminated Indian imports of non-market economy countries from the import statistics used to calculate the surrogate values.

One of the respondents purchased cold-rolled steel inputs from a market economy supplier in a market economy currency. At this time, the Department has generally available information indicating that the PRC government imposed an antidumping order on imports of cold-rolled steel products from various countries, including the country in question. *See* Memorandum from Sam Zengotitabengoa, International Trade Compliance Analyst, to the File, ''PRC AD Final Determination,'' dated concurrently with this notice, on file in the CRU. Because the Department has reason to believe or suspect that cold-rolled steel from the country in question is being dumped, we have disregarded prices for cold-rolled steel from this country, and instead used the Indian surrogate value for both respondents.

For energy, we valued argon gas using a 1997 price quote from an Indian producer of argon; diesel oil and electricity using the 2003 International Energy Agency's Key World Energy Statistics; and water using four price quotes reported by the Asian Development Bank on October 1997.

We valued labor using the latest regression-based wage rate for China found on Import Administration's Web page (http://ia.ita.doc.gov/wages/), as described in 19 CFR 351.408(c)(3).

To value foreign inland truck freight costs, we relied upon 17 price quotes used by the Department in the *Notice of Final Determination of Sales at Less*

Than Fair Value: Bulk Aspirin From the People's Republic of China, 65 FR 33805 (May 25, 2000). We valued brokerage and handling using the average of the foreign brokerage and handling expenses in *Certain Stainless Steel Wire Rod From India: Final Results of Administrative and New Shipper Review*, 64 FR 856 (January 6, 1999).

Because the Department did not find industry specific data on the record to calculate the surrogate ratios for selling, general and administrative (SG&A) expenses, factory overhead, and profit, the Department used the ''2001–2002 combined income, value of production, expenditure and appropriation accounts'' for a sample of 2,024 public companies in India that were reported in the October 2003 *Reserve Bank of India Bulletin*.

For a complete analysis of surrogate values used in the preliminary determination, see FOP Valuation Memo.

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Suspension of Liquidation

We are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of ironing tables from the PRC entered, or withdrawn from warehouse, for consumption on or after the date on which this notice is published in the **Federal Register**. In addition, we are instructing CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

We preliminarily determine that the following percentage weighted-average margins exist for the POI:

Manufacturer/exporter	Weighted-Average Margin (percent)
Since Hardware (Guangzhou) Co., Ltd.	7.66
Shunde Yongjian Housewares Co., Ltd.	153.76
Forever Holdings Ltd.	69.59
Harvest International Housewares Ltd.	69.59
Gaoming Lihe Daily Necessities Co., Ltd.	69.59
PRC-Wide Rate.	153.76

The PRC-wide rate applies to all entries of the subject merchandise except for entries from Since Hardware, Yongjian, Forever Holdings, Harvest, and Lihe.

Disclosure

In accordance with 19 CFR 351.224(b), the Department will disclose the calculations performed in the preliminary determination to interested parties within five days of the date of publication of this notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the final determination in this proceeding is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of ironing tables from the PRC are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 351.301(c)(3)(i), interested parties may submit publicly available information to value the factors of production for purposes of the final determination within 40 days after the date of publication of this preliminary determination. Case briefs or other written comments must be submitted to the Assistant Secretary for Import Administration no later than one week after issuance of the verification reports. Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days after the deadline for the submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline for submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c). The Department will make its final determination no later than 75 days after the preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: January 26, 2004.

James J. Jochum,

Assistant Secretaryfor Import Administration.

[FR Doc. 04–2168 Filed 2–2–04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–831]

Fresh Garlic From the People's Republic of China: Notice of Extension of Time Limit for the Final Results of Antidumping Duty Administrative and New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for the final results of antidumping duty administrative and new shipper reviews.

SUMMARY: The Department of Commerce is extending the time limit for the final

results of the administrative and new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China until May 17, 2004. This extension applies to the administrative review of two exporters, Jinan Yipin Corporation, Ltd., and Shandong Heze International Trade and Developing Company, and the new shipper reviews of two exporters, Jining Trans-High Trading Company and Zhengzhou Harmoni Spice Co., Ltd. The period of review is November 1, 2001, through October 31, 2002.

EFFECTIVE DATE: February 3, 2004.

FOR FURTHER INFORMATION CONTACT: Susan Lehman or Minoo Hatten, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0180 and (202) 482–1690, respectively.

Background

On December 26, 2002, the Department of Commerce (the Department) published the *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews: Fresh Garlic from the People's Republic of China* (67 FR 78772), in which it initiated an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China. On January 6, 2003, the Department published the *Notice of Initiation of New Shipper Antidumping Duty Reviews: Fresh Garlic from the People's Republic of China* (68 FR 542), in which it initiated the new shipper reviews. On March 10, 2003, we aligned the new shipper reviews with the administrative review pursuant to 19 CFR 351.214(j)(3). As such, the time limits for the new shipper reviews were aligned with those for the administrative review. See memorandum to the File from Jennifer Moats entitled ''Request for Alignment of Annual and New Shipper Reviews,'' dated March 10, 2003. On December 10, 2003, the Department published the *Notice of Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews: Fresh Garlic from the People's Republic of China* (69 FR 68868).

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), provides that the Department will issue the final results of an administrative review of an antidumping duty order within 120 days after the date upon which the preliminary determination is published. The Act provides further that the Department may extend that 120-day period to 180 days if it determines that it is not practicable to complete the review within the foregoing time period. Section 751(a)(2)(B)(iv) of the Act also provides that we may extend the deadlines in a new shipper review if we determine that the case is extraordinarily complicated.The Department has determined that the aligned administrative review and new shipper reviews of Jinan Yipin Corporation Ltd., Shandong Heze International Trade and Developing Company, Jining Trans-High Trading Company, and Zhengzhou Harmoni Spice Co., Ltd., are extraordinarily complicated. Some of the companies have yet to be verified, and the Department has been unable, as of yet, to research and conduct a thorough analysis of the matter pertaining to the valuation of the factors of production for those companies. Therefore, because of these complications, it is not practicable to complete the final results by the current deadline of April 8, 2004. Furthermore, there are a number of other complex factual and legal questions which are currently before the agency that relate directly to the assignment of antidumping duty margins in this case. Thus, it is not practicable to complete the administrative review and new shipper reviews within the 120-day period and we require additional time to address these matters.

Therefore, in accordance with sections 751(a)(2)(B)(iv) and 751(a)(3)(A) of the Act, the Department is extending the time limit for the final results by 39 days, until no later than May 17, 2004.

Dated: January 27, 2004.

Jeffrey May,

Deputy Assistant Secretary for AD/CVD Enforcement I.

[FR Doc. 04–2167 Filed 2–2–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Public Meeting To Present Progress and Preliminary Findings of the NIST Federal Building and Fire Safety Investigation of the World Trade Center Disaster

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) of the United States Department of Commerce has scheduled a public meeting for February 12, 2004, to present an update on the progress and preliminary findings of the Federal Building and Fire Safety Investigation of the World Trade Center Disaster and to solicit comments from the public on:

(1) Specific technical aspects of the individual projects as reported in our December 2003 progress update and presentations to the National Construction Safety Team Advisory Committee (available on the NIST WTC Investigation Web site *http://wtc.nist.gov*);

(2) Information that NIST might consider in the time remaining that is within the scope of the eight projects described in the investigation plan (the plan is available at the same Web site); and

(3) Areas that NIST should consider, within the scope of its investigation, in order to make recommendations for specific improvements to building and fire practice, standards, and codes, and their timely adoption.

Individuals and representatives of organizations who would like to offer comments may request an opportunity to speak at the public meeting. The total number of speakers and organizations, and the time available for each, will be determined by the number of requests, but the time is likely to be 5 to 10 minutes each. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who are unable to attend in person are invited to submit written statements and supporting material to the WTC Technical Information Repository by February 19, 2004. All comments received will be forwarded to the appropriate investigator for consideration.

DATES: The meeting will be held on Thursday, February 12, 2004, from 10 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the New York Marriott Financial Center Hotel, 85 West Street, New York, New York, (212) 385–4900.

FOR FURTHER INFORMATION CONTACT: Stephen Cauffman at (301) 975–6051 or by e-mail at *stephen.cauffman@nist.gov.* Written statements and supporting material should be submitted to the WTC Technical Information Repository, Building and Fire Research Laboratory, National Institute of Standards and Technology, MS 8610, Gaithersburg, MD 20899–8610; electronically by e-mail to *wtc@nist.gov;* or by fax to (301) 975–6122.

SUPPLEMENTARY INFORMATION: NIST is conducting a Federal building and fire

safety investigation of the World Trade Center disaster. NIST is investigating the building construction, the materials used, and the technical conditions that combined to cause the World Trade Center disaster following the airplane impacts. The primary objectives of the NIST-led technical investigation of the WTC disaster are to:

(1) Determine why and how WTC 1 and 2 collapsed following the initial impacts of the aircraft, and why and how WTC 7 collapsed;

(2) Determine why the injuries and fatalities were so high or low depending on location, including all technical aspects of fire protection, occupant behavior, evacuation, and emergency response;

(3) Determine what procedures and practices were used in the design, construction, operation, and maintenance of WTC 1, 2, and 7; and

(4) Identify, as specifically as possible, areas in building and fire codes, standards, and practices that are still in use and warrant revision.

The investigation is part of a broader NIST response plan to the WTC disaster, which includes research and development and information dissemination and technical assistance.

To request an opportunity to speak, NIST must receive the following information via e-mail (*wtc@nist.gov*) or fax ((301)–975–6122) no later than 5 p.m. on February 5, 2004:

- Name and contact information (including fax, phone, and/or e-mail) of individual who would be speaking.
- Name and complete address of organization(s) that speaker represents.
- A 150- to 200-word summary of key points to be made by the speaker relating to:
- (1) Specific technical aspects of the individual projects as reported in our December 2003 progress update and presentations to the National Construction Safety Team Advisory Committee (available on the NIST WTC Investigation Web site *http://wtc.nist.gov*);
- (2) Information that NIST might consider in the time remaining that is within the scope of the eight projects described in the investigation plan (the plan is available at the same Web site); and
- (3) Areas that NIST should consider, within the scope of its investigation, in order to make recommendations for specific improvements to building and fire practice, standards, and codes, and their timely adoption.

Those who are selected to speak will be contacted by 12 noon on February 9, 2004, using the fax, phone, or e-mail address provided, and informed of the decision and the maximum amount of time allotted to each speaker.

Speakers will be selected based on the following criteria:

(1) Relevance of the 150- to 200-word summary on any or all of the above three topics,

(2) Order in which requests are received,

(3) Balancing interests and perspectives, and

(4) Avoidance of duplication in comments and suggestions.

Speakers who wish to expand upon their oral statements, those who wish to speak but cannot be accommodated on the agenda, and those who are unable to attend in person are invited to submit written statements and supporting material to the WTC Technical Information Repository, Building and Fire Research Laboratory, National Institute of Standards and Technology, MS 8610, Gaithersburg, MD 20899–8610; electronically by e-mail to *wtc@nist.gov;* or by fax to (301) 975–6122. All comments received will be forwarded to the appropriate investigator for consideration.

Statements made at the meeting and/or submitted to NIST may be recorded and transcribed and made available to the public at a later date. The meeting will be Web cast and linked to the NIST home page, *http://www.nist.gov/.* Details will be available on that Web site before the meeting.

Dated: January 27, 2004.

Arden L. Bement, Jr.,

Director.

[FR Doc. 04–2110 Filed 2–2–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by January 30, 2004. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before April 5, 2004.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 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 Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: January 28, 2004.

Angela C Arrington,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired

Title: Part C of the Individuals with Disabilities Education Act Annual Performance Report

Abstract: States are required to submit a performance report to the Secretary under section 80.40 of the Education Department General Administrative Regulations. The State Interagency Coordinating Committee is required under section 641 of Part C of the IDEA to submit an annual report to the Secretary and the State's Governor on the status of the early intervention program for infants and toddlers with disabilities and their families. This collection serves both of these functions. OSEP is implementing an integrated, four-part accountability strategy: (1) Verifying the effectiveness and accuracy of States' monitoring, assessment, and data collection systems; (2) attending to States at high risk for compliance, financial, and/or management failure; (3) supporting States in assessing their performance and compliance, and in planning, implementing, and evaluating improvement strategies; and (4) focusing OSEPs' intervention on States with low ranking performance on critical performance indicators. Component 3 of OSEPs' accountability strategy is implemented through this Annual Performance Report. Reporting requirements for States' Self-Assessments, Improvement Plans, and Annual Performance Reports are being combined in this Part C Annual Performance Report.

Additional Information: We are also proposing that the Part C Performance Report shall be submitted annually for the purpose of updating the State's self-assessing and improvement planning, including reporting on the impact of the State's improvement activities on performance and compliance. The Secretary is proposing that the Annual Performance Report, convering grant year July 1, 2002 through June 30, 2003, will be submitted no later than March 31, 2004.

Frequency: Annually

Affected Public:

State, local, or tribal gov't, SEAs or LEAs (primary)

Federal Government

Reporting and Recordkeeping Hour Burden:

Responses: 56

Burden Hours: 1,710

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2445. 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, contact Shelia Carey at her e-mail address *Shelia Carey @ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–2095 Filed 2–2–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools

Overview Information: Elementary and Secondary School Counseling Programs Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215E.

DATES: *Applications Available:* February 3, 2004.

Deadline for Transmittal of Applications: March 19, 2004.

Deadline for Intergovernmental Review: May 18, 2004.

Eligible applicants: Local educational agencies.

Estimated available funds: $11,500,000. Contingent upon the availability of funds, the Secretary may make additional awards in FY 2005 from the rank-ordered list of unfunded applicants from this competition.

Estimated Range of Awards: $250,000–$400,000.

Maximum Award: Section 5421(a)(5) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, 20 U.S.C. 7245 (ESEA) limits the amount of a grant under this program in any one year to a maximum of $400,000.

Estimated Number of Awards: 35.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

I. Full Text of Announcement

Purpose of Program: The purpose of the Elementary and Secondary School Counseling program is to award grants to local educational agencies for the purpose of establishing or expanding elementary and secondary school counseling programs.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from Section 5421 of the ESEA.

Absolute Priority: For FY 2004 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is: the establishment or expansion of elementary school counseling programs. Under 34 CFR part 77, an elementary school is a day or residential school that provides elementary education, as determined under State law. Applicants must also address the requirements in section 5421(c)(2) of the ESEA. A copy of the statute authorizing this competition is included in the application package.

Program Authority: 20 U.S.C. 7245.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, 99, and 299.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $11,500,000. Contingent upon the availability of funds, the Secretary may make additional awards in FY 2005 from the rank-ordered list of unfunded applicants from this competition.

Estimated Range of Awards: $250,000–$400,000.

Maximum Award: Section 5421(a)(5) of the ESEA limits the amount of a grant under this program in any one year to a maximum of $400,000.

Estimated Number of Awards: 35.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Local educational agencies.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching, but does involve supplement-not-supplant funding provisions. Section 5421(b)(2)(G) of the

ESEA requires applicants under the program to assure that program funds will be used to supplement, and not supplant, any other Federal, State, or local funds used for providing school-based counseling and mental health services to students.

3. *Other:* Section 5421(g)(2) of the ESEA requires that for any fiscal year in which the amount available for this program is less than $40,000,000 the Secretary makes grants to local educational agencies only to establish or expand counseling programs in elementary schools. The FY 2004 appropriation for this program is $33,799,400. Therefore, under this notice applicants must propose projects that establish or expand counseling programs only in elementary schools.

IV. Application and Submission Information

1. *Address to Request Application Package:* Paper copies of applications for this program are available from the Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edupubs.html* or you may contact ED Pubs at its e-mail address, *edpubs@inet.ed.gov,* in order to request a paper copy of the application for this program.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.215E.

The application package for this program is also available to be downloaded from the Department's Web site at: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.* The application package is available in both PDF and WORD formats.

Individuals with disabilities may obtain a copy of the application package for this program in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** elsewhere in this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

3. *Submission Dates and Times: Applications Available:* February 3, 2004.

Deadline for Transmittal of Applications: March 19, 2004. The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: May 18, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* Section 5421(d) of the ESEA requires that no more than four percent of a grant award may be used for administrative costs to carry out the project.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. Elementary and Secondary School Counseling Programs—CFDA 84.215E is one of the programs included in the pilot project. If you have an applicant under Elementary and Secondary School Counseling Programs, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We will continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you elect to participate in the e-Application pilot for Elementary and Secondary School Counseling Programs and you are prevented from submitting your application on the application deadline date because the e-Application

system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if–

1. You are a registered user of e-Application, and have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the house of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for Elementary and Secondary School Counseling Programs at: *http://e-grants.ed.gov*.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are in the application package.

2. *Review and Selection Process:* Applicants also must address the requirements in section 5421(c)(2) of the ESEA.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report. If you receive a multi-year award, you must submit an annual report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The Secretary has established the following performance measures for assessing the effectiveness of the Elementary and Secondary School Counseling Programs: (1) The percentage of grantees closing the gap between their student/mental health professional ratios and student/mental health professional ratios recommended by the American School Health Association will increase; and (2) the number of referrals/suspensions for disciplinary reasons for students receiving counseling under the program will decrease. These two measures constitute the Department's indicators of success for this program. Consequently, applicants for a grant under this program are advised to give careful consideration to these two outcomes in conceptualizing the design, implementation, and evaluation of their proposed project. If funded, applicants will be asked to collect and report data in their annual performance reports about progress toward these goals. The Secretary will also use this information to respond to reporting requirements concerning this program established in Section 5421(f) of the ESEA.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Loretta McDaniel, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E220, Washington, DC 20202–6450. Telephone: (202) 260–2661, or by e-mail: *loretta.mcdaniel@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: January 29, 2004.

William Modzeleski,

Associate Deputy Under Secretary for Safe and Drug-Free Schools.

[FR Doc. 04–2175 Filed 2–2–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of Open Meeting and Partially Closed Meetings.

SUMMARY: The notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify members of the general public of their opportunity to attend. Individuals who will need special accommodations in order to attend the meeting (*i.e.*, interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than February 27, 2004. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: March 4–March 6, 2004.

Times:

March 4

Committee Meetings:

Assessment Development Committee: Closed Session—12:30 p.m. to 4 p.m.;

Executive Committee: Open Session—4:30 p.m. to 5:00 p.m.; Closed Session—5:00 p.m. to 6 p.m.

March 5

Full Board: Open Session—8 a.m. to 10:30 a.m.

Committee Meetings:

Assessment Development Committee: Open Session—10:30 a.m. to 12:30 p.m.;

Committee on Standards, Design, and Methodology: Open Session—10:30 a.m. to 12:30 p.m.;

Reporting and Dissemination Committee: Open Session—10:30 a.m. to 12:30 p.m.;

Full Board: Closed Session—12:30 p.m. to 1:30 p.m.; Open Session—1:30 p.m. to 4:30 p.m.

March 6

Nominations Committee: Closed Session—7:45 a.m. to 8:45 a.m.

Full Board: Open Session—9 a.m. to 12 p.m.

Location: Westin Philadelphia, 99 S. 17th Street, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994, as amended.

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment objectives, developing appropriate student achievement levels for each grade and subject tested, developing guidelines for reporting and disseminating results, and developing standards and procedures for interstate and national comparisons.

On March 4, the Assessment Development Committee will meet in closed session from 12:30 p.m. to 4 p.m. to review secure test items for the National Assessment of Educational Progress (NAEP) 12th Grade 2005 Economics Pilot Test. The meeting must be conducted in closed session as disclosure of proposed test items from the NAEP 2005 Economics Pilot Test would significantly impede implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The Executive Committee will meet in open session on March 4 from 4:30 p.m. to 5:00 p.m. The committee will then meet in closed session from 5:00 p.m. to 6 p.m. to discuss independent cost estimates for contracts related to the National Assessment of Educational Progress (NAEP). This part of the meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program. The discussion of this information would be likely to significantly impede implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On March 5, the full Board will meet in open session from 8:00 a.m. to 10:30 a.m. The Board will approve the agenda, hear the Executive Director's report; receive an update on the work of the National Center for Education Statistics (NCES) from the Commissioner of NCES, Robert Lerner; and receive a final report of the NAEP 12th Grade Commission.

From 10:30 a.m. to 12:30 p.m. on March 5, the Board's standing committees—the Assessment Development Committee; the Committee on Standards, Design, and Methodology; and the Reporting and Dissemination Committee—will meet in open session.

The full Board will meet in closed session on March 5, 2004, from 12:30 p.m. to 1:30 p.m. to receive reports on the 1990–2000 High School Transcript Study and a Special Study on Charter Schools. This part of the meeting must be conducted in closed session because the results of these two studies are under development and have not been released to the public. Premature disclosure of the information would significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The full Board will meet in open session on March 5 from 1:30 p.m.–4:30 p.m. At 1:30 p.m., the Board will provide input and discuss the report of the NAEP 12th Grade Commission. This will be followed by a report to the Board from the External Review Panel on the 2009 NAEP Reading Framework Project from 3:15 p.m. to 4:30 p.m., after which the March 5 session of the Board meeting will adjourn.

On March 6, the Nominations Committee will meet in closed session from 7:45 a.m. to 8:45 a.m. to review nominations for Board membership. This discussion pertains solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 U.S.C.

Thereafter, the full Board will meet in open session from 9 a.m. to 12 p.m. The Board will discuss the Draft Reading Framework from 9 a.m. to 10:30 a.m. Board actions on policies and Committee reports are scheduled to take place between 10:30 a.m. and 12 p.m., when the March 6, 2004 session of the Board meeting will adjourn.

A final agenda of the March 4–6, 2004 Board meeting can be accessed after February 23, 2004 at *http://www.nagb.org*. Detailed minutes of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 9 a.m. to 5 p.m. Eastern Standard Time.

Dated: January 29, 2004.

Charles E. Smith,

Executive Director, National Assessment Governing Board.

[FR Doc. 04–2096 Filed 2–2–04; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket Nos. EA–286]

Application To Export Electric Energy; Avista Energy, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Avista Energy, Inc., (Avista Energy) has applied for authority to export electric energy from the United States to Canada, pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before March 4, 2004.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (Fax 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On December 26, 2003, Avista Energy applied to the Office of Fossil Energy of

the Department of Energy (DOE) for authority to export electric energy from the United States to Canada. Avista Energy, formally known as WWP Resource Services, Inc., is a majority-owned subsidiary of Avista Capital, Inc., which is a wholly-owned subsidiary of Avista Corp. Avista Energy is incorporated under the laws of the State of Washington, with its principal place of business in Spokane, Washington. Avista Energy engages in the marketing and trading of electricity and natural gas and is authorized by the Federal Energy Regulatory Commission (FERC) to make market based sales of electric power. Avista Energy has the exclusive right to market the entire output of a combined-cycle generating facilitiy located in Rathdrum, Idaho. However, Avista Energy has no franchised electric power service territory and does not own or operate any generation, transmission, or distribution facilities.

All of the electric energy and capacity that Avista Energy proposes to export in FE Docket No. EA–286 will be purchased from electric utilities and Federal power marketing agencies within the United States. Avista Energy will arrange for the delivery of those exports to Canada over the international transmission facilities owned by Bonneville Power Administration. The construction of these international transmission facilities has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

In FE Order No. EA–98–I, Avista Energy was granted the authority to export electric energy to British Columbia Hydro or other future Canadian members of the Western Systems Power Pool (WSPP). In this proceeding, Avista Energy is seeking separate authority to export electric energy to Canadian entities that are not members of WSPP.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's rules of practice and procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Avista Energy application to export electric energy to Canada should be clearly marked with Docket EA–286. Additional copies are to be filed directly with R. Blair Strong, Paine, Hamblen, Coffin, Brooke & Miller LLP., 717 West Sprague Avenue, Suite 1200, Spokane, Washington 99201–3505, and Dave Dickson, Vice President Energy Trading and Marketing, Avista Energy, Inc., 201 W. North River Drive, Suite 610, Spokane, WA 99201.

A final decision will be made on this application after the environmental impact has been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy home page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy home page, select ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC on January 27, 2004.

Anthony Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 04–2119 Filed 2–2–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–54–000]

ANR Storage Company; Notice of Application

January 26, 2004.

Take notice that on January 16, 2004, ANR Storage Company (''ANR Storage''), Nine E Greenway Plaza, Houston, Texas 77046, filed in Docket No. CP04–54–000, an abbreviated application pursuant to Section 7(b) of the Natural Gas Act (''NGA''), 15 U.S.C. 717f(b), as amended, and the Regulations of the Federal Energy Regulatory Commission's (''Commission'') 18 CFR sections 157.5 *et seq.*, Subpart A, requesting that the Commission issue an order authorizing ANR Storage to abandon a storage service performed by ANR Storage under its Rate Schedule X–11 on behalf of Aquila Inc., successor in interest to Inter City Gas Corporation.

Any questions regarding this application should be directed to Jacques A. Hodges, Attorney, Nine E Greenway Plaza, Houston, Texas 77046, (832) 676–5509.

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 ''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 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. E4–167 Filed 2–2–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–242–000, EL04–50–000, ER04–115–000, and EL04–47–000]

Pacific Gas and Electric Company, California Independent System Corporation; Notice of Initiation of Proceeding and Refund Effective Date

January 27, 2004.

Take notice that on January 23, 2004, the Commission issued an order in the above-referenced dockets initiating an investigation in Docket No. EL04–50–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL04–50–000, established pursuant to section 206(b) of the Federal Power Act, will be 60 days following publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E4–166 Filed 2–2–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2173–002, et al.]

Northern Indiana Public Service Company, et al.; Electric Rate and Corporate Filings

January 26, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Northern Indiana Public Service Company, EnergyUSA–TPC Corp., Whiting Clean Energy, Inc.

[Docket No. ER00–2173–002]

Take notice that on January 15, 2004, Northern Indiana Public Service Company (NIPSCO), EnergyUSA–TPC Corp. (TPC), and Whiting Clean Energy, Inc. (Whiting) (jointly NiSource Companies) tendered for filing their three-year analysis regarding market power in the relevant generation markets. In addition, TPC and Whiting submitted revised market-based rate tariffs incorporating the market behavior rules adopted by the Commission on November 17, 2003, in Docket Nos. EL01–118–000 and 001.

Comment Date: February 5, 2004.

2. PJM Interconnection, LLC

[Docket No. ER04–368–001]

Take notice that on January 16, 2004, PJM Interconnection, LLC (PJM), submitted for filing a substitute construction service agreement (CSA) among PJM, Borough of Chambersburg and Monongahela Power Company, the Potomac Edison Company, and West Penn Power Company, all doing business as Allegheny Power. PJM requests a waiver of the Commission's 60-day notice requirement to permit a December 17, 2003, effective date for the substitute CSA.

PJM states that copies of this filing were served upon the parties to the agreements, the state regulatory commissions within the PJM region, and the official service list compiled by the Secretary in this proceeding.

Comment Date: February 6, 2004.

3. The Connecticut Light and Power Company

[Docket No. ER04–408–000]

Take notice that on January 16, 2004, Northeast Utilities Service Company (NUSCO), on behalf of its affiliate, the Connecticut Light and Power Company (CL&P), filed the executed Original Service Agreement No. 104 (the Service Agreement) by and between CL & P and Lake Road Trust (Lake Road) under Northeast Utilities System Companies' Open Access Transmission Tariff No. 10. NUSCO requests an effective date of December 31, 2003, for the Service Agreement, and requests any waivers of the Commission's regulations that may be necessary to permit such an effective date.

NUSCO states that a copy of this filing has been sent to Lake Road.

Comment Date: February 6, 2004.

4. PJM Interconnection, LLC

[Docket No. ER04–410–000]

Take notice that on January 16, 2004, PJM Interconnection, LLC (PJM), submitted for filing an executed interconnection service agreement (ISA) among PJM and Borough of Chambersburg, and Monongahela Power Company, the Potomac Edison Company, and West Penn Power Company, all doing business as Allegheny Power. PJM requests a waiver of the Commission's 60-day notice requirement to permit a December 17, 2003, effective date for the ISA.

PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: February 6, 2004.

5. Niagara Mohawk Power Corporation

[Docket No. ER04–411–000]

Take notice that on January 16, 2004, Niagara Mohawk Power Corporation, a National Grid Company (Niagara Mohawk), tendered for filing Original Service Agreement No. 333 (Service Agreement) between Niagara Mohawk and Besicorp-Empire Power Company, LLC (POWER CO.) under the New York Independent System Operator's FERC Electric Tariff, Original Volume No. 1.

Comment Date: February 6, 2004.

6. The Connecticut Light and Power Company

[Docket No. ER04–412–000]

Take notice that on January 16, 2004, Northeast Utilities Service Company (NUSCO), on behalf of its affiliate, the Connecticut Light and Power Company (CL&P), filed executed Original Service Agreement No. 105 by and between CL&P and Waterside Power, LLC (Waterside) under Northeast Utilities System Companies' Open Access Transmission Tariff No. 10. NUSCO and Waterside request an effective date of January 16, 2004.

NUSCO states that a copy of this filing has been sent to Waterside.

Comment Date: February 6, 2004.

7. Maine Public Service Company

[Docket No. ER04–420–000]

Take notice that on January 16, 2004, Maine Public Service Company (MPS) submitted for filing an executed interconnection agreement between MPS and Boralex Fort Fairfield, Inc. MPS requests an effective date of January 7, 2004, for the agreement.

MPS states that copies of this filing were served upon Boralex Fort Fairfield, Inc., the Maine Public Service Commission, and the Maine Office of Public Advocate.

Comment Date: February 6, 2004.

8. Western Massachusetts Electric Company

[Docket No. ER04–421–000]

Take notice that on January 16, 2004, Northeast Utilities Service Company (NUSCO), on behalf of its affiliate, Western Massachusetts Electric Company (WMECO), filed an executed Interconnection and Operations Agreement by and between WMECO and Berkshire Power Company, LLC (Berkshire Power) designated as Original Service Agreement No. 103 (Service Agreement) under Northeast Utilities System Companies' Open Access Transmission Tariff No. 10. NUSCO and Berkshire Power request an effective date for the Service Agreement of January 20, 2004, and request any waivers of the Commission's regulations that may be necessary to permit such an effective date.

NUSCO states that a copy of this filing has been sent to Berkshire Power.

Comment Date: February 6, 2004.

9. American Transmission Company LLC

[Docket No. ER04–422–000]

Take notice that on January 16, 2004, American Transmission Company LLC (ATCLLC) tendered for filing a Generation-Transmission Interconnection Agreement between ATCLLC and White Pine Copper Refinery, Inc. ATCLLC requests an effective date of January 16, 2004.

Comment Date: February 6, 2004.

10. Niagara Mohawk Power Corporation

[Docket No. ER04–423–000]

Take notice that on January 16, 2004, Flat Rock Windpower, LLC (Flat Rock), pursuant to a request by Niagara Mohawk Power Corporation, a National Grid Company (Niagara Mohawk), filed an Interconnection Service Agreement between Flat Rock and Niagara Mohawk (the Agreement) subject to the NYISO's Open Access Transmission Tariff. On behalf of Niagara Mohawk, Flat Rock

requests an effective date of January 16, 2004, for the Agreement and seeks a waiver of the Commission's prior notice requirement.

Flat Rock states that it has served a copy of the filing on Niagara Mohawk, the NYISO and the New York State Public Service Commission.

Comment Date: February 6, 2004.

11. Valley Electric Association, Inc.

[Docket No. ER04–424–000]

Take notice that on January 16, 2004, Valley Electric Association, Inc. (Valley) tendered for filing an Interconnection Agreement between Valley and Ivanpah Energy Center, LP designated as Service Agreement No. 1 under Valley's Open Access Transmission Tariff.

Comment Date: February 6, 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. E4–168 Filed 2–2–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF04-1-000]

Golden Pass LNG LP and Golden Pass Pipeline LP; Notice of Environmental Review and Scoping for the Golden Pass LNG Terminal and Pipeline Project and Request for Comments on Environmental Issues

January 26, 2004.

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 Golden Pass LNG LP's and Golden Pass Pipeline LP's (collectively referred to as Golden Pass) proposed Golden Pass LNG Terminal and Pipeline Project in Texas and Louisiana. The proposed facilities would consist of a liquefied natural gas (LNG) import terminal and one or more interconnecting pipelines. The Commission will use this EIS in its decision-making process to determine whether or not the project is in the public convenience and necessity.

The Golden Pass LNG Terminal and Pipeline Project is currently in the preliminary design stage. At this time no formal application has been filed with the FERC. For this project, the FERC staff is initiating its National Environmental Policy Act (NEPA) review prior to receiving the application. This will allow interested stakeholders to be involved early in project planning and to identify and resolve issues before an application is filed with the FERC. A docket number (PF04–1–000) has been established to place information filed by Golden Pass and related documents issued by the Commission, into the public record.[1] Once a formal application is filed with the FERC, a new docket number will be established.

This notice is being sent to residents within 0.5 mile of the proposed LNG terminal site; landowners along the various pipeline routes under consideration; Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; and local libraries and newspapers.

With this notice, we[2] are asking these and other Federal, state, and local agencies with jurisdiction and/or special expertise with respect to 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. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Some affected landowners may be contacted by a project representative about the acquisition of an easement to construct, operate, and maintain the proposed pipeline. If so, the company should seek to negotiate a mutually acceptable agreement. In the event that the project is certificated by the Commission, that approval conveys the right of eminent domain for securing easements for the pipeline. Therefore, if easement negotiations fail to produce an agreement, the company could initiate condemnation proceedings in accordance with state law.

Summary of the Proposed Project

Golden Pass proposes to construct and operate an LNG import terminal and natural gas pipeline to import LNG and deliver up to 2 billion cubic feet per day (Bcf/d) of natural gas to existing intrastate and interstate pipeline systems.

The LNG receiving terminal would be located approximately 10 miles south of Port Arthur, Jefferson County, Texas and 2 miles northwest of the town of Sabine Pass on the Sabine-Neches Waterway (Port Author Ship Channel). The terminal would be designed to accept LNG cargoes, temporarily store and vaporize LNG, and would contain up to five LNG storage tanks with an approximate capacity of 160,000 cubic meters (m3) each. It would be constructed in two phases, with a nominal output of 1 billion cubic feet per day (Bcf/d) for the first phase (three LNG tanks), increasing to 2 Bcf/d in the second phase when all five LNG storage tanks are in operation. Each tank would be approximately 150 feet tall and 250 feet in diameter.

The terminal would contain a dedicated slip and berths capable of accommodating the unloading of two LNG tankers. The berths would be designed for 200,000 m3 LNG tankers, such that the entire ship within the slip would be outside of the existing ship channel. One LNG tanker would visit the terminal every 4 days in the initial

[1] To view information in the docket, follow the instructions for using the eLibrary link at the end of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Office of Energy Projects.

phase, increasing to one tanker every 2 days in the second phase.

A 36-inch-diameter sendout pipeline would also be constructed to transport the vaporized natural gas to interconnections with as many as 12 existing intrastate and interstate pipeline systems. Metering facilities would be installed at each of the interconnections. The pipeline would extend approximately 75 miles north from the terminal to an interstate interconnection near Starks, Calcasieu Parish, Louisiana. The pipeline would pass through Jefferson, Orange, and Newton Counties, Texas, and Calcasieu Parish, Louisiana. Approximately 63 miles of 36-inch-diameter pipeline would be constructed in Texas and 12 miles would be constructed in Louisiana. Additionally, a 5-mile-long pipeline lateral would be constructed between the sendout pipeline and the existing ExxonMobil Beaumont refinery in Jefferson County, Texas.

A map depicting the proposed terminal site and the preliminary pipeline route is provided in appendix 1.[3, 4]

Land Requirements

The proposed Golden Pass LNG terminal would be constructed and operated within an approximate 560-acre site. The ship berths would require dredging to achieve the required size and depth to accommodate the LNG tanker ships.

The sendout and lateral pipeline would be constructed on a nominal 100-foot-wide right-of-way with occasional increases in the right-of-way width for additional workspace at waterbody, highway, and railroad crossings, and for topsoil storage, and would affect about 1,000 acres. Other temporary land requirements would include land for pipe storage and equipment yards. Operation of the pipeline facilities would require a nominal 50-foot-wide permanent right-of-way, affecting about 450 acres.

The EIS Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity, or an import authorization under Section 3 of the Natural Gas Act. NEPA also requires us to discover and address issues and concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues and reasonable alternatives. By this notice, we are requesting agency and public comments on the scope of the issues to be analyzed and presented in the EIS. All scoping comments received will be considered during the preparation of the EIS. To ensure your comments are considered, please carefully follow the instructions in the public participation section of this notice.

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- endangered and threatened species
- land use
- cultural resources
- air quality and noise
- public safety

Our independent analysis of the issues will be included in a draft EIS. The draft EIS will be mailed to Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; other interested parties; local libraries and newspapers; 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 comments on the draft EIS and revise the document, as necessary, before issuing a final EIS. In addition, we will consider all comments on the final EIS before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have identified several issues that we think deserve attention based on a preliminary review of the planned facilities and the environmental resources present in the project area. This preliminary list of issues may be changed based information obtained during the public participation period and on our continuing analysis:

- Geology and Soils
  - Assessment of dredged material management plan, including the potential for beneficial uses of dredged material.
- Water Resources
  - Assessment of construction effects on water quality.
  - Review of wetland areas impacted on the terminal site.
  - Potential impacts of a thermal (cold water) discharge.
- Fish, Wildlife, and Vegetation
  - Impingement/entrainment at seawater intake.
  - Effects on wildlife and fisheries including commercial and recreational fisheries.
  - Potential effect of electric transmission lines on shore birds and other birds.
- Endangered and Threatened Species
  - Effects on federally-listed species including the Kemp's Ridley Sea Turtle, Green Sea Turtle, and Loggerhead Sea Turtle.
  - Effects on essential fish habitat.
- Reliability and Safety
  - Safety and security of the terminal and pipeline.
  - LNG shipping.

Our evaluation will also include possible alternatives to the proposed project or portions of the project, and we will make recommendations on how to lessen or avoid impacts on the various resource areas of concern.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. Golden Pass has established a preliminary pipeline route for the project; however, if minor reroutes or variations are required to avoid or minimize impacts to certain features on your property, this is your opportunity to assist us and Golden Pass in identifying your specific areas of concern. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received and properly recorded:

- 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 2; and

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Internet Web site (*http://www.ferc.gov*) at the ''eLibrary'' link or from the Commission's Public Reference and Files Maintenance Branch at (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice.

[4] Requests for detailed maps of the facilities may be made to the company directly. Call or e-mail: Jason B. Dupres, (281) 654–3456 or *jason.b.dupres@exxonmobil.com*. Be as specific as you can about the location(s) of your area(s) of interest.

• Peference Docket No. PF04–1–000 on the original and both copies.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov*under the ''eFiling'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Mailing List Retention Form included in Appendix 2.

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, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' (*i.e.,* PF04–1–000), and follow the instructions. Searches may also be done using the phrase ''Golden Pass'' in the ''Text Search'' field. For assistance with access to eLibrary, the 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 rule makings.

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*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–164 Filed 2–2–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP93–541–013]

Young Gas Storage Company, Ltd; Notice of Intent To Prepare an Environmental Assessment for the Proposed Young Storage Project and Request for Comments on Environmental Issues

January 23, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Young Storage Project involving construction and operation of facilities by Young Gas Storage Company, Ltd (Young) in Morgan County, Colorado.[1] These facilities would consist of:

• 3 horizontally drilled injection/withdrawal wells (Wells 43, 44, and 45);

• Facilities associated with each well that include a surface wellhead and associated filters/separators, orifice meter, catalytic heater, and methanol injection/storage tanks with concrete footers;

• 600 feet of 6-inch-diameter steel gas pipeline;

• 1,090 feet of 4-inch-diameter steel gas pipeline;

• 1,090 feet of 2-inch-diameter poly instrument pipeline; and

• 1,090 feet of 2-inch-diameter fiberglass drainline pipeline.

This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Young provided to landowners. 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*).

Summary of the Proposed Project

Young has analyzed the operation of the Young Storage Field and determined that water has been displaced and produced from the storage field during the 8 years of its operation. This has increased the pore space available for gas storage. The increased space has caused storage pressures to decrease below the pressure contemplated when the field was designed. The storage field has also expanded into areas that cannot be effectively drained by the existing wells. The reduced pressure and reservoir expansion have reduced deliverability from the field.

Young wants to drill there injection/withdrawal wells to better access certain areas within the existing Young Storage Field. It would also construct pipeline and related facilities to connect these new wells to its existing storage field pipeline system. The storage capacity and withdrawal capability of the Young Storage Field would not be increased above the presently certificated volumes (10 billion cubic feet and 198,813 thousand cubic feet per day, respectively) by construction and operation of the proposed facilities. Young also proposes to expand the protection zone for the storage field.

Young would also reclassify two existing injection/withdrawal wells (Wells 24 and 39) as observation wells.

Young also proposes to conduct a reservoir testing program to evaluate the possibility of increasing gas deliverability from the storage field as it drills the proposed new injection/withdrawal wells.

The location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 6.8 acres of land. Following construction, about 2.2 acres would be maintained for operation of the new facilities. The remaining 4.6 acres of land would be restored and allowed to revert to its former use.

[1] Young's application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Internet Web site (*http://www.ferc.gov*) at the ''eLibrary'' link or from the Commission's Public Reference and Files Maintenance Branch at (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice of intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Ground water;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species;
- Public safety.

We will not discuss impacts to the following resource areas since they are not present in the project area, or would not be affected by the proposed facilities.

- Surface water;
- Wetlands;
- Fisheries;
- Residential areas;
- Federal, State, or local parks, forests, trails, scenic highways, wild and scenic rivers, nature preserves, wildlife refuges, wilderness areas, game management areas, or other designated natural, recreational, or scenic areas registered as natural landmarks;
- Native American reservations; or
- Coastal zone management areas.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission(s official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Young. This preliminary list of issues may be changed based on your comments and our analysis.

- A total of 6.77 acres of agricultural land and pasture would be affected by the project.
- Three horizontally drilled wells would be constructed.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal including alternative well locations and pipeline routes, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- 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 the comments for the attention of Gas Branch 2.
- Reference Docket No. CP93–541–013.
- Mail your comments so that they will be received in Washington, DC on or before February 23, 2004.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *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 which can be created on-line.''

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA 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. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to rule 214 of the Commission(s rules of practice and procedure (18 CFR 385.214) (*see* appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

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.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC 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 which 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. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, 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. E4–165 Filed 2–2–04; 8:45 AM]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0081, FRL–7617–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; Survey Questionnaire To Determine the Effectiveness, Costs, and Impacts of Sewage and Graywater Treatment Devices for Large Cruise Ships Operating in Alaska, EPA ICR Number OW–2003–0014, OMB Control Number 20XX–XXXX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for a new collection. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 5, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OW–2003–0081, to EPA online using EDOCKET (our preferred method), by e-mail to *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, EPA Docket Center, Environmental Protection Agency, Water Docket, EPA West, 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Elizabeth Kim, Oceans and Coastal Protection Division, Office of Water, 4504T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–1270; fax number: (202) 566–1546; e-mail address: *kim.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OW–2003–0081, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Affected entities: Entities potentially affected by this action are operators of cruise lines and individual cruise ships authorized to carry for hire 500 or more passengers that operate in and near waters of the State of Alaska.

Title: Survey Questionnaire to Determine the Effectiveness, Costs, and Impacts of Sewage and Graywater Treatment Devices for Large Cruise Ships Operating in Alaska.

Abstract: On December 12, 2000, Congress passed HR 4577 (Pub. L. 106–554), ''Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act.'' This act included a section, entitled ''Title XIV: Certain Alaskan Cruise Ship Operations'' (33 U.S.C. 1902 Note). Title XIV set requirements for the discharge of sewage and graywater from cruise ships capable of carrying for hire 500 or more passengers while operating in the waters of the Alexander Archipelago and the navigable waters of the United States within the State of Alaska and within the Kachemak Bay National Estuarine Research Reserve. Title XIV also authorized that:

> the Administrator [of the EPA] may promulgate effluent standards for treated sewage (human body waste and the wastes from toilets and other receptacles intended to receive or retain human body waste) and graywater (galley, dishwasher, bath, and laundry waste water) from cruise vessels operating in the waters of the Alexander Archipelago or the navigable waters of the United States within the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve. Regulations implementing such standards shall take into account the best available scientific information on the environmental effects of the regulated discharges and the availability of new technologies for wastewater treatment.

EPA has begun an effort to develop and promulgate regulations, as

necessary and appropriate, for controlling the discharge of sewage and graywater from cruise ships covered by Title XIV. Title XIV provides that the authority of sections 308(a) and 308(b) of the Clean Water Act, regarding records, reports, and inspections, shall be available to carry out the provisions of the Act (section 1413). EPA is in the process of preparing an ICR for OMB approval for gathering data in support of this rulemaking. The ICR would request approval to collect information from cruise lines and each cruise ship covered by Title XIV.

The information to be gathered with a survey questionnaire would include: general information regarding the cruise line and each of the cruise vessels authorized to carry for hire 500 or more passengers in waters in and near Alaska (*e.g.*, size, capacity, ports of call); description of sources of graywater; ship-board plumbing systems; data describing the effectiveness of sewage and graywater treatment systems and marine sanitation devices (MSDs) operating on these large vessels at removing pollutants of concern; costs of these systems; pollution prevention programs and management practices; information pertinent to environmental assessment; and financial information and data necessary for economic impact analysis. When possible, EPA would use available information to complete answers to some questions. In these cases, the respondent would be asked to verify the information and update it if necessary. The survey questionnaire would provide instructions on the procedures for making CBI claims, if necessary, and the respondents would be informed of the rules governing protection of CBI, obtained under the Clean Water Act, for information that warrants such claims.

In a related effort that would not be covered by the Paperwork Reduction Act, EPA intends to sample and analyze wastewaters from three to five yet-to-be selected vessels operating in Alaska during the summer of 2004. The purpose of this sampling would be to characterize the on-board performance of various sewage and graywater treatment systems. EPA would like to solicit comments on this sampling effort. Subsequent to the publication of this notice, EPA intends to consult with cruise lines and other stakeholders to select technologies and vessels to be sampled, and will make specific information for this activity available for further public comment in the second **Federal Register** notice for the survey ICR.

EPA also intends to continue to supplement these primary sources by gathering additional publicly available information and data from the Alaska Department of Environmental Conservation (ADEC) and the U.S. Coast Guard (USCG), the cruise ship industry, and other stakeholders.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: EPA estimates that 12 cruise line operators would respond to the survey for each of the 32 vessels operating in Alaska. EPA estimates it would take an average of approximately 48 hours to complete and review responses to the survey questionnaire and associated data submissions for each cruise ship that is certified by the U.S. Coast Guard to discharge continuously in the waters in and near Alaska under 33 CFR 159.309. This estimate includes the burden for verifying and updating ''draft'' responses provided by EPA to a portion of the questions. EPA estimates that the total burden for cruise lines operating the 18 vessels certified to discharge continuously under 33 CFR 159.309 would be approximately 864 hours, or $34,000 assuming an average labor rate for the likely range of personnel involved in responding.

For the remaining 14 ships that do *not* have wastewater treatment systems authorized to discharge continuously, EPA estimates it would take an average of approximately 16 hours to complete and review responses to the survey questionnaire. EPA estimates that the total burden for these 14 vessels would be approximately 224 hours, or $9,000 assuming an average labor rate for the likely range of personnel involved in responding.

EPA estimates that the total burden to the 12 cruise lines operating 32 vessels for responding to the survey questionnaire would be approximately 1088 hours, or $43,000. EPA estimates that there would be no start up or capital cost associated with responding to the surveys described above.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: January 20, 2004.

Suzanne E. Schwartz,

Director, Oceans and Coastal Protection Division.

[FR Doc. 04–2154 Filed 2–2–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7617–2]

EPA Public Meeting: Market Enhancement Opportunities for Water-Efficient Products; Notice of Change in Meeting Location

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is hosting a one-day public meeting to discuss market enhancement opportunities for water-efficient products. EPA's goal is to bring together stakeholders from Federal, state and local governments; utilities; manufacturers; building trade associations; consumer groups; and other interested parties to exchange information and views on promoting water-efficient products in the marketplace. The focus of the February meeting will be on landscape irrigation products. The first meeting was held in Washington, DC on October 9, 2003 and

the second was held in Austin, TX on January 15, 2004. One additional public meeting will be held in Seattle, WA in April; notice will be provided on a location and time when available.

The meeting will consist of several panel discussions, and is open to the public. The audience will have an opportunity to ask questions and provide comments at the conclusion of the meeting.

DATES: The meeting will begin at 8:30 a.m. on February 17, 2004.

ADDRESSES: The meeting will be held at the Wyndham Phoenix, 50 East Adams Street, Phoenix, AZ 85004.

FOR FURTHER INFORMATION CONTACT: For more information on this meeting, please see EPA's Water Efficiency Web Page at *www.epa.gov/owm/water-efficiency/index.htm*. To register online from the Water Efficiency Program page, click on the registration form link. You may also register by contacting ERG, Inc. by phone (781–674–7374), or by downloading the registration form and sending the completed form to ERG via fax at 781–674–2906 or mail to ERG, Conference Registration, 110 Hartwell Avenue, Lexington, MA 02421–3136. Seating is limited, therefore please register or request special accommodations no later than February 10, 2004.

Dated: January 23, 2004.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 04–2155 Filed 2–2–04; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7601–8]

Notice of Availability and Opportunity To Comment on the ''Draft CERCLA Model Application/Information Request for Service Station Dealers'' for Section 114(c) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); Notice of Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and opportunity for public comment; notice of public meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a 60-day public comment period for the document entitled ''Draft Model CERCLA Application/Information Request for Service Station Dealers.'' EPA also is announcing a public meeting to discuss questions and comments on the draft model document.

DATES: Comments on the ''Draft Model CERCLA Application/Information Request for Service Station Dealers'' must be received by April 5, 2004. The public meeting will be held on Wednesday, March 3, 2004 from 1 to 4 pm.

ADDRESSES: Comments may be sent by e-mail to *boushell.susan@epa.gov*, mailed to Susan Boushell, Office of Site Remediation Enforcement (Mail Code 2273A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20006, or delivered to Susan Boushell, Ariel Rios South Building, 1200 Pennsylvania Avenue, NW., Room 6233Q, Washington, DC 20006, (202) 564–2173. The public meeting will be held in room 6226 of EPA's Ariel Rios South Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Susan Boushell, EPA's Office of Site Remediation Enforcement, (202) 564–2173 or *boushell.susan@epa.gov*.

SUPPLEMENTARY INFORMATION: Under CERCLA Section 114(c), certain service station dealers may be exempt from liability under section 107(a)(3) or 107(a)(4) for a release or a threatened release of recycled oil. In 2002, EPA issued a memorandum entitled ''Use of CERCLA Section 114(c) Service Station Dealers Exemption,'' which discusses the scope of the exemption and encourages EPA Regions to consider its application at sites involving used oil. A copy of this memorandum may be found on EPA's Web page at *http://www.epa.gov/compliance/resources/policies/cleanup/superfund/serv-sta-exemp-mem.pdf*.

EPA currently is developing a model CERCLA application/information request which is focused specifically on the service station dealer industry. This targeted application/information request generally would be used in lieu of a more general information request for any party EPA has reason to believe may be eligible for the service station dealer exemption. EPA believes the model document would provide an efficient method for gathering the information necessary to decide which parties it should or should not treat as potentially responsible parties (PRPs) at a particular Superfund site.

At some sites, EPA will not have sufficient information regarding the identities of potential service station dealers until after a more general request for information has been issued to parties at the site. At those sites where EPA has reason to believe there may be service station dealers (*e.g.*, a waste oil recycling facility), the Agency would include a statement in the general information request or general notice letter (whichever is sent first) that a party may request the targeted application/information request for service station dealers.

A copy of the ''Draft Model CERCLA Application/Information Request for Service Station Dealers'' is published below and will be available on the Internet at *http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/ssde-draftmod-104e-mem.pdf* for review and comment by interested parties. The public meeting will include a brief overview of the draft model, followed by a question, answer and comment period. Those planning to attend the meeting should call Susan Boushell at (202) 564–2173 by Thursday, February 26, 2004, so their names can be added to a security list.

After EPA considers and incorporates, as appropriate, comments received during the public review process, EPA will publish a notice of availability of the final model application/information request in the **Federal Register**.

Dated: January 29, 2004.

Susan Bromm,

Director, Office of Site Remediation Enforcement.

Draft Model CERCLA Application/Information Request for Service Station Dealers

_____

[Date]

_____

Certified Mail

Return Receipt Requested

_____

[Recipient Name]

_____

[Recipient Address]

Re: Application/Information Request for the Service Station Dealer Exemption

Dear [Recipient]: _____

The United States Environmental Protection Agency (EPA) is currently working to clean up the [name] Site located in [city, state] under the federal Superfund program. Superfund is a program administered by EPA that is designed to clean up hazardous substances that may pose a threat to human health or the environment. A Site Information Sheet describing the history, conditions and EPA's efforts at the [name] Site is attached to this letter.

EPA is sending this letter to you because EPA has reason to believe that you or your business may have sent

hazardous substances to the [name] Site. However, you may qualify for an exemption called the ''Service Station Dealer Exemption.'' If EPA considers you to be exempt, EPA would not require you to help pay for cleanup activities at the site. To help EPA make this decision, you are requested to respond to the questions in the attached Application/Information Request within thirty (30) days of receipt of this letter. Below this letter provides a brief overview of the Superfund program, describes the Service Station Dealer Exemption, and explains the process for completing the Application/Information Request.

Background

Under the Superfund law, EPA has the authority to take action at a site contaminated with high levels of hazardous substances that may present a threat to human health or the environment. (The full name of the Superfund law is the Comprehensive Environmental Response, Compensation and Liability Act, or ''CERCLA,'' 42 U.S.C. 9601–9674.) The Superfund law also authorizes EPA to require the parties who are responsible for the contamination (''potentially responsible parties'' or ''PRPs'') to help clean up the site.

The law, however, contains several exemptions which may reduce or eliminate a party's responsibility for cleanup, including the Service Station Dealer Exemption under section 114(c) of CERCLA, 42 U.S.C. 9614(c). An EPA memorandum discussing the scope of the exemption can be found on EPA's Web page at *http://www.epa.gov/compliance/resources/ policies/cleanup/superfund/serv-sta-exemp-mem.pdf*. To help EPA decide whether or not to treat a party as a PRP at a site, section 104(e) of CERCLA allows EPA to require a party to provide information regarding its involvement at the site.

Service Station Dealer Exemption

EPA is sending you this letter and attached Application/Information Request because EPA has reason to believe that you or your business may qualify for the Service Station Dealer Exemption. You may be eligible for the Service Station Dealer Exemption if you:

(1) Are or were a Service Station Dealer;

(2) Collected ''Do-It-Yourselfer'' Used Oil (also referred to as DIY Used Oil);

(3) Transported or sent this Do-It-Yourselfer Used Oil to the [name] Site after March 8, 1993;

(4) Did not mix hazardous substances with Used Oil generated or collected by your facility; and

(5) complied with the Used Oil management standards found in the Code of Federal Regulations (40 CFR Part 279).

Each of the italicized terms is defined in the ''Definitions'' section of the Application/Information Request. If you owned or operated the [name] Site, you would not qualify for the Service Station Dealer Exemption.

Application/Information Request

EPA is requesting that you respond to the attached Application/Information Request within thirty (30) days of your receipt of this letter. The Instructions for completing the Application/Information Request begin on page 11. The Definitions that apply to this Application/Information Request begin on page 14, immediately after the Instructions. The Instructions and Definitions are very important and may affect your response. Please read them carefully before answering any questions.

Please send your response to this letter within thirty (30) days to:

_____

_____

_____

Please note that your response to this Application/Information Request is required by law. Please also note that false, fictitious, or fraudulent statements or representations may subject you to civil or criminal penalties under Federal law.

After EPA receives your response, EPA will determine if any additional information from you is necessary before deciding whether or not to treat you as a PRP at the [name] Site. Once EPA has received all the information needed regarding the exemption, EPA will contact you regarding its decision as soon as possible.

Additional Information

If you have any questions regarding this letter, please contact [name and phone number of regional contact]. For additional information on the Superfund law, including the Service Station Dealer Exemption and other exemptions that may apply, please see EPA's Web site at *http://www.epa.gov/compliance/cleanup/superfund/index.html*. Last, enclosed with this letter is a Small Business Regulatory Enforcement Fairness Act (SBREFA) fact sheet, which includes information that may be helpful to small businesses.

Thank you for your cooperation in responding to this Application/Information Request.

Sincerely,

_____

Attachments

Site Information Sheet
Small Business Information Sheet
Application/Information Request
Appendix A to Application/Information Request
Appendix B to Application/Information Request

Please Read the Instructions and Definitions Before Completing

Application/Information Request

Please fill out this Application/Information Request as completely and accurately as possible. In preparing your response, refer to any records, receipts, cancelled checks, invoices and other documents which will help you to provide accurate and complete responses. Also consult with other people who may have information. At the end of this Application/Information Request, you will be asked to certify that your answers are correct and accurate to the best of your knowledge.

The Instructions for the Application/Information Request begin on page 11. The Definitions for the words in italics begin on page 14, immediately after the Instructions. The Instructions and Definitions are very important and may affect your response. Please read them carefully before answering any question.

Answer the following questions by marking the appropriate box(es) and/or filling in the space(s) provided. If additional space is required, please provide your answer(s) on additional sheets.

1. Name of the Person Completing Application/Information Request

In the spaces below, state the name, title, address and telephone number of the person completing this Application/Information Request.

Name _____
Title (if any) _____
Address _____

_____

Telephone _____

2. Name and Address of the Business

Name _____
Address _____

_____

Telephone _____

3. Determination That Exemption Does Not Apply

Have you already determined that the Service Station Dealer Exemption does not apply to the Business?

☐ yes ☐ no

If ''yes,'' answer only questions 6, 14 and 15 and complete the chart in Appendix A. Then STOP and sign the certification at the end of this Application/Information Request.

4. Description of the Business

(A) Is the Business a motor vehicle service station, filling station, garage, or similar retail business involved in the sale, repair, or servicing of motor vehicles?

☐ yes ☐ no

(B) Is the Business a Government Agency that established a facility solely for the purpose of accepting Do-It-Yourselfer Used Oil (DIY Used Oil)?

☐ yes ☐ no

If ''yes,'' state:

1. The name of the facility established to accept DIY Used Oil _____

2. The address of the facility _____

3. The EPA ID Number, if any _____

4. The State ID Number, if any _____

5. The date that the facility was established _____

6. The date(s) that the facility accepted DIY Used Oil _____

(C) Is the Business a Refuse Collection Service compelled by State law to collect, accumulate and deliver DIY Used Oil?

☐ yes ☐ no

If ''yes,'' state:

1. The name of the Refuse Collection Service compelled to accept DIY Used Oil _____

2. The EPA ID Number, if any _____

3. The State ID Number, if any _____

4. The date(s) that Refuse Collection Service accepted DIY Used Oil _____

5. The citation, name, and date of the law that compelled the Refuse Collection Service to accept DIY Used Oil _____

(D) ☐ The Business is/was not any of the above

If you checked (D):

1. Describe the Business (*e.g.*, the type and nature of its operations): _____

2. Answer only Questions 6, 14 and 15 and complete the chart in Appendix A. Then STOP and sign the certification at the end of this Application/Information Request.

5. Collection of Do-It-Yourselfer Used Oil

Does the Business accept or did the Business ever accept DIY Used Oil?

☐ yes ☐ no ☐ don't know

If ''yes,'' provide the date(s) (or, if over an extended period of time, a range of dates, *e.g.*, May 1986 to April 1998) that the Business accepted DIY Used Oil: _____

If ''no,'' answer only Questions 6, 14 and 15 and complete the chart in Appendix A. Then STOP and sign the certification at the end of this Application/Information Request.

6. Relationship to the [Name] Site

(A) At any time, did the Business own or operate any portion of the [name] Site?

☐ yes ☐ no ☐ don't know

(B) Did the Business send or arrange to send Used Oil to the [name] Site?

☐ yes ☐ no ☐ don't know

If ''yes,'' complete the chart in Appendix A.

(C) Did the Business send or arrange to send waste or other materials (that were not Used Oil) to the [name] Site?

☐ yes ☐ no ☐ don't know

If ''yes,'' complete the chart in Appendix A.

7. Percentage of Gross Revenue From Fueling, Repairing or Servicing Motor Vehicles

Do you know the percentage of gross revenue that the Business received from the fueling, repair, servicing of or similar work on motor vehicles for each year that the Business sent Used Oil to the [name] Site?

☐ yes ☐ no ☐ don't know

If ''yes,'' complete the chart in Appendix B.

8. Used Oil Management

Did the Business place any of the following in tank(s) or container(s) the Business used to store Used Oil (including DIY Used Oil)? (Mark all those that apply. Dates may be listed separately or over a period of time, *e.g.*, 5/29/94–9/4/96.)

(A) Automobile coolant/antifreeze

☐ yes; always
Dates _____
☐ yes; sometimes
Dates _____
☐ no; never
☐ don't know

(B) Solvents, degreasers, cleaners, or similar products, including carburetor and brake cleaners and rags or wipes containing solvents or degreasers

☐ yes; always
Dates _____
☐ yes; sometimes
Dates _____
☐ no; never
☐ don't know

(C) Polychlorinated Biphenyl (PCB) oils or other materials containing PCBs

☐ yes; always
Date(s) _____
☐ yes; sometimes
Date(s) _____
☐ no; never
☐ don't know

Note: PCBs may be found in oils from transformers, capacitors, voltage regulators, circuit breakers, switches, reclosers, electromagnets, fluorescent lamp ballasts, starting aids for small motors in refrigerators and washing machines, sealants and oil reservoirs in vapor diffusion or vacuum or water well pumps, hydraulic system fluids, heat transfer fluids.)

(D) Waste lead-acid or mercury-containing batteries or their components

☐ yes; always
Date(s) _____
☐ yes; sometimes
Date(s) _____
☐ no; never
☐ don't know

(E) Asbestos-containing brake shoes or pads

☐ yes; always
Date(s) _____
☐ yes; sometimes
Date(s) _____
☐ no; never
☐ don't know

(F) Scrap metal with lead solder (*e.g.*, radiators)

☐ yes; always
Date(s) _____
☐ yes; sometimes
Date(s) _____
☐ no; never
☐ don't know

(G) Mercury switches (*e.g.*, automotive convenience lighting)

☐ yes; always
Date(s) _____
☐ yes; sometimes
Date(s) _____
☐ no; never
☐ don't know

(H) Paint, paint thinner, rags contaminated with paint or paint thinner

☐ yes; always
Date(s) _____
☐ yes; sometimes
Date(s) _____
☐ no; never
☐ don't know

(I) Pesticides (*e.g.*, arsenic compounds, cyanide compounds, chlordane, 2,4-D, endrin, heptachlor, lindane, pyridine, toxaphene, silvex/2,4,5-TP)

☐ yes; always
Date(s) _____
☐ yes; sometimes
Date(s) _____
☐ no; never
☐ don't know

(J) Other materials

☐ yes; always
Date(s) _____
☐ yes; sometimes
Date(s) _____

☐ no; never
☐ don't know

If other hazardous substances were added to Used Oil (including DIY Used Oil) collected or generated by the Business, describe what was added:

_____

_____

9. Storage

What was used to store Used Oil? (Mark all those that apply. Dates may be listed separately or over a period of time, *e.g.*, 5/29/94–9/4/96.)

(A) Container(s) (*e.g.*, 55-gallon drum, bucket, dumpster)

☐ yes; always
Date(s) _____
Container type(s) _____
☐ yes; sometimes
Date(s) _____
Container type(s) _____
☐ no; never
☐ don't know

(B) Aboveground tank(s)

☐ yes; always
Date(s) _____
☐ yes; sometimes
Date(s) _____
☐ no; never
☐ don't know

(C) Underground tank(s)

☐ yes; always
Date(s) _____
☐ yes; sometimes
Date(s) _____
☐ no; never
☐ don't know

(D) Other storage unit(s) (*e.g.*, containment building, basement, vault, sump, wastewater treatment unit, surface impoundment, holding pit, storage pit, settling pit, aeration pit, pond, lagoon, pile, trench, gutter, roll-off box)

☐ yes; always
Date(s) _____
Unit type(s) _____
☐ yes; sometimes
Date(s) _____
Unit type(s) _____
☐ no; never
☐ don't know

(E) ☐ Unknown

10. Labeling of Tanks, Containers and Fill Pipes

(A) Were Tank(s) and Container(s) the Business used to store Used Oil labeled or clearly marked with the words ''Used Oil'' at all times after March 8, 1993?

☐ yes; always
Date(s) _____
☐ yes; sometimes
Date(s) _____
☐ no; never
☐ don't know
☐ not applicable (*i.e.*, the Business did not store DIY Used Oil)

(B) Were underground storage tank fill pipes the Business used to transfer Used Oil, labeled or clearly marked with the words ''Used Oil'' at all times after March 8, 1993?

☐ yes; always
Date(s) _____
☐ yes; sometimes
Date(s) _____
☐ no; never
☐ don't know
☐ not applicable (*i.e.*, the Business did not use Underground Storage Tank fill pipes)

11. Condition of Tanks and Containers

(A) Did the Business, at any time after March 8, 1993, manage Used Oil in Tanks or Containers which were leaking, severely rusted, or had apparent structural defects or deterioration?

☐ yes
Each date of discovery_____
☐ no; never
☐ don't know
☐ not applicable (*i.e.*, the Business did not accept DIY Used Oil for collection)

(B) If ''yes,'' describe what the Business did when it discovered container(s) that had structural defects or that were leaking or severely rusting or deteriorating. (Include a description of the steps taken to stop any leaks; to address any release of oil; and to repair or replace the container):

_____

_____

_____

_____

12. Spill Prevention and Containment

(A) At any time after March 8, 1993, did the Business have or does the Business currently have: (1) a total aboveground oil storage capacity of greater than 1,320 gallons; (2) oil storage capacity greater than 660 gallons capacity in a single aboveground container; or (3) a total underground oil storage capacity of 42,000 gallons?

☐ yes ☐ no ☐ don't know

(B) If ''yes,'' state:

The amount of such oil storage capacity: _____

_____

The date(s) the Business had such capacity: _____

_____

(C) If ''yes,'' does the Business have a Spill Prevention, Control and Countermeasures (SPCC) Plan?

☐ yes
☐ no
☐ don't know
☐ not applicable (*i.e.*, the Business does not have the storage capacity listed)

(D) If you answered ''yes'' to Question 12(B), state whether there was ever a leak or release from any of these units.

☐ yes ☐ no ☐ don't know

If ''yes'':

State the each date(s) of the release(s)

_____

Describe the steps the Business took to address the release(s) _____

_____

_____

(E) If the Business had or currently has a Spill Prevention, Control and Countermeasures Plan (SPCC Plan), does or did the Business follow it?

☐ yes, always
Dates SPCC Plan Followed _____
☐ yes, sometimes
Dates SPCC Plan Followed _____
☐ no
☐ don't know
☐ not applicable (*i.e.*, the Business has not had the storage capacity listed)

(F) Provide a copy of each SPCC Plan the Business had from March 8, 1993 to present.

(G) If, at any time after March 8, 1993, the Business stored Used Oil in Underground Storage Tanks, provide:

Date(s) Underground Storage Tanks used: _____

_____

Description of Leak Detection System: _____

_____

(H) If the Business stores or stored Used Oil in Underground Storage Tanks, describe what, if anything, the Business does or did to monitor those tanks for leaks or releases:

_____

_____

13. Notification to the Public That the Business Accepted DIY Oil

How was the public notified that the Business accepted DIY Oil? (Mark all that apply)

☐ Sign at premises
☐ Notice on Service Sign-in Form
☐ Newspaper
☐ Leaflets/Pamphlets
☐ Radio, television
☐ Through listing on the Internet
☐ Through registration, licensing or permitting by a state/county/municipal/local government to manage Used Oil (''Used oil collection center'')
☐ Through 1 (800) CLEAN-UP (EPA- and business-sponsored helpline)
☐ Other

_____

14. Request for Copies of Documents and Records

For each shipment listed on Appendix A, provide a copy of each

document, including log books, bills of lading, manifests, proofs of delivery, waste tickets, waste analyses, contracts, check stubs and any other information (*e.g.*, correspondence, photographs) you have about the materials transported to the [name] Site.

15. Other Information

Please provide any information you have about: (1) other persons who may have knowledge or information that may assist EPA in its investigation of the [name] Site or who may be responsible for the contamination found at the Site; or (2) persons you consulted in completing this Application/Information Request. Please attach any related documents.

Name _____
Title (if any) _____
Employer _____
Bus. Address _____
_____
Bus. Tel. _____

Name _____
Title (if any) _____
Employer _____
Bus. Address _____
_____
Bus. Tel. _____

(Continue on separate sheet(s), as necessary)

Certification of Responses

I, _____, swear, under penalty of perjury, that the answers provided in response to this Application/Information Request are true and correct to the best of my knowledge, information and belief.

Signature _____
Title _____
Bus. Address _____
_____
Date _____ Bus. Tel._____

Instructions

Under the authority of section 104(e)(2) of CERCLA (42 U.S.C. 9604(e)(2)), EPA requests your response to this Application/Information Request. Compliance with this Application/Information Request is required by law. Please note that false, fictitious, or fraudulent statements or representations may subject you to civil or criminal penalties.

1. *Answer Every Question Completely.* Unless otherwise indicated, a response must be made to each question in the Application/Information Request. For each question, if information responsive to this Application/Information Request is not in your possession, custody, or control, please identify the person(s) from whom such information may be obtained.

2. *Provide the Best Information Available.* Provide responses to the best of your ability, even if the information requested was never put down in writing or if the written documents are no longer available. You should seek out responsive information from current and former employees, franchisees, contractors, transporters and other agents and persons who may have information relevant to this Application/Information Request. Submission of incomplete responses when other responsive information is available to you will be considered non-compliance with this Application/Information Request.

3. *Identify Sources of Answer.* For each question, identify all the persons and documents on which you relied to produce your answer.

4. *Dates.* If you are requested to provide ''each date'' on which an activity took place, you must list every individual date on which that activity took place. Where dates are requested without a request to provide ''each date'', you may list each date on which the activity at issue took place or, if the activity took place over an extended period, you may provide the period over which such activity took place (*e.g.*, ''5/29/94–9/4/96; 11/28/98–4/9/02'').

5. *Continuing Obligation To Provide/Correct Information.* Pursuant to CERCLA Section 104(e)(2), if additional information or documents responsive to this Request become known or available to you after you respond to this Request, you must supplement your response to EPA.

6. *Confidential Information.* The information requested herein must be provided even though you may contend that it includes confidential information or trade secrets. You may assert a confidentiality claim covering part or all of the information requested pursuant to section 104(e)(7)(E) and (F) of CERCLA (42 U.S.C. 9604(e)(7)(E) and (F)), section 3007(b) of RCRA, (42 U.S.C. 6927(b)), and 40 CFR 2.203(b).

To prove your claim of confidentiality, you must provide a statement that separately address the following points for each document for which you make a claim of confidentiality. State:

a. The portions of the information alleged to be entitled to confidential treatment;

b. The period of time for which confidential treatment is desired (*e.g.*, until a certain date, until the occurrence of a specific event, or permanently);

c. Measures taken by you to guard against the undesired disclosure of the information to others;

d. The extent to which the information has been disclosed to others, and the precautions taken in connection with such disclosure;

e. Pertinent confidentiality determinations, if any, by EPA or other federal agencies, and a copy of any such determinations or reference to them, if available; and

f. Whether you assert that disclosure of the information would likely result in substantial harmful effects on your business' competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects.

See 40 CFR 2.204(e)(4).

To make a confidentiality claim, please stamp, write or type ''Confidential'' on all confidential responses and any related confidential documents. Confidential portions of otherwise non-confidential documents should be clearly identified. You should indicate a date, if any, after which the information no longer needs to be treated as confidential. Please submit a clean and a redacted version of any documents or response for which you claim confidentiality in a separate envelope.

All confidentiality claims are subject to EPA verification. It is important that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information, that you intend to continue to do so, and that it is not and has not been obtainable by legitimate means without your consent. Information covered by such claim will be disclosed by EPA only to the extent permitted by CERCLA Section 104(e) and 40 CFR 2.205(c). If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to you.

7. *Disclosure to EPA Contractor.* Information that you submit in response to this Application/Information Request may be disclosed by EPA to authorized representatives of the United States, pursuant to 40 CFR 2.310(h), even if you assert that all or part of it is confidential business information. Please be advised that EPA intends to disclose all responses to this Application/Information Request to one or more of its private contractors for the purpose of organizing and analyzing the information contained in the responses to this Application/Information Request. If you submit information that you assert is entitled to treatment as

confidential business information, you may comment on this intended disclosure within fourteen (14) days of receiving this Application/Information Request.

8. *Personal Privacy Information.* Personnel and medical files, and similar files the disclosure of which to the general public may constitute an invasion of privacy should be segregated from your responses, included on a separate sheet(s), and marked as ''Personal Privacy Information''.

9. *Objections to Questions.* Even if you have objections to some or all the questions within the Application/ Information Request, you are still required to respond to each of the questions.

10. *If You Need More Space.* If more space is required for you to provide full and complete answers to any question, use additional sheets of paper and attach these to your response.

Definitions

The following definitions shall apply to the following words as they appear in this Application/Information Request and the related Instructions and cover letter. All terms not defined here shall have their ordinary meaning, unless those terms are defined in CERCLA or the Resource Conservation and Recovery Act (''RCRA''), in which case the statutory or regulatory definitions shall apply.

1. The term ''Aboveground Tank'' means a tank used to store or process used oil that is not an underground storage tank.(*See* 40 CFR 279.1)

2. The term ''the Business'' means the company, the government or governmental entity, refuse collection service or other commercial enterprise to which this request for information is addressed and any agent, servant or employee of that company, governmental entity, refuse collection service or other commercial enterprise.

3. The term ''Container'' means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled. (*See* 40 CFR 279.1)

4. The term ''Do-it-Yourselfer Used Oil'' or ''DIY Used Oil'' means Household Do-it-Yourselfer Used Oil that was removed from the engine of a Light Duty Motor Vehicle or household appliance by the owner of such vehicle or appliance and was presented, by the owner, to the Business for collection, accumulation and delivery to an oil Recycling Facility. (*See* 42 U.S.C. 9614(c)(2); 40 CFR 279.1)

5. The term ''Documents'' means any object that records, stores, or presents information, and includes writings of any kind, formal or informal, whether or not wholly or partially in handwriting, including by way of illustration and not by way of limitation, any invoice, manifest, bill of lading, receipt, endorsement, check, bank draft, canceled check, deposit slip, withdrawal slip, order, correspondence, record book, minutes, memoranda of telephone and other conversations including meetings/agreements and the like, diary, calendar, desk pad, scrapbook, notebook, bulletin, circular, form, pamphlet, statement, journal, postcard, letter, telegram, telex, telescope, telefax, report, notice, message, analysis, comparison, graph, chart, map, interoffice or intra office communications, photostat or other copy of any documents, microfilm or other film record, photograph, sound recording on any type of device, punch card, disc pack, tape or other type of memory generally associated with computers and data processing (including printouts and the programming instructions and other written material necessary to use such punch card, disc, or disc pack, tape or other type of memory), every copy of each document that is not an exact duplicate of a document otherwise provided, every copy of each document that has any writing on it (including figures, notations, annotations, or the like), drafts of documents, attachments to or enclosures with any document, and every document referred to in any other document.

6. The term ''Hazardous Substance'' has the same definition as in subsection 101(14) of CERCLA, 42 U.S.C. 9601(14), and includes any mixtures of hazardous substances with any other substances. (*See* 42 U.S.C. 9601(14))

7. The term ''Household Do-It-Yourselfer Used Oil'' means oil that is derived from households, such as Used Oil generated by individuals who generate Used Oil through the maintenance of their personal vehicles. (*See* 40 CFR 279.1)

8. The term ''Light Duty Vehicle'' means a passenger car or passenger car derivative capable of seating twelve passengers or less. (See 40 CFR 86.1803–01)

9. The term ''Recycled Oil'' means any Used Oil that is reused, following its original use, for any purpose. This includes oil which is re-refined, reclaimed, burned or reprocessed. (*See* 42 U.S.C. 9614(c)(3); 42 U.S.C. 6903(3))

10. The term ''Recycling Facility'' means a Used Oil Processor/Used Oil Re-refiner, or Used Oil Burner, burning Used Oil for energy recovery. (*See* 42 U.S.C. 9614; 40 CFR 279.1)

11. The term ''Service Station Dealer'' means a:

(1) Motor vehicle service station, filling station, garage, or similar retail business involved in sales, repair, or service of motor vehicles;

(2) Government Agency that established a facility solely for the purpose of accepting Do-It-Yourselfer Used Oil; or

(3) Refuse Collection Service compelled by State law to collect, accumulate and deliver Do-It-Yourselfer Used Oil. (*See* 42 U.S.C. 9601(37)(A) & (B))

12. The term ''Tank'' means any stationary device, designed to contain an accumulation of used oil, which is constructed primarily of non-earthen materials (*e.g.*, wood, concrete, steel, plastic) that provides structural support. (*See* 40 CFR 279.1)

13. The term ''Transporter'' means the person(s) who selected the [name] Site as a treatment or disposal site and transported the hazardous substances to that Site.

14. The term ''Underground Tank'' means a device meeting the definition of Tank whose entire surface area is totally below the surface of and covered by the ground. (*See* 40 CFR 260.10)

15. The term ''Used Oil'' means (1) any oil that has been refined from crude oil, or any synthetic oil that (2) has been used, and (3) contaminated by physical or chemical impurities as a result. Used Oil includes petroleum-based, water soluble, and also polymer-type lubricants that are contaminated through use. Used Oil includes Do-It-Yourselfer Used Oil (DIY Used Oil). Used Oils may include:

- spent automotive lubricating oils (including automotive and truck engine oil and engine, turbine or gear lubricants)
- transmission fluid
- brake fluid
- hydraulic fluid
- off-road engine oil
- spent industrial oils and process fluids (including compressor, turbine, and bearing oils, hydraulic oils and fluids)
- metalworking oils and fluid (including cutting, grinding, machining, rolling, stamping, quenching, coating fluid)
- gear oils
- electrical oils not containing polychlorinated biphenyls (PCBs). (*See* 42 U.S.C. 6903(36), 9614(c)(3); 40 CFR 279.1)

16. The term ''Used Oil Burner'' means a facility where Used Oil, not meeting the specification requirements in 40 CFR 279.11, is burned for energy recovery in devices identified in 40 CFR 279.61(a). (*See* 40 CFR 279.1)

17. The term ''Used Oil Processor/Re-refiner'' means a facility that processes Used Oil. (*See* 40 CFR 279.1)

18. The term ''Used Oil Transporter'' means any person who transports Used Oil, any person who collects Used Oil from more than one generator and transports the collected oil, and owners and operators of used oil transfer facilities. (*See* 40 CFR 279.1)

19. The terms ''You'' means the addressee of this Request; including, the addressee's officers, managers, employees, contractors, trustees, partners, successors, assigns, and agents.

Appendix A

Manifest #, bill of lading #, or shipment #	Date of delivery to [name] site	Total volume of shipment	Total volume of used oil	Transporter: carrier name, address, telephone, ID#(s)	Transport by the business or employee: state vehicle owner

Appendix B

Year	Percentage of service-related gross revenue

Year	Percentage of service-related gross revenue

Note.—This Application/Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

[FR Doc. 04–2156 Filed 2–2–04; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

SUMMARY: The Advisory Committee was established by Pub. L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

TIME AND PLACE: Wednesday, February 18, 2004, from 9:30 a.m. to 12:30 p.m. The meeting will be held at Ex-Im Bank in the Main Conference Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

AGENDA: Agenda items include a discussion of the financing needs of middle market exporters, a status update on previous Advisory Committee recommendations, and an update on Ex-Im Bank related legislative issues.

Public Participation:

The meeting will open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to February 12, 2004, Teri Stumpf, Room 1203, 811 Vermont Avenue, NW., Washington, DC 20571, Voice : (202) 565–3502 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Teri Stumpf, Room 1203, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3502.

David C. Chavern,

Deputy General Counsel.

[FR Doc. 04–2111 Filed 2–2–04; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 04–2]

Reminder to Video Programming Distributors Regarding Effective Date for Increase in Captioning Requirements

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document reminds video programming distributors and the public of the closed captioning benchmarks for new English and Spanish language nonexempt video programming for the period between January 1, 2004, and December 31, 2005. This document also reminds distributors of their responsibilities regarding pre-rule English and Spanish language programming. As a further reminder, this document notes that the closed captioning requirements discussed herein are separate from video programming distributors' obligations to make emergency information accessible to persons with hearing and vision disabilities as described in 47 CFR 79.2 of the Commission's rules.

DATES: January 1, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Traci Randolph, Consumer & Governmental Affairs Bureau, (202) 418–0569 (voice), (202) 418–0537 (TTY); *traci.randolph@fcc.gov* or Sonia Greenaway-Mickle, Media Bureau, (202) 418–1419 (voice), (202) 418–7172 (TTY); *sonia.greenaway@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice DA 04–2, released January 6, 2004. All closed captioning benchmarks and rules were established to ensure that video programming is accessible to persons who are deaf or hard of hearing in accordance with the mandate of Congress as set forth in § 713 of the Telecommunications Act of 1996. To view the FCC's Factsheet summarizing

all of the Commission's closed captioning rules and benchmarks go to *http://www.fcc.gov/cgb/consumerfacts/closedcaption.html*. The full texts of these documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This public notice can also be downloaded in text and ASCII formats at *http://www.fcc.gov/cgb/dro*. These documents may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893 (voice), (202) 863–2898 (fax), (202) 863–2897 (TTY), or via e-mail *qualexint@aol.com*. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY).

Synopsis

First, with regard to new nonexempt English language programming, between January 1, 2004, and December 31, 2005, a video programming distributor shall provide at least 1,350 hours of captioned video programming or all of its new nonexempt video programming must be provided with captions, whichever is less. These hours are measured on a per channel, per calendar quarter basis. The Commission's closed captioning benchmarks apply to both analog new programming (*i.e.*, video programming that was first published or exhibited on or after January 1, 1998), and digital new video programming. Digital new programming is video programming prepared or formatted for display on digital televisions that was first published or exhibited on or after July 1, 2002. This benchmark is the last before the final benchmark of January 1, 2006, when 100% of all new nonexempt programming must be captioned. Second, with regard to pre-rule nonexempt English video programming, as of January 1, 2003, 30% of such programming was required to be captioned. Furthermore, as of January 1, 2008, and thereafter, 75% of the programming distributor's pre-rule nonexempt video programming being distributed and exhibited on each channel during each calendar quarter must be provided with closed captioning. Analog pre-rule programming is video programming that was first published or exhibited before January 1, 1998. Digital pre-rule programming is video programming first published or exhibited before July 1, 2002. Third, with regard to new nonexempt Spanish language programming, between January 1, 2004, and December 31, 2006, 900 hours of such programming must be closed captioned per channel per quarter, an increase from 450 hours, leading to the final benchmark of 100% of new nonexempt Spanish language programming starting January 1, 2010. Lastly, the first benchmark for pre-rule nonexempt Spanish language programming is January 1, 2005, after which 30% of the programming distributor's pre-rule nonexempt Spanish language video programming being distributed and exhibited on each channel during each calendar quarter must be provided with closed captioning. Beginning January 1, 2012, and thereafter, 75% of the programming distributor's pre-rule nonexempt Spanish language video programming must be provided with closed captioning.

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 04–2088 Filed 2–2–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, January 27, 2004. Meeting closed to the public. This meeting was cancelled.

DATE AND TIME: Thursday, February 5, 2004, 2 p.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

The following item has been added to the agenda:

Final Rules on Extension of the Administrative Fines Program.

FOR FURTHER INFORMATION CONTACT: Robert W. Biersack, Acting Press Officer Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 04–2311 Filed 1–30–04; 2:43 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

[Petition No. P2–04]

Petition of BDP International, Inc. for Exemption From the Tariff Publishing Requirements of Section 8 of the Shipping Act of 1984, as Amended; Notice of Filing

This is to provide notice of filing and to invite comments on or before February 13, 2004, with regard to the Petition described below.

BDP International, Inc. (''Petitioner'') has petitioned, pursuant to Section 16 of the Shipping Act of 1984, 46 U.S.C. app. § 1715, for an exemption from the tariff publishing requirements of the Shipping Act in order to permit Petitioner to selectively, and in its discretion, offer its customers in contract format a confidential individually tailored package of logistics services, that includes ocean transportation.

In order for the Commission to make a thorough evaluation of the Petition, interested persons are requested to submit comments on the Petition no later than February 13, 2004. Comments on this Petition shall consist of an original and 15 copies, be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, and be served on Petitioner's counsel Carlos Rodriguez, Esq., Rodriguez O'Donnell Ross Fuerst Gonzalez & Williams, P.C., 1211 Connecticut Ave. NW., Suite 800 Washington, DC 20036. It is also requested that a copy of the comment be submitted in electronic form (WordPerfect, Word or ASCII) on diskette or emailed to *Secretary@fmc.gov*.

The Petition will be posted on the Commission's Home page at *http://www.fmc.gov/Docket%20Log/Docket%20Log%20Index.htm*. All comments on the Petition will also be posted on the Commission's Home page at this location.[1] Copies of the Petition also may be obtained by sending a request to the Office of the Secretary by regular mail, e-mail, or by calling (202) 523–5725.

Interested parties may also make oral presentations in this proceeding. At the discretion of individual Commissioners, interested persons may request one-on-one meetings at which they may make presentations describing their views on the petition. All meetings shall be completed before the close of the comment period. A summary or

[1] Copies of replies to Petition Nos. P3–03, P5–03, P7–03, P8–03 and P9–03 are also available on the Commission's homepage at the address listed above.

transcript of each oral presentation will be included in the record and must be submitted to the Secretary of the Commission within 5 days of the meeting. Persons wishing to make oral presentations should contact the Office of the Secretary to secure contact names and numbers for individual Commissioners.

Comments submitted in response to this Notice shall be limited to the merits of this Petition. Commenters shall not use this as an opportunity to submit further comments or replies to the Notices issued in Petition Nos. P3–03, P5–03, P7–03, P8–03 and P9–03. The comment period in those Petitions closed January 16, 2004, and the Commission's rules at 46 CFR 502.74 prohibit replies to replies.

Parties participating in this proceeding may elect to receive service of the Commission's issuances in this proceeding through e-mail in lieu of service by U.S. mail. A party opting for electronic service shall advise the Office of the Secretary in writing and provide an e-mail address where service can be made. Such request should be directed to *secretary@fmc.gov*.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–2076 Filed 2–2–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Petition No. P1–04]

Petition of Danzas Corporation d/b/a Danmar Lines Ltd., Danzas AEI Ocean Services, and DHL Danzas Air and Ocean for Exemption From the Tariff Publishing Requirements of Section 8 of the Shipping Act of 1984, as Amended; Notice of Filing

This is to provide notice of filing and to invite comments on or before February 13, 2004, with regard to the Petition described below.

Danzas Corporation d/b/a Danmar Lines Ltd., Danzas AEI Ocean Services, and DHL Danzas Air and Ocean (''Petitioner'') has petitioned, pursuant to section 16 of the Shipping Act of 1984, 46 U.S.C. app. 1715, for an exemption from the tariff publishing requirements of the Shipping Act in order to give Petitioner and its customers the discretion to negotiate individually structured, confidential contracts for the specific combination of services that best fulfills the customers' particular transportation requirements.

In order for the Commission to make a thorough evaluation of the Petition, interested persons are requested to submit comments on the Petition no later than February 13, 2004. Comments on this Petition shall consist of an original and 15 copies, be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, and be served on Petitioner's counsel Carlos Rodriguez, Esq., Rodriguez O'Donnell Ross Fuerst Gonzalez & Williams, P.C., 1211 Connecticut Ave. NW., Suite 800 Washington, DC 20036. It is also requested that a copy of the comment be submitted in electronic form (WordPerfect, Word or ASCII) on diskette or emailed to *Secretary@fmc.gov*.

The Petition will be posted on the Commission's homepage at *http://www.fmc.gov/Docket%20Log/Docket%20Log%20Index.htm*. All comments on the Petition will also be posted on the Commission's homepage at this location.[1] Copies of the Petition also may be obtained by sending a request to the Office of the Secretary by regular mail, e-mail, or by calling (202) 523–5725.

Interested parties may also make oral presentations in this proceeding. At the discretion of individual Commissioners, interested persons may request one-on-one meetings at which they may make presentations describing their views on the petition. All meetings shall be completed before the close of the comment period. A summary or transcript of each oral presentation will be included in the record and must be submitted to the Secretary of the Commission within 5 days of the meeting. Persons wishing to make oral presentations should contact the Office of the Secretary to secure contact names and numbers for individual Commissioners.

Comments submitted in response to this Notice shall be limited to the merits of this Petition. Commenters shall not use this as an opportunity to submit further comments or replies to the Notices issued in Petition Nos. P3–03, P5–03, P7–03, P8–03 and P9–03. The comment period in those Petitions closed January 16, 2004, and the Commission's rules at 46 CFR 502.74 prohibit replies to replies.

Parties participating in this proceeding may elect to receive service of the Commission's issuances in this proceeding through e-mail in lieu of service by U.S. mail. A party opting for electronic service shall advise the Office of the Secretary in writing and provide an e-mail address where service can be made. Such request should be directed to *secretary@fmc.gov*.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–2075 Filed 2–2–04; 8:45 am]

BILLING CODE 6730–01–P

[1] Copies of replies to Petition Nos. P3–03, P5–03, P7–03, P8–03 and P9–03 are also available on the Commission's homepage at the address listed above.

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 17, 2004.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Erik McBride Thompson, Las Vegas, Nevada; to retain control of Milan Agency, Inc., Milan, Minnesota, and thereby indirectly retain control of Prairie Sun Bank, Milan, Minnesota.

Board of Governors of the Federal Reserve System, January 28, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–2116 Filed 2–2–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or

bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 27, 2004.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Provident Bankshares, Baltimore, Maryland; to merge with Southern Financial Bancorp, Inc., Warrenton, Virginia, and thereby indirectly acquire voting shares of Southern Financial Bank, Warrenton, Virginia.

In connection with this application, applicant also has applied to acquire Essex Savings Bank, F.S.B., Norfolk, Virginia, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y; Southern Webtech.com, Warrenton, Virginia, and thereby engage in developing web based banking systems for cash management for the small and medium size business market, pursuant to section 225.28(b)(14)(i) of Regulation Y; and Loancare Servicing Center, Inc., Norfolk, Virginia, and thereby engage in servicing loans and collection agency services, pursuant to sections 225.28(b)(1) and (b)(2)(iv) of Regulation Y.

Board of Governors of the Federal Reserve System, January 28, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–2117 Filed 2–2–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 27, 2004.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. E J Financial Corp., Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Franklin National Bankshares, Inc., Mount Vernon, Texas, and its subsidiary Franklin National Delaware Bankshares, Inc., Dover, Delaware, and Franklin National Bank, Mount Vernon, Texas.

Board of Governors of the Federal Reserve System, January 28, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–2118 Filed 2–2–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY: Board of Governors of the Federal Reserve System.

Time and Date: 11:30 a.m., Monday, February 9, 2004.

Place: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets NW., Washington, DC 20551.

Status: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; (202) 452–2955.

SUPPLEMENTARY INFORMATION: You may call (202) 452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, January 30, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–2321 Filed 1–30–04; 3:21 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0243]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed

information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

#1 Type of Information Collection Request: Revision of a Currently Approved Collection;

Title of Information Collection: OCR Pre-grant Data Request Package;

Form/OMB No.: OS–0990–0243;

Use: Recipients of HHS funds must review their policies/practices and submit documents to demonstrate compliance with the Civil Rights Requirements of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehab Act of 1973 and the Age Discrimation Act 1975.

Frequency: Recordkeeping, Single time;

Affected Public: State, local, or tribal governments, business or other for profit;

Annual Number of Respondents: 4,000;

Total Annual Responses: 4,000;

Average Burden Per Response: 16 hours;

Total Annual Hours: 64,000;

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (0990–0243), Room 531–H, 200 Independence Avenue, SW., Washington DC 20201.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 04–2094 Filed 2–2–04; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–24]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Evaluation of a Family History Tool for Health Promotion and Disease Prevention—New—Office of Genomics and Disease Prevention (OGDP), Centers for Disease Control and Prevention (CDC).

Background

Although family history is a risk factor for most chronic diseases of public health significance, it is underutilized in the practice of preventive medicine and public health for assessing disease risk and influencing early detection and prevention strategies. It has been known for years that people that have close relatives with certain diseases like, heart disease, diabetes, and cancers, are more likely to develop those diseases themselves. Geneticists have long recognized the value of family history for discovering inherited disorders, usually the result of single gene mutations. Although single gene disorders are typically associated with a large magnitude of risk, they account for a small proportion of individuals with a genetic risk for common, chronic diseases. Most of the genetic susceptibility to these disorders is the result of multiple genes interacting with multiple environmental factors. Family history is more than genetics; it reflects the consequences of inherited genetic susceptibilities, shared environment, shared cultures and common behaviors. All of these factors are important when estimating disease risk. In early 2002, the CDC Office of Genomics and Disease Prevention (OGDP) in collaboration with several CDC programs and NIH institutes began an initiative to develop a family history tool for identifying apparently healthy people who may be at increased risk for a number of common diseases. The major activities of this initiative have included: (1) Reviews of the literature for approximately 25 diseases; (2) assessments of family history tools currently in use or under development; (3) a meeting of experts to provide input into the process; (4) development of criteria for determining which diseases to include in the tool; (5) development of a framework for evaluating a family history tool and the development of a tool.

As a result of this initiative, a PC-based familial risk assessment tool was developed to be used as a public health strategy to improve health and prevent disease. The assessment tool is called, ''Family Healthware.'' This tool will be used to collect information about the disease history of a person's first- and second-degree relatives (mother, father, children, siblings, grandparents, aunts, and uncles), use family history information to assess risk for common diseases of adulthood, and influence early detection and prevention strategies. The current version of the tool focuses on six diseases—heart disease, stroke, diabetes, and colorectal, breast, and ovarian cancer.

The proposed project is a study to evaluate the clinical utility of the ''Family Healthware'' tool by determining whether family history risk assessment, stratification, and personalized prevention messages have any impact on health behaviors, and use of medical services. In 2003, CDC awarded funding to three research centers to collaborate on a study set in primary care clinics to assess the clinical utility of the family history tool. The primary care clinics will be randomized into two groups. In group 1, patients attending the primary care clinics will be asked to complete the

family history tool and a questionnaire that includes an assessment of risk factors, preventive behaviors, use of medical services, and perception of risk. The patients will be provided with an assessment of their familial risk (average, above average, much above average) for each of the six diseases and information about preventive measures (*e.g.*, diet, exercise, screening tests) that is tailored to their level of familial risk for each of the six diseases. After 6 months, the patients will be asked to complete a questionnaire that assess their risk factors, use of medical services, interest in modifying health behaviors, and changes in risk perception. In group 2, patients will complete the questionnaire only (not the family history tool) and will be given standard public health messages about preventing the six diseases of interest (messages will not be tailored to risk level). After 6 months, the patients in group 2 will also complete the same post intervention questionnaire and will also complete the family history tool.

The purpose of having patients in group 2 complete the family history tool post intervention is so that the analysis can be stratified by familial risk level in both patient groups. The hypothesis to be tested in this study is that patients who are provided with personalized prevention messages based on an assessment of their family history of disease will be more motivated to make behavior changes and use preventive health services. There is no cost to respondents participating in this study.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Group 1—healthy persons between the ages of 35 and 65	3,750	[1]2	45/60	5,625
Group 2—healthy persons between the ages of 35 and 65	3,750	[1]2	45/60	5,625
Total				11,250

[1] Pre-test and post-test.

Dated: January 26, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–2101 Filed 2–2–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–25]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: The National Centers for Autism and Developmental Disabilities Research and Epidemiology (CADDRE) Study—New—National Center for Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

The Children's Health Act of 2000 mandated CDC to establish autism surveillance and research programs to address the number, incidence, correlates, and causes of autism and related disabilities. Under the provisions of this act, CDC funded 5 CADDRE centers including the California Department of Health and Human Services, Colorado Department of Public Health and Environment, John Hopkins University, the University of Pennsylvania, and the University of North Carolina at Chapel Hill. CDC National Center for Birth Defect and Developmental Disabilities will participate as the 6th site. The multi-site, collaborative study will be an epidemiological investigation of possible causes for the autism spectrum disorders.

Data collection methods will consist of the following: (1) Medical and educational record review of the child participant; (2) medical record review of the biological mother of the child participant; (3) a packet sent to the participants with self-administered questionnaires and a buccal swab kit; (4) a telephone interview focusing on pregnancy-related events and early life history (biological mother and/or primary caregiver interview); (5) a child development interview (for case participants only) administered over the telephone or in-person; (6) a developmental and physical exam of the child participant; (7) biological sampling of the child participant (blood and hair); and, (8) biological sampling of the biological parents of the child participant (blood only). OMB clearance is requested for the self administered questionnaires and buccal swab kit, the primary caregiver interview, and the child development interview. There is no cost to respondents.

Survey	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Cases:				
—Self administered questionnaires and buccal swab kit	644	1	3	1932
—Primary caregiver interview	644	1	40/60	429
—Child development interview	644	1	3	1932
Controls:				
—Self administered questionnaires and buccal swab kit	1288	1	3	3864
—Primary caregiver interview	1288	1	40/60	859
—Child development interview	1288	1	1	1288
Total				10,304

Dated: January 27, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–2102 Filed 2–2–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Resource Center on Sexual Violence Prevention

Announcement Type: New.

Funding Opportunity Number: 04067.

Catalog of Federal Domestic Assistance Number: 93.136.

Key Dates

Letter of Intent Deadline: February 18, 2004.

Application Deadline: April 5, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under section 317(k), 392, and 393 of the Public Health Service Act, [42 U.S.C. section 247b(k), 280b–1, and 280b–1a] as amended.

Purpose: The purposes of this program are to:

1. Provide national leadership in the prevention of sexual violence.

2. Provide comprehensive information and resources on sexual violence (*e.g.* sexual violence across the lifespan, the continuum of prevention, etc.) through a central resource library and Web site.

3. Provide technical assistance and professional consultation to State sexual assault coalitions and local sexual assault programs; local, state, national and tribal agencies and organizations (including public health agencies and organizations), and the media designed to enhance the prevention of and community response to sexual violence.

For the purposes of this program announcement the following definitions apply:

Intervention: services, policies and actions provided after sexual violence has occurred and that may have the advantageous effect of preventing a re-occurrence of violence.

Prevention: population-based and/or environmental/system level services, policies and action that prevent sexual violence from initially occurring. Prevention efforts work to modify and/or entirely eliminate the event, conditions, situations, or exposure to influences (risk factors) that result in the initiation of sexual violence and associated injuries, disabilities, and deaths. Additionally, prevention efforts seek to identify and enhance protective factors that may prevent sexual violence not only in at-risk populations but also in the community at large.

This program addresses the ''Healthy People 2010'' focus area of Injury and Violence Prevention.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Increase the capacity of injury prevention and control programs to address the prevention of injuries and violence.

Activities

Awardee activities for this program are as follows:

a. Collaborate with CDC on the implementation and evaluation of the resource center, which includes establishing mutually agreed upon goals and objectives, and participating in strategic planning.

b. Provide national leadership in the prevention of sexual violence.

c. Work with the media to respond to emerging issues and proactively communicate sexual violence prevention messages.

d. Collaborate with research and academic experts to provide statistics, fact sheets, specialized information packets, and original informational materials addressing a range of sexual violence issues including, but not limited to: sexual violence across the lifespan; sexual violence in unserved and/or underserved communities; and sexual violence as a public health issue.

e. Identify areas where additional research and evaluation is needed to complement policy and practice.

f. Maintain a central resource library to compile and disseminate information on statistics, research and evaluation findings, promising prevention strategies and intervention programs.

g. Maintain a website to communicate information about the resource center, resources and services available, and other information on emerging issues.

h. Provide a toll-free information line and an e-mail request box which allows the public access to information on sexual violence prevention and intervention tools; research and evaluation findings; and practice standards.

i. Provide a customized service available by phone, fax, mail, or electronic mail whereby programs, agencies, professionals, and the media may receive information packets, newsletters, bibliographies, policy papers, fact sheets, etc. This service should be designed and implemented in such a way as to meet the needs of programs, agencies and allied professionals residing in multiple time zones.

j. Provide a full-time manager and other staff as appropriate.

k. Establish and maintain collaborative relationships with national, state, local and tribal sexual violence prevention organizations, public health agencies and organizations, the recipient of the national online resource to support violence against women prevention cooperative agreement, and other CDC grantees and partners.

l. Actively market the resource center to a broad range of constituents (including researchers and practitioners in the sexual violence field as well as public health researchers and practitioners).

m. Establish and maintain an advisory board with professional experience and

expertise in the area of sexual violence. Board members should represent multiple disciplines including child sexual abuse and public health, represent a balance between prevention and intervention expertise, and be culturally and racially/ethnically diverse.

n. Provide a detailed evaluation plan that will document program process, effectiveness, and outcomes. This plan should identify potential data sources for evaluation, document staff availability, expertise and capacity to perform the evaluation activities. The plan should also include how results or information will be used to make programmatic and/or operational decisions.

o. Participate in regular conference calls with CDC program staff and participate in CDC grantee meetings as requested by CDC.

p. Submit required reports to CDC as scheduled.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

a. Provide technical assistance and consultation in the design, implementation and evaluation of the resource center including participation in strategic planning, and advisory committee meetings.

b. Collaborate with resource center staff in identifying the most recent scientific and programmatic information around sexual violence prevention activities, including, but not limited to, CDC funded projects, extramural research, and initiatives with other agencies that support sexual violence prevention and intervention activities.

c. Arrange for information sharing among the resource center and other relevant CDC grantees and partners.

d. Participate in the concept development of original information materials and review all products before publishing.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $700,000.

Approximate Number of Awards: One.

Approximate Average Award: $700,000.

Floor of Award Range: None.

Ceiling of Award Range: None.

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

1. *Eligible applicants:* Eligible applicants are limited to state sexual assault coalitions that receive the Sexual Assault Coalition Grants funded through the Violence Against Women Act (VAWA) (Pub. L. 106–386, section 1103(c), 42 U.S.C. section 3796gg–1–3796gg–3), as identified by (CDC) since the authorization and funding for this program is designated in the Rape Prevention and Education (RPE) section of VAWA. RPE funds are intended to support rape prevention and education programs of state sexual assault coalitions and local rape crisis programs. The National Resource Center on Sexual Violence Prevention will provide technical support for the RPE Program. Because of the unique expertise, experience and knowledge base of state sexual assault coalitions, they are best positioned to implement the required components of a national resource center.

III.2. *Cost Sharing or Matching:* Matching funds are not required for this program.

III.3. *Other:*

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. *Address To Obtain Application Package:* To apply for this funding opportunity use application form PHS 5161. Forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.* If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. *Content and Form of Submission: Letter of Intent (LOI):* CDC requests that you send a LOI if you intend to apply for this program. Your LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review. Your LOI must be written in the following format:

- Maximum number of pages: 2.
- Font size: 12-point unreduced.
- Paper size: 8.5 by 11 inches.
- Single spaced.
- Page margin size: 1.5 inches—left, 1 inch—top, bottom, and right.
- Printed only on one side of page.

Your LOI must contain the following information:

- Number and title of this Program Announcement (PA #).

Application

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.* If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

You must submit a signed hard copy original and two copies of your application forms.

You must include a project narrative with your application forms. Your narrative must be submitted in the following format:

- Maximum number of pages: 25. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12 point unreduced.
- Double spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- Written in plain language, avoid jargon.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Abstract (one-page summary of the application, does not count towards page limit).
- Applicant's Relevant Experience.
- Plan to Implement the Resource Center.

- Applicant's Capacity and Staffing.
- Collaboration.
- Marketing Plan.
- Measures of Effectiveness.
- Proposed Budget and Justification (does not count towards page limit).

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Curriculum Vitae.
- Job Descriptions.
- Resumes.
- Organizational Charts.
- Letters of Support, etc.

IV.3. *Submission Dates and Times:*

LOI Deadline Date: February 18, 2004.

Application Deadline Date: April 5, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This program announcement is the definitive guide on application format, content, and deadlines. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. *Intergovernmental Review of Applications:* Executive Order 12372 does not apply to this program.

IV.5. *Funding Restrictions:* Funding restrictions, which must be taken into account while writing your budget are as follows: cooperative agreement funds for this project cannot be used for construction, renovation, the lease of passenger vehicles, the development of major software applications, or supplanting current applicant expenditures.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement must be less than 12 months of age.

IV.6. *Other Submission Requirements:*

LOI Submission Address: Submit your LOI by express delivery service, or e-mail to:

Karen Lang, Project Officer, 2939 Flowers Road South, Atlanta, GA 30341, (770) 488–1118, *klang@cdc.gov.*

Application Submission Address: Submit your application by mail or express delivery service to:

Technical Information Management-PA 04067, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. *Criteria:* You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. Applicant's Relevant Experience (30 points)

a. The extent to which the applicant has demonstrated experience coordinating, collaborating and providing leadership on a national level with regard to sexual violence.

b. The extent to which the applicant has demonstrated experience in managing a central resource library specializing in sexual violence prevention and intervention information and resources.

c. The extent to which the applicant has demonstrated experience providing technical assistance and professional consultation on sexual violence prevention to sexual violence practitioners, public health practitioners, policy makers, and the media.

d. The extent to which the applicant has demonstrated experience creating and distributing fact sheets, original informational materials, specialized information packets and other materials on sexual violence prevention and intervention through a variety of mediums.

e. The extent to which the applicant has demonstrated experience in compiling, synthesizing and disseminating research and evaluation findings, information on innovative prevention strategies and intervention programs through a variety of mediums.

f. The extent to which the applicant has demonstrated experience maintaining a web site and distributing timely information via the Internet.

g. The extent to which the applicant has demonstrated experience working with the media to respond to emerging issues and proactively communicate sexual violence prevention messages.

2. Plan To Implement the Resource Center (25 points)

a. The extent to which the applicant provides clearly stated goals and corresponding objectives that are time-phased, specific, attainable, and measurable.

b. The extent to which the applicant provides a 5-year vision for how the resource center will be flexible and adaptable in incorporating change and growth in technology as well as changes in priorities and context of the sexual violence and public health fields.

c. The extent to which the applicant provides a clear description of the role and involvement of the advisory board and has identified participants representing a broad range of disciplines that work in the area of sexual violence, including public health.

d. The extent to which the applicant demonstrates a specific and achievable plan to market the resource center to a diverse range of constituents, including public health.

3. Applicant's Capacity and Staffing (20 points)

a. The extent to which the applicant demonstrates an existing capacity and infrastructure (including institutional experience, evidence of leadership, comprehensive resource library of sexual violence materials, adequate server space and other information technology) to manage the resource center and carry out the required activities in the cooperative agreements.

b. The extent to which the applicant's description of the responsibilities of individual staff members, including the level of effort and allocation of time, demonstrates an ability to effectively manage and implement the activities of this cooperative agreement.

c. The extent to which the project staff are clearly described and have appropriate skills and expertise for their assigned staff position. Additionally, the applicant has included an organizational chart and curriculum vitae or position description for each proposed staff member.

d. The extent to which the applicant describes plans to train new staff and support existing staff to carry out the program plan.

4. Collaboration (15 points)

a. The extent to which the applicant demonstrates a willingness to collaborate with CDC in the design, implementation and evaluation of the resource center.

b. The extent to which the applicant demonstrates a willingness to collaborate with other relevant CDC grantees and partners, including the recipient of the national online resource to support the prevention of violence against women.

c. The extent to which the applicant demonstrates a successful history of collaborating effectively with other organizations at the local, state, national and tribal levels. Additionally, the applicant has included letters of support and/or memoranda of agreement from national and state sexual violence organizations, research and/or academic experts/institutions, and other relevant agencies and organizations, including public health agencies and organizations.

5. Evaluation (10 points)

a. The extent to which the applicant provides a detailed description of the methods to be used to evaluate program effectiveness, including what will be evaluated, data to be collected and analyzed, who will perform the evaluation, the time-frame and how data will be used for program enhancement.

b. The extent to which the applicant documents staff availability, expertise, and capacity to evaluate program activities and effectiveness. Evaluation should include progress towards meeting the objectives during the budget and project periods, and the impact of program activities on the individuals and agencies accessing center resources. Describe how evaluation results will be used to make programmatic decisions, mid course corrections and how results will be reported.

c. The extent to which the applicant's evaluation plan includes a component for assessing consumer satisfaction as well as periodic assessment of emerging issues and information needs in the sexual violence field.

6. Measures of Effectiveness (not scored)

The extent to which the applicant provided objective/quantifiable measures regarding the resource center's intended outcomes that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement.

7. Budget (Not Scored)

The applicant should provide a detailed budget with complete line-item justification of all proposed costs consistent with the stated activities in the program announcement. Details must include a breakdown in the categories of personnel (with time allocations for each), staff travel, communications and postage, equipment, supplies, and any other costs. The budget projection must also include a narrative justification for all requested costs. Any sources of additional funding beyond the amount stipulated in this cooperative agreement should be indicated, including donated time or services. For each expense category, the budget should indicate CDC share, the applicant share and any other support. These funds should not be used to supplant existing efforts.

V.2. *Review and Selection Process:* An objective review panel will evaluate your application according to the criteria listed above.

V.3. *Anticipated Announcement and Award Dates:*

Announcement Date: None.

Award Date: September 1, 2004.

VI. Award Administration Information

VI.1. *Award Notices:* Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. *Administrative and National Policy Requirements:* 45 CFR part 74 and part 92: For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html*.

The following additional requirements apply to this project:

- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.
- AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities.
- AR–15 Proof of Non-Profit Status.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm*.

VI.3. *Reporting Requirements:*

You must provide CDC with a hard copy original, plus two copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2700.

For program technical assistance, contact: Karen Lang, Project Officer, 4770 Buford Hwy. NE, MS–K60, Atlanta, GA 30341–3724, Telephone: (770) 488–1118, E-mail: *klang@cdc.gov*.

For budget assistance, contact: Angie Nation, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341, Telephone: (770) 488–2719, E-mail: *aen4@cdc.gov*.

Dated: January 27, 2004.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–2103 Filed 2–2–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Advisory Committee on Immunization Practices (ACIP).

Times and Dates: 8:30 am–5 pm, February 24, 2004; 8 am–5 pm, February 25, 2004.

Place: Atlanta Marriott Century Center, 2000 Century Boulevard, NE., Atlanta, Georgia 30345–3377.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters To Be Discussed: The agenda will include discussions on smallpox update on the civilian program; Department of Defense Smallpox Vaccine Update; report from the smallpox vaccine safety working group; consideration for the timing of revaccination for smallpox; recommended childhood and adolescent immunization schedule; influenza vaccine recommendation; update on the Federal Advisory Stakeholder Engagement Survey Results; working group and Departmental updates.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Demetria Gardner, Epidemiology and Surveillance Division, National Immunization Program, CDC, 1600 Clifton Road, NE., (E–61), Atlanta, Georgia 30333, telephone (404) 639–8096, fax (404) 639–8616.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: January 28, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–2104 Filed 2–2–04; 8:45 am]

BILLING CODE 4163–18–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: State Self-Assessment Review and Report.

OMB No.: 0970–0223.

Description: The information to be collected from states includes statistics on specific criteria. This information is to be provided in the form of a report submitted annually to the Secretary of the Department of Health and Human Services. It is required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as a substitute for process audits and will be used to determine if states are complying with specified child support requirements.

Respondents: State Child Support Enforcement Agencies or the Department/Agency/Bureau responsible for Child Support Enforcement in each state.

Annual Burden Estimates:

Insrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Report	54	1	3,866	208,764

Estimated Total Annual Burden Hours: 208,764.

Additional Information: Copies of the proposed collection may be obtained 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. E-mail address: *rsargis@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *katherine_t._astrich@omb.eop.gov.*

Dated: January 29, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–2170 Filed 2–2–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: OCSE–157 Child Support Enforcement Program Annual Data Report.

OMB No. 0970–0057.

Description: The data collected by OCSE–157 are used to prepare the OCSE annual data report. In addition, these data are used to determine state performance indicators for establishing the effectiveness and efficiency of the State child support programs for incentive and penalty purposes.

Respondents: State Child Support Enforcement Agencies or the Department/Agency/Bureau responsible for Child Support Enforcement in each State.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–157	54	1	4.0	216.0

Estimated Total Annual Burden Hours: 216.0.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 29, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–2171 Filed 2–2–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: National Extranet Optimized Runaway and Homeless Youth Management Information System (NEO–RHYMIS).

OMB No. 0970–0123.

Description: The Runaway and Homeless Youth Act (RHYA), as amended by Pub. L. 106–71 (42 U.S.C. 5701 *et seq.*), mandates that the Department of Health and Human Services (HHS) report regularly to Congress on the status of HHS-funded programs serving runaway and homeless youth. Such reporting is similarly mandated by the Government Performance and Results Act. Organizations funded under the Runaway and Homeless Youth (RHY) program are required by statute (42 U.S.C. 5712, 42 U.S.C. 5714–2) to meet certain data collection and reporting requirements. These requirements include maintenance of client statistical records on the number and the characteristics of the runaway and homeless youth, and youth at risk of family separation, who participate in the project; and the services provided to such youth by the project.

Respondents: Public and private, community-based nonprofit and faith-based organizations receiving HHS funds for services to runaway and homeless youth.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Youth Profile	535	153	0.25	20,464
Street Outreach Report	147	4211	0.02	12,380
Brief Contacts	535	305	0.15	24,476
Turnaways	535	13	0.1	696
Data Transfer	535	2	0.5	535

Estimated Total Annual Burden Hours: 58,551.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 29, 2004

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–2172 Filed 2–2–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. FV03–2004]

Family Violence Prevention and Services Program

AGENCY: Family and Youth Services Bureau, Administration on Children, Youth and Families (ACYF) and the Office of Community Services (OCS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of the availability of funds to State domestic violence coalitions for grants to carry out family violence intervention and prevention activities.

SUMMARY: This instruction governs the proposed award of fiscal year (FY) 2004 formula grants under the Family Violence Prevention and Services Act (FVPSA) to private non-profit State domestic violence coalitions. The purpose of these grants is to assist in the conduct of activities to promote domestic violence intervention and prevention and to increase public awareness of domestic violence issues.

This announcement sets forth the application requirements, the application process, and other administrative and fiscal requirements for grants in fiscal year (FY) 2004.

DATES: Applications for FY 2004 State domestic violence coalition grant awards meeting the criteria specified in this instruction must be received no later than February 20, 2003.

ADDRESSES: Applications should be sent to, Family and Youth Services Bureau, Administration for Children, Youth, and Families, Administration for Children and Families, Attention: William D. Riley, 330 C Street, SW., Room 2117, Washington, DC, 20447.

FOR FURTHER INFORMATION CONTACT: William D. Riley at (202) 401–5529 or e-mail at *WRiley@acf.hhs.gov*, or Sunni Knight at (202) 401–5319 or e-mail at *GKnight@acf.hhs.gov*.

SUPPLEMENTARY INFORMATION: This notice for family violence prevention and services grants to State domestic violence coalitions serves two purposes. The first is to confirm a Federal commitment to reducing family and intimate partner violence and the second purpose is to urge States, localities, cities, and the private sector to become involved in State and local planning towards an integrated service delivery approach.

Annual State Domestic Violence Coalition Grantee Conference

The annual grantee conference is a training and technical assistance activity. Attendance at these activities is mandatory. Family Violence Prevention and Services Act (FVPSA) funds may also be used to support attendance and participation. A subsequent Program Instruction will advise State Coalition administrators of the date, time, and location of their grantee conference.

Client Confidentiality

FVPSA programs must establish or implement policies and protocols for maintaining the safety and confidentiality of the adult victims and their children of domestic violence, sexual assault, and stalking. It is essential that the confidentiality of individuals receiving FVPSA services be protected. Consequently, when providing statistical data on program activities, individual identifiers of client records will not be used (section 303(a)(2)(E)).

Stop Family Violence Postal Stamp

The U.S. Postal Service was directed by the ''Stamp Out Domestic Violence Act of 2001'' (the Act), Pub. L. 107–67, to make available a ''semipostal'' stamp to provide funding for domestic violence programs. Funds raised in connection with sales of the stamp, less reasonable costs, will be transferred to the U.S. Department of Health and Human Services in accordance with the Act for support of services to children and youth affected by domestic violence. It is projected that initial revenues will be received during the third quarter of FY 2004. Subsequent to the receipt of the stamp proceeds, a program announcement will be issued providing guidance and information on the process and requirements for awards to programs providing services to children and youth.

State Coalition Grant Application Requirements

This section includes application requirements for family violence prevention and services grants for state domestic violence coalitions and is organized as follows:

Application Requirements

A. Legislative Authority
B. Background
C. Eligibility
D. Funds Available
E. Expenditure Period
F. Reporting Requirements
G. Application Requirements
H. Paperwork Reduction Act
I. Executive Order 12372
J. Certifications

A. Legislative Authority

Title III of the Child Abuse Amendments of 1984, (Pub. L. 98–457, 42 U.S.C. 10401, *et seq.*) is entitled the ''Family Violence Prevention and Services Act'' (the Act). The Act was first implemented in FY 1986, was reauthorized and amended in 1992 by Public Law 102–295, was amended and reauthorized for fiscal years 1996 through 2000 by Public Law 103–322, the Violence Crime Control and Law Enforcement Act of 1994 by Public Law 104–235, the Child Abuse Prevention and Treatment Act Amendment of 1996, and in 2000 by the Victims of Trafficking and Violence Protection Act (Pub. L. 106–386, 10/28/2000). The Act was most recently amended by the ''Keeping Children and Families Safe Act of 2003'' (Pub. L.108–36).

B. Background

Section 311 of the Act authorizes the Secretary to award grants to statewide private non-profit State domestic violence coalitions to conduct activities to promote domestic violence intervention and prevention and to increase public awareness of domestic violence issues.

C. Eligibility

To be eligible for grants under this program announcement, an organization shall be a statewide private non-profit domestic violence coalition meeting the following criteria:

(1) The membership of the coalition includes representatives from a majority of the programs for victims of domestic violence operating within the State (a State domestic violence coalition may include representatives of Indian Tribes and Tribal organizations as defined in the Indian Self-Determination and Education Assistance Act);

(2) The Board membership of the coalition is representative of such programs;

(3) The purpose of the coalition is to provide services, community education, and technical assistance to domestic violence programs in order to establish and maintain shelter and related services for victims of domestic violence and their children; and

(4) In the application submitted by the coalition for the grant, the coalition provides assurances satisfactory to the Secretary that the coalition:

(A) Has actively sought and encouraged the participation of law enforcement agencies and other legal or judicial entities in the preparation of the application; and

(B) will actively seek and encourage the participation of such entities in the

activities carried out with the grant (section 311(5)(A)).

Additional Information on Eligibility

All applications must have a Dun and Bradstreet Number (DUNS). A DUNS number will be required for every application for a new or renewal/continuation of an award under formula, entitlement and block grant programs. A DUNS number may be acquired at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711 or a number may be requested on-line at *http://www.dnb.com.*

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants.'' The forms are located on the web at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

D. Funds Available

The Department will make ten percent of the Family Violence Prevention and Services Act appropriation available for grants to State domestic violence coalitions. One grant each will be available for the State domestic violence coalitions of the 50 states, the Commonwealth of Puerto Rico, and the District of Columbia. The Coalitions of the U.S. Territories (Guam, U.S. Virgin Islands, Northern Mariana Islands, American Samoa, and Trust Territory of the Pacific Islands) are also eligible for domestic violence coalition grant awards.

E. Expenditure Period

The FVPSA funds may be used for expenditures after October 1 of each fiscal year for which they are granted and will be available for expenditure through September 30 of the following fiscal year, *i.e.*, FY 2004 funds may be used for expenditures from October 1, 2003 through September 30, 2005. Funds will be available for obligation through October 1, 2004.

F. Reporting Requirements

The State domestic violence coalition grantee must submit an annual report of activities describing the coordination, training and technical assistance, needs assessment, and comprehensive planning activities carried out. Additionally, the coalition must report on the public information and education services provided; the activities conducted in conjunction with judicial and law enforcement agencies; the actions conducted in conjunction with other agencies such as the state child welfare agency; and any other activities undertaken under this grant award. The annual report also must provide an assessment of the effectiveness of the grant-supported activities.

The annual report is due 90 days after the end of the fiscal year in which the grant is awarded, *i.e.*, December 30. The final program report is due 90 days after the end of the two-year expenditure period.

The State domestic violence coalition grantees must also submit an annual financial report, Standard form 269(SF–269). A financial report is due 90 days after the end of the fiscal year in which the grant is awarded.

G. Application Requirements

The State domestic violence coalition application must be signed by the Executive Director of the Coalition or the official designated as responsible for the administration of the grant. The application must contain the following information:

We have cited each requirement to the specific section of the law.

1. A description of the process and anticipated outcomes of utilizing these federal funds to work with local domestic violence programs and providers of direct services to encourage appropriate responses to domestic violence within the State, including—

Training and technical assistance for local programs and managers working the field:

(a) Planning and conducting State needs assessments and planning for comprehensive services;

(b) Serving as an information clearinghouse and resource center for the State; and

(c) Collaborating with other governmental systems that affect battered women (section 311(a)(1)).

2. A description of the public education campaign regarding domestic violence to be conducted by the coalition through the use of public service announcements and informative materials that are designed for print media; billboards; public transit advertising; electronic broadcast media; and other forms of information dissemination that inform the public about domestic violence, including information aimed at underserved racial, ethnic or language-minority populations (Section 311(a)(4)).

3. The anticipated outcomes and a description of planned grant activities to be conducted in conjunction with judicial and law enforcement agencies concerning appropriate responses to domestic violence cases and an examination of related issues.

4. The anticipated outcomes and a description of planned grant activities to be conducted in conjunction with Family Law Judges, Criminal Court Judges, Child Protective Services agencies, Child Welfare agencies, Family Preservation and Support Service agencies, and children's advocates to develop appropriate responses to child custody and visitation issues in domestic violence cases and in cases where domestic violence and child abuse are both present. The anticipated outcomes and a description of other activities in support of the general purpose of furthering domestic violence intervention and prevention (section 311(a)).

5. The following documentation will certify the status of the domestic violence coalition and must be included in the grant application:

(a) A description of the procedures developed between the State domestic violence agency and the Statewide coalition that allow for implementation of the following cooperative activities:

(i) the participation of the State domestic violence coalition in the planning and monitoring of the distribution of grants and grant funds provided in the State (section 311(a)(5); and

(ii) the participation of the State domestic violence coalition in compliance activities regarding the State's family violence prevention and services program grantees (section 303 (a)(C)).

(b) Unless already on file at HHS, a copy of a currently valid 501(c)(3) certification letter from the Internal Revenue Service stating private non-profit status; or a copy of the applicant's listing in the Internal Revenue's Services (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code; or

(c) A copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled;

(d) A current list of the organizations operating programs for victims of domestic violence programs in the State and the applicant coalition's current membership list by organization;

(e) A list of the applicant coalition's current Board of Directors, with each individual's organizational affiliation and the Chairperson identified;

(f) A copy of the resume of any coalition or contractual staff to be supported by funds from this grant and/or a statement of requirements for staff or consultants to be hired under this grant; and

(g) A budget narrative which clearly describes the planned expenditure of funds under this grant.

6. Required Documentation and Assurances (included in the application as an appendix).

(a) The applicant coalition must provide documentation in the form of support letters, memoranda of agreement, or jointly signed statements, that the coalition:

(i) Has actively sought and encouraged the participation of law enforcement agencies and other legal or judicial organizations in the preparation of the grant application (section 311(b)(4)(A)); and

(ii) Will actively seek and encourage the participation of such organizations in grant funded activities (section 311(b)(4)(B)).

(b) The applicant coalition must provide a signed statement that the coalition will not use grant funds, directly or indirectly, to influence the issuance, amendment, or revocation of any executive order or similar legal document by any Federal, State or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress, or any State or local legislative body, or State proposals by initiative petition, except that the representatives of the State Domestic Violence Coalition may testify or make other appropriate communications except:

(c) When formally requested to do so by a legislative body, a committee, or a member of such organization (section 311(d)(1)); or in connection with legislation or appropriations directly affecting the activities of the State domestic violence coalition or any member of the coalition (section 311(d)(2)).

The applicant coalition must provide a signed statement that the State domestic violence coalition will prohibit discrimination on the basis of age, handicap, sex, race, color, national origin or religion (section 307).

Additional Forms: Private, non-profit organizations may submit with their applications the additional survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants'' at *http://www.acf.hhs.gov/programs/ofs/form.htm.*

H. Paperwork Reduction Act

This program announcement contains information collection requirements in sections (F) and (G). We estimate that all of the information requirements for this program will take each grantee approximately 6 hours to complete. As there are 53 projected grantees, the total number of hours annually will be 318. In accordance with the Act, the application requirements contained in this notice have been approved by OMB under control number 0970–0062.

I. Executive Order 12372

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs'' for State plan consolidation and simplification only—45 CFR 100.12. The review and comment provisions of the Executive Order and Part 100 do not apply.

J. Certifications

Applicants must comply with the required certifications found at the Appendices:

1. *The Anti-Lobbying Certification and Disclosure Form* must be signed and submitted with the application. If applicable, a Standard Form LLL, which discloses lobbying payments must be signed and submitted.

2. *Certification Regarding Debarment:* The signature on the application by a coalition official responsible for the administration of the program attests to the applicant's intent to comply with the Debarment Certification. The Debarment Certification must be signed and submitted with the application.

3. *Certification Regarding Environmental Tobacco Smoke:* The signature on the application by a coalition official certifies that the applicant will comply with the requirements of the Pro-Children Act of 1994 (Act). The applicant further agrees that it will require the language of this certification be included in any standards which contain provisions for children's Services and that all grantees shall certify accordingly.

4. *Certification Regarding Drug-Free Workplace Requirements:* The signature on the application by a coalition official attests to the applicant's intent to comply with the Drug-Free Workplace requirements. The Drug Free Workplace Certification does not have to be returned with the application.

(Catalog of Federal Domestic Assistance Number 93.591, Family Violence Prevention and Services: Grants to State Domestic Violence Coalitions)

Dated: January 24, 2004.

Clarence Carter,

Director, Office of Community Services, Administration for Children and Families.

Appendices: Required Certifications:
- Anti-Lobbying and Disclosure;
- Regarding Debarment;
- Regarding Environmental Tobacco Smoke; and
- Drug-Free Workplace.

Appendix A

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Appendix B

Certification Regarding Debarment, Suspension and Other Responsibility Matters

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered tranaction with a person who is proposed for debarement under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause title ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not requied to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or

voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Appendix D

Certification Regarding Drug-Free Workplace Requirements

The certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR part 76, subpart F, sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (*e.g.*, all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (*e.g.*, volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal

drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[FR Doc. 04–2173 Filed 2–2–04; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. FV02–2004]

Family Violence Prevention and Services Program

AGENCY: Family and Youth Services Bureau, Administration on Children, Youth and Families, (ACYF) and the Office of Community Services (OCS), Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of the availability of funding to Native American Tribes, Alaskan Villages, and Tribal organizations for family violence prevention and services.

SUMMARY: This announcement governs the proposed award of formula grants under the Family Violence Prevention and Services Act to Native American Tribes, Alaskan Villages, and Tribal organizations. The purpose of these grants is to assist Tribes in establishing, maintaining, and expanding programs and projects to prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

This announcement sets forth the application requirements, the application process, and other administrative and fiscal requirements for grants in fiscal year (FY) 2004. *Grantees are to be mindful that although the expenditure period for grants is a two year period, an application is required every year to provide continuity in the provision of services. (*See* B. Expenditure Period).

DATES: Applications for FY 2004 Native American Tribes, Alaskan Villages, and Tribal Organizations grant awards meeting the criteria specified in this instruction should be received no later than February 21, 2003.

ADDRESSES: Applications should be sent to Family and Youth Services Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Attn: William Riley, 330 C Street, SW, Room 2117, Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: William D. Riley at (202) 401–5529; or e-mail at *WRiley@acf.hhs.gov,* or Sunni Knight at (202) 401–5319 or e-mail at *GKnight@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Annual Native American and Alaskan Native Villages Grantee Conference

The annual grantee conference is a training and technical assistance activity. Attendance at these activities is mandatory. Family Violence Prevention and Services Act (FVPSA) funds may be used to support attendance and participation. A subsequent Program Instruction will advise Tribal FVPSA administrators of the date, time, and location of their grantee conference.

Client Confidentiality

FVPSA programs must establish or implement policies and protocols for maintaining the safety and confidentiality of the adult victims and their children of domestic violence, sexual assault, and stalking. It is essential that the confidentiality of individuals receiving FVPSA services be protected. Consequently, when providing statistical data on program activities, individual identifiers of client records will not be used (section 303(a)(2)(E)).

Stop Family Violence Postal Stamp

The U.S. Postal Service was directed by the ''Stamp Out Domestic Violence Act of 2001'' (the Act), Pub. L. 107–67, to make available a ''semipostal'' stamp to provide funding for domestic violence programs. Funds raised in connection with sales of the stamp, less reasonable costs, will be transferred to the U.S. Department of Health and Human Services in accordance with the Act for support of services to children and youth affected by domestic violence. It is projected that initial revenues will be received during the third quarter of FY 2004. Subsequent to the receipt of the stamp proceeds, a program announcement will be issued providing guidance and information on the process and requirements for awards to programs providing services to children and youth.

The Importance of Coordination of Services

The impact of family and intimate violence include physical injury and death of primary or secondary victims, psychological trauma, isolation from family and friends, harm to children witnessing or experiencing violence in homes in which the violence occurs, increased fear, reduced mobility and employability, homelessness, substance abuse, and a host of other health and related mental health consequences.

The physical and cultural obstacles existing in much of Indian country compound the basic dynamics of domestic violence. Barriers such as the isolation of vast rural areas, the concern

for safety in isolated settings, and the transportation requirements over long distances, heighten the need for the coordination of the services through an often limited delivery system.

It is estimated that between 12 percent and 35 percent of women visiting emergency rooms with injuries are there because of battery. In a project intended to broaden the reach of the Native American domestic violence community, the Indian Health Service (IHS) and FVPSA have collaborated to oversee the development of domestic violence community projects. These projects are designed to develop improved health care responses to domestic violence and to facilitate collaboration between the local health care system and local American Indian and Alaskan Native domestic violence advocacy programs. In this effort the IHS also is collaborating with representatives of Mending the Sacred Hoop, Cangleska, Inc., and the Family Violence Prevention Fund to provide training, technical assistance and oversight to the pilot projects.

To help bring about a more effective response to the problem of domestic violence, the Department of Health and Human Services (HHS) urges Native American Tribes, Alaskan Native Villages, and Tribal organizations receiving funds under this grant announcement to coordinate activities under this grant with other new and existing resources for the prevention of family and intimate violence.

Programmatic and Funding Information

A. Background

Title III of the Child Abuse Amendments of 1984 (Pub. L. 98–457, 42 U.S.C. 10401 *et seq.*) is entitled the ''Family Violence Prevention and Services Act'' (the Act). The Act was first implemented in FY 1986, reauthorized and amended in 1992 by Pub. L. 102–295, in 1994 by Pub. L. 103–322, the Violent Crime Control and Law Enforcement Act, in 1996 by Pub. L. 104–235, the Child Abuse Prevention and Treatment Act (CAPTA) of 1996, and in 2000 by the ''Victims of Trafficking and Violence Protection Act'' (Pub. L. 106–386, 10/28/2000). The Act was most recently amended by the Keeping Children and Families Safe Act of 2003, Pub. L. 108–36.

The purpose of this legislation is to assist States and Native American Tribes, Alaskan Villages and Tribal organizations in supporting the establishment, maintenance, and expansion of programs and projects to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

During FY 2003, 227 grants were made to States and Native American Tribes. The Department also made 53 family violence prevention grant awards to nonprofit State domestic violence coalitions.

In addition, the Department supports the Domestic Violence Resource Center Network (DVRN). The DVRN consist of the National Resource Center for Domestic Violence (NRC) and four Special Issue Resource Centers (SIRCs). The SIRCs are the Battered Women's Justice Project; the Resource Center on Child Custody and Protection, the Resource Center for the Elimination of Domestic Violence Against Native Women (Sacred Circle), and the Health Resource Center on Domestic Violence. The purpose of the NRC and the SIRCs is to provide resource information, training, and technical assistance to Federal, State, and Native American agencies, local domestic violence prevention programs, and other professionals who provide services to victims of domestic violence.

In February, 1996, the Department funded the National Domestic Violence Hotline to ensure that every woman has access to information and emergency assistance wherever and whenever she needs it. The NDVH is a 24-hour, toll-free service which provides crisis assistance, counseling, and local shelter referrals to women across the country. Hotline counselors also are available for non-English speaking persons and for people who are hearing-impaired. The hotline number is 1–800–799–SAFE; the TDY number for the hearing impaired is 1–800–787–3224. As of August 31, 2003 the National Domestic Violence Hotline had answered over 1 million calls.

B. Funds Available

Of the total appropriation for the Family Violence Prevention and Services Program for FY 2004, the Department of Health and Human Services will allocate 70 percent to the designated State agencies administering Family Violence Prevention and Services programs. In this separate announcement the Department will allocate 10 percent to the Tribes, Alaskan Villages and Tribal organizations for the establishment and operation of shelters, safe houses, and the provision of related services. Additionally, in a subsequent announcement, 10 percent will be allocated to the State Domestic Violence Coalitions to continue their work within the domestic violence community by providing technical assistance and training, and advocacy services among other activities with local domestic violence programs, and to encourage appropriate responses to domestic violence within the States.

Five percent of the FVPSA FY 2004 appropriation will be available to continue the support for the National Resource Center and the four Special Issue Resource Centers. The remaining 5 percent of the FY 2004 family violence prevention and services funding will be used to support training and technical assistance, collaborative projects with advocacy organizations and service providers, data collection efforts, public education activities, research and other demonstration activities at the national level through the competitive or discretionary grant process.

C. Native American Tribal Allocations

The Secretary is required to make 10 percent of amounts appropriated under section 310(a) for grants to Native American Tribes. Native American Tribes and Tribal organizations are eligible for funding under this program if they meet the definition of such entities as found in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450, and are able to demonstrate their capacity to carry out a family violence prevention and services program.

Any Native American Tribe that believes it meets the eligibility criteria should provide supportive documentation in its application and a request for inclusion on the list of eligible tribes. (See Native American Tribal Application Requirements.)

In computing Native American Tribal allocations, we will use the latest available population figures from the Census Bureau. Where Census Bureau data are unavailable, we will use figures from the BIA Indian Population and Labor Force Report.

Because section 304 of the Act specifies a minimum base amount for State allocations, we have set a base amount for Native American Tribal allocations. Since FY 1986, we have found, in practice, that the establishment of a base amount has facilitated our efforts to make a fair and equitable distribution of limited grant funds.

Due to the expanded interest in the prevention of family violence and in the provision of services to victims of family violence and their dependents, we have received an increasing number of tribal applications over the past several years. In order to ensure the continuance of an equitable distribution of family violence prevention and services funding in response to the

increased number of tribes that apply, we have adjusted the funding formula for the allocation of family violence funds.

Native American Tribes which meet the application requirements and whose reservation and surrounding Tribal Trust Lands population is:

- Less than or equal to 1,500 will receive a minimum base amount of $1,500;
- Greater than 1,500 but less than 3,001 will receive a minimum base amount of $3,000;
- Between 3,001 and 4,000 will receive a minimum base amount of $4,000; and
- Between 4,001 and 5,000 will receive a minimum base amount of $5,000.

The minimum base amounts are in relation to the Tribe's population and the progression of an additional $1,000 per 1,000 persons in the population range continues until the Tribe's population is 50,000.

Tribes with a population of 50,000 to 100, 000 will receive a minimum of $50,000, and Tribes with a population of 100,001 to 150,000 will receive a minimum of $100,000.

Once the base amounts have been distributed to the Tribes that have applied for family violence funding, the ratio of the Tribe's population to the total population of all the applicant Tribes is then considered in allocating the remainder of the funds. With the distribution of a proportional amount plus a base amount to the Tribes we have accounted for the variance in actual population and scope of the family violence programs. Under the previous allocation plan we did not have a method by which to consider the variance in tribal census counts. As in previous years, Tribes are encouraged to apply as consortia for the family violence funding.

General Grant Requirements for Native American Tribes

A. Definitions

Native American Tribes should use the following definitions in carrying out their programs. The definitions are found in section 320 of the Act.

(1) Family Violence: Any act or threatened act of violence, including any forceful detention of an individual, which (a) results or threatens to result in physical injury and (b) is committed by a person against another individual (including an elderly person) to whom such person is or was related by blood or marriage or otherwise legally related or with whom such person is or was lawfully residing.

(2) Indian Tribe and Tribal organization: Have the same meanings given such terms in subsections (b) and (c), respectively, of section 4 of the Indian Self-Determination and Education Assistance Act.

(3) Shelter: The provision of temporary refuge and related assistance in compliance with applicable State law and regulation governing the provision, on a regular basis, which includes shelter, safe homes, meals, and related assistance to victims of family violence and their dependents.

(4) Related assistance: The provision of direct assistance to victims of family violence and their dependents for the purpose of preventing further violence, helping such victims to gain access to civil and criminal courts and other community services, facilitating the efforts of such victims to make decisions concerning their lives in the interest of safety, and assisting such victims in healing from the effects of the violence. Related assistance includes:

(a) Prevention services such as outreach and prevention services for victims and their children, assistance to children who witness domestic violence, employment training, parenting and other educational services for victims and their children, preventive health services within domestic violence programs (including services promoting nutrition, disease prevention, exercise, and prevention of substance abuse), domestic violence prevention programs for school age children, family violence public awareness campaigns, and violence prevention counseling services to abusers;

(b) Counseling with respect to family violence, counseling or other supportive services by peers individually or in groups, and referral to community social services;

(c) Transportation, technical assistance with respect to obtaining financial assistance under Federal and State programs, and referrals for appropriate health-care services (including alcohol and drug abuse treatment), but shall not include reimbursement for any health-care services;

(d) Legal advocacy to provide victims with information and assistance through the civil and criminal courts, and legal assistance; or

(e) Children's counseling and support services, and child care services for children who are victims of family violence or the dependents of such victims, and children who witness domestic violence.

B. Expenditure Periods

The FVPSA funds may be used for expenditures on and after October 1 of each fiscal year for which they are granted, and will be available for expenditure through September 30 of the following fiscal year, *i.e.*, FY 2004 funds may be used for expenditures from October 1, 2003 through September 30, 2005. Funds will be available for obligation through October 1, 2004.

Reallotted funds, if any, are available for expenditure until the end of the fiscal year following the fiscal year that the funds became available for reallotment. FY 2004 grant funds which are made available to Tribes and Tribal Organizations through reallotment, under section 304(d)(2), must be expended by the grantee no later than September 30, 2005.

C. Reporting Requirements

Section 303(a)(4) requires that a performance report be filed with the Department describing the activities carried out, and including an assessment of the effectiveness of those activities in achieving the purposes of the grant. A section of this performance report must be completed by each grantee or sub grantee that performed the direct services contemplated in the application certifying performance of such services. Consortia grantees should compile performance reports into a comprehensive report for submission.

Please note that section 303(a)(4) of the FVPS Act also requires that the director of the FVPS program suspend funding for an approved application if an applicant fails to submit an annual Performance Report. The Performance Report should include the following data elements:

Funding—The total amount of the FVPSA grant funds awarded; the percentage of funding used for shelters, and the percentage of funding used for related services and assistance.

Shelters—The number of shelters and shelter programs (safe homes/motels, etc.) assisted by FVPSA program funding. Data elements should include:

- The number of shelters.
- The number of women sheltered.
- The number of young children sheltered (birth–12 years of age).
- The number of teenagers and young adults (13–17 years of age).
- The number of men sheltered.
- The number of the elderly serviced.
- The average length of stay.
- The number of women, children, teens, and other who were turned away because shelter was unavailable.

• The number of women, children, teens, and others were referred to other shelters due to lack of space.

Types of individuals served including special populations. Record information by numbers and percentages against the total population served. Individuals and special populations served should include:

• The elderly.
• Individuals with physical challenges.
• And other special needs populations.

Related services and assistance. List the types of related services and assistance provided to victims and their family members by indicating the number of women, children, and men that have received services. Services and assistance may include but are not limited to the following:

• Individual counseling.
• Services to Children.
• Crisis intervention/hotline.
• Information and referral.
• Batterers support services.
• Legal advocacy services.
• Transportation.
• Services to teenagers.
• Child Care.
• Training and technical assistance.
• Housing advocacy.
• Other innovative program activities.

Volunteers—List the total number of volunteers and hours worked.

Identified Abuse—Indicate (if available) the number of women, children, and men who were identified as victims of physical, sexual, and/or emotional abuse.

Service referrals—List the number of women, children, and men referred for the following services: (Note: If the individual was identified as a batterer please indicate.)

• Physical abuse.
• Alcohol abuse.
• Drug abuse.
• Batterer intervention services.
• Child abuse.
• Witnessed abuse.
• Emergency medical intervention.
• Law enforcement intervention.

The performance report should include narratives of success stories about services provided and the positive impact on the lives of children and families. Examples may include the following:

• An explanation of the activities carried out including an assessment of the major activities supported by the family violence funds, what particular priorities within the Tribe or Tribal organization were addressed, and what special emphases were placed on these activities;

• A description of the specific services and facilities that your program funded, contracted with, or otherwise used in the implementation of your program, *e.g.*, shelters, safe houses, related assistance, programs for batterers;

• An assessment of the effectiveness of the direct service activities contemplated in the application;

• A description of how the needs of under-served populations, including those persons geographically isolated were addressed; and

• A description and assessment of the prevention activities supported during the program year, *e.g.*, community education events, and public awareness efforts.

Performance reports for the Tribes, Alaskan Native Villages and Tribal organizations are due on an annual basis on December 30 of each year.

D. Departmental Grants Management Reports

All grantees are reminded that the annual Program Reports and annual Financial Status Reports (Standard Form 269) are due 90 days after the end of the expenditure period, *i.e.*, December 30 of each year.

Application Requirements for Native American Tribes, Alaskan Native Villages and Tribal Organziations

A. Eligibility

As described above, Native American Tribes, Tribal organizations, and Alaskan Native Villages are eligible for funding under this program if they meet the definition of such entities as found in subsections (b) and (c) of section 4 of the Indian Self-Determination and Education Assistance Act and are able to demonstrate their capacity to carry out a family violence prevention and services program.

Any Native American Tribe or Tribal organization that believes it meets the eligibility criteria and should be included in the list of eligible tribes should provide supportive documentation and a request for inclusion in its application. (*See* Application Content Requirements below.)

As in previous years, Native American Tribes may apply singularly or as a consortium. In addition, a non-profit private organization, approved by a Native American Tribe for the operation of a family violence shelter or program on a reservation is eligible for funding.

B. Additional Information on Eligibility

Approval/Disapproval of a Tribal, Alaskan Village, or Tribal Organization Application

The Secretary will approve any application that meets the requirements of the Act and this Announcement, and will not disapprove an application unless the applicant organization has been given reasonable notice of the Department's intention to disapprove and an opportunity to correct any deficiencies (section 303(a)(3)).

All applicants must have Dun and Bradstreet Number (DUNS). A DUNS number will be required for every application for a new award or renewal/continuation of an award under formula, entitlement and block grant programs. A DUNS number may be acquired at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711 or a number may be requested on-line at *http://www.dnb.com*.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants.'' The forms are located on the web at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

C. Application Content Requirements

The application from the Native American Tribe, Tribal organization, or Alaskan Native Village must be signed by the Chief Executive Officer or Tribal Chairperson of the applicant organization.

(1) The name of the organization or agency and the Chief Program Official designated as responsible for administering funds under the Act, and the name, telephone number, and fax number, if available, of a contact person in the designated organization or agency.

(2) A copy of a current resolution stating that the designated organization or agency has the authority to submit an application on behalf of the Native American individuals in the Tribe(s) or Village(s) and to administer programs and activities funded under this program (section 303(b)(2)).

(3) A description of the procedures designed to involve knowledgeable individuals and interested organizations in providing services under the Act (section 303(b)(2)). For example, knowledgeable individuals and interested organizations may include: Tribal officials or social services staff involved in child abuse or family violence prevention, Tribal law

enforcement officials, representatives of State coalitions against domestic violence, and operators of family violence shelters and service programs.

(4) A description of the applicant's operation of and/or capacity to carry out a family violence prevention and services program. This might be demonstrated in ways such as the following:

(a) The current operation of a shelter, safe house, or family violence prevention program;

(b) The establishment of joint or collaborative service agreements with a local public agency or a private non-profit agency for the operation of family violence prevention activities or services; or

(c) The operation of social services programs as evidenced by receipt of ''638'' contracts with the Bureau of Indian Affairs (BIA); Title II Indian Child Welfare grants from the BIA; Child Welfare Services grants under Title IV–B of the Social Security Act; or Family Preservation and Family Support grants under title IV–B of the Social Security Act.

(5) A description of the services to be provided, how the applicant organization plans to use the grant funds to provide the direct services, to whom the services will be provided, and the expected results of the services.

(6) Documentation of the procedures that assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services by any program assisted under the Act (section 303(a)(2)(E)).

(7) The EIN number of the applicant organization submitting the application.

D. Each application must contain the following assurances:

(a) That not less than 70 percent of the funds shall be used for immediate shelter and related assistance for victims of family violence and their dependents and not less than 25% of the funds distributed shall be used to provide related assistance (section 303(g)).

(b) That grant funds made available under the Act will not be used as direct payment to any victim or dependent of a victim of family violence (section 303(d)).

(c) That the address or location of any shelter or facility assisted under the Act will not be made public, except with the written authorization of the person or persons responsible for the operations of such shelter (section 303(a)(2)(E)).

(d) That law or procedure has been implemented for the eviction of an abusing spouse from a shared household (section 303(a)(2)(F)).

(e) That applicant will comply with the applicable Departmental recordkeeping and reporting requirements and general requirements for the administration of grants under 45 CFR part 92.

Additional Forms: Private, non-profit organizations may submit with their applications the additional suvey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants'' *at http://www.acf.hhs.gov/program/ofs/form.htm.*

Other Information

A. Notification Under Executive Order 12372

The review and comment provisions of the Executive Order and Part 100 do not apply. Federally-recognized Native American Tribes are exempt from all provisions and requirements of E.O. 12372.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the application requirements contained in this instruction have been approved by the Office of Management and Budget under control number 0970–0062.

C. Required Certifications

All applications must submit or comply with the required certifications found at the Appendices as follows:

- *Anti-Lobbying Certification and Disclosure Form must be signed and submitted with the application:* If applicable, a standard Form LLL, which discloses lobbying payments, must be submitted.
- *Certification Regarding Drug-Free Workplace Requirements and the Certification Regarding Debarment:* The signature on the application by the chief program official attests to the applicants intent to comply with the Drug-Free Workplace requirements and compliance with the Debarment Certification. The Drug-Free Workplace and certification does not have to be returned with the application.
- *Certification Regarding Environmental Tobacco Smoke:* The signature on the application by the chief program official attests to the applicants intent to comply with the requirements of the Pro-Children Act of 1994 (Act). The applicant further agrees that it will require the language of this certification be included in any sub-awards which contain provisions for children's services and that all grantees shall certify accordingly.

(Catalog of Federal Domestic Assistance Number 93.671, Family Violence Prevention and Services)

Dated: January 29, 2004.

Clarence Carter,

Director, Office of Community Services, Administration for Children and Families.

Appendices: Required Certifications:
Anti-Lobbying and Disclosure;
Drug-Free Workplace;
Regarding Debarment; and
Regarding Environmental Tobacco Smoke

Appendix A—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this

commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Appendix B—Certification Regarding Debarment, Suspension and Other Responsibility Matters

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment,

Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Appendix C—Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Appendix D—Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR part 76, subpart, F, sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central pint is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW., Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (*e.g.*, all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (*see* paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (*e.g.*, volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[FR Doc. 04–2174 Filed 2–2–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1982F–0075]

JSR America, Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 2B3620) proposing that the food additive regulations be amended to provide for the safe use of 1,2–polybutadiene as a food-packaging film that will contact food.

FOR FURTHER INFORMATION CONTACT: Elizabeth R. Sanchez, Center for Food Safety and Applied Nutrition (HFS–275), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3858, 202–418–3086.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 23, 1982 (47 FR 17672), FDA announced that a food additive petition (FAP 2B3620) had been filed by JSR America, Inc., 350 Fifth Ave., New York, NY 10001 (now 312 Elm St., suite 1585, Cincinnati, OH 45202). The petition proposed to amend the food additive regulations to provide for the safe use of 1,2–polybutadiene as a food-packaging film that will contact food. JSR America, Inc. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: December 24, 2003.

Laura M. Tarantino,

Acting Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 04–2083 Filed 2–2–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Homeland Security Advisory Council

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Homeland Security Advisory Council (HSAC) will meet via teleconference in an open session on Wednesday, February 18, 2004, from 3 p.m. to 4 p.m., EST. The HSAC will continue its discussions on development of a National Homeland Security Award for Excellence, based on recommendations submitted to the HSAC by the HSAC Award Working Group, and, pending discussion, approve a letter to the Secretary presenting the HSAC's recommendations.

DATES: The HSAC will meet Wednesday, February 18, 2004, from 3 pm until 4 pm.

FOR FURTHER INFORMATION CONTACT: Interested members of the public may listen in to the teleconference meeting by calling in to a toll free number provided upon registration. To ensure the appropriate number of lines, persons wishing to listen to the meeting must register with Mike Miron at (202) 692–4283 by 5 pm, EST, Friday February 13, 2004. Members of the public will receive the call-in number and access code at that time.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Members of the public who wish to file a written statement with the HSAC may do so by mail to Mike Miron at the following address: Homeland Security Advisory Council, Department of Homeland Security, Washington DC 20528. Comments may also be sent via email to *HSAC@dhs.gov* or via fax to (202) 772–9718.

Dated: January 28, 2004.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 04–2237 Filed 1–30–04; 9:33 am]

BILLING CODE 4410–10–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24–1A]

OMB Control Number 1004–0134, Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44

U.S.C. 3501 *et seq.*). On February 10, 2003, the BLM published a notice in the **Federal Register** (68 FR 6759) requesting comment on this information collection. The comment period ended on April 11, 2003. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirements should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0134), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov.* Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information we collect; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Onshore Oil and Gas Operations Nonform Information (43 CFR 3160).

OMB Control Number: 1004–0134.

Bureau Form Number(s): 0.

Abstract: The Bureau of Land Management (BLM) collects and uses the information from Federal and Indian (except Osage) oil and gas operators and operating rights owners to approve proposed operations and monitor compliance with granted approvals.

Frequency: Occasional and nonrecurring.

Description of Respondents: Operators and operating rights owners of oil and gas leases.

Estimated Completion Time:

Information collection (43 CFR)	Requirement	Hours per response	Total respondents	Total burden hours
3162.3–1(a)	Well-Spacing Program	0.5	150	75
3162.3–1(e)	Drilling Plans	8	2,875	23,000
3162.6	Well Markers	0.5	300	150
3162.5–2(b)	Direction Drilling	1	165	165
3162.4–2(a)	Drilling Tests, Logs, Surveys	1	330	330
3162.3–4(a)	Plug and Abandon for Water Injection	1.5	1,200	1,800
3162.3–4(b)	Plug and Abandon for Water Source	1.5	1,200	1,800
3162.7–1(d)	Additional Gas Flaring	1	400	400
3162.5–1(c)	Report of Spills, Discharges, or Other Undesirable Events.	2	200	400
3162.5–1(b)	Disposal of Produced Water	2	1,500	3,000
3162.5–1(d)	Contingency Plan	16	50	800
3162.4–1(a) and 3162.7–5(d)(1)	Schematic/Facility Diagrams	4	2,350	9,400
3162.7–1(b)	Approval and Reporting of Oil in Pits	0.5	520	260
3164.1 (Order No. 3)	Prepare Run Tickets	0.2	90,000	18,000
3162.7–5(b)	Records on Seals	0.2	90,000	18,000
3165.1(a)	Application for Suspension	8	100	800
3165.3(b)	State Director Review	16	100	1,600
3162.7–5(c)	Site Security	7	2,415	16,904
Totals			193,855	96,885

Annual Responses: 193,855.

Application Fee Per Response: 0.

Annual Burden Hours: 96,885.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: January 14, 2004.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 04–2162 Filed 2–2–04; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24 1A]

OMB Control Number 1004–0135; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*). On February 5, 2003, the BLM published a notice in the **Federal Register** (68 FR 6758) requesting comment on this information collection. The comment period ended on April 7, 2003. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirements should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0135), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov.* Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of

Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information we collect; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Requirements for Operating Rights Owners and Operators (43 CFR 3162).

OMB Control Number: 1004–0135.

Bureau Form Number(s): 3160–5.

Abstract: The Bureau of Land Management (OMB) collects and uses the information from oil and gas operators for approval of specific additional operations on a well and to report the completion of such additional work on wells.

Frequency: Occasional.

Description of Respondents: Operating rights owners and operators.

Estimated Completion Time: 25 minutes.

Annual Responses: 34,000.

Application Fee Per Response: 0.

Annual Burden Hours: 14,166.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: January 22, 2004.

Michael H. Schwartz,

Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. 04–2163 Filed 2–2–04; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24 IA]

OMB Control Number 1004–0136, Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). On February 5, 2003, the BLM published a notice in the **Federal Register** (68 FR 5914) requesting comment on this information collection. The comment period ended on April 7, 2003. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirements should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0136), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov.* Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information we collect; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Requirements for Operating Rights Owners and Operators (43 CFR 3162).

OMB Control Number: 1004–0136.

Bureau Form Number(s): 3160–3.

Abstract: The Bureau of Land Management (BLM) collects and uses the information from oil and gas operators to approve proposed drilling operations.

Frequency: Occasional.

Description of Respondents: Operating rights owners and operators.

Estimated Completion Time: 30 minutes.

Annual Responses: 5,000.

Application Fee Per Response: 0.

Annual Burden Hours: 2,800.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: January 22, 2004.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 04–2164 Filed 2–2–04; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24 1A]

OBM Control Number 1004–0137; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). On February 5, 2003, the BLM published a notice in the **Federal Register** (68 FR 5913) requesting comment on this information collection. The comment period ended on April 7, 2003. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirements should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0137), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov.* Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information we collect; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Requirements for Operating Rights Owners and Operators (43 CFR 3160).

OBM Control Number: 1004–0137.

Bureau Form Number(s): 3160–4.

Abstract: The Bureau of Land Management (BLM) collects and uses information from oil and gas operators to ensure accurate, up-to-date, and detailed descriptions of well completion and re-completion operations and compliance with approved plans for conservation of the resources and protection of the environment.

Frequency: Occasional.

Description of Respondents: Operating rights owners and operators.

Estimated Completion Time: 1 hour.

Annual Responses: 3,000.

Application Fee per Response: 0.

Annual Burden Hours: 3,150.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: January 24, 2004.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 04–2165 Filed 2–2–04; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(WY–060–1320–EL), WYW154595]

Notice of Availability of Ten Mile Rim Coal Lease by Application Draft Environmental Assessment and Federal Coal Notice of Hearing, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability (NOA) of a Draft Environmental Assessment (EA) on a Coal Lease By Application (LBA) received for one Federal coal tract in the decertified Green River/Hams Fork Coal Production Region, Wyoming, and Notice of Public Hearing.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Ten Mile Rim Coal Tract Draft EA and a public hearing on the proposal to lease coal pursuant to 43 Code of Federal Regulations (CFR) 3425.4.

The Draft EA analyzes and discloses direct, indirect, and cumulative environmental impacts of issuing a Federal coal lease on the eastern flank of the Rock Springs Uplift. These lands are located in Sweetwater County, Wyoming.

The purpose of the public hearing is to solicit comments from the public on (1) the proposal to issue a Federal coal lease; (2) the proposed competitive lease sale; (3) the fair market value of the Federal coal; and (4) maximum economic recovery of the Federal coal included in the Ten Mile Rim tract.

DATES: Written comments on the Draft EA will be accepted on or before March 4, 2004. The public hearing will be held at 2 p.m. Mountain Standard Time on March 9, 2004, at the Pilot Butte Conference Room at the Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming.

ADDRESSES: Please address questions, comments, or concerns to the Rock Springs Field Office, Bureau of Land Management, Attn: Teri Deakins, 280 Highway 191 North, Rock Springs, Wyoming 82902; fax them to (307) 352–0329; or send e-mail comments to Teri Deakins at *teri_deakins@blm.gov.*

The BLM asks that those submitting comments make them as specific as possible with reference to page numbers and chapters of the Draft EA. Comments that contain only opinions or preferences will not receive a formal response; however, they will be considered and included as part of the BLM decision-making process. Comments, including names and street addresses of respondents, will be available for public review at the address listed above during regular business hours (7:45 a.m. through 4:30 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, will be made available for public inspection in their entirety.

A copy of the Draft EA has been sent to the affected Federal, State, and local government agencies; persons and entities identified as potentially being affected by a decision to lease the Federal coal in this tract; and persons who indicated to the BLM that they wished to receive a copy of the Draft EA. Copies of the Draft EA are available for public inspection at the following office locations: Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009; Bureau of Land Management, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901.

Future notification of public meetings, or other public involvement activities, concerning the proposed exchange will be provided through public notices, news media releases, or mailings. These notifications will provide at least 15 days notice of public meetings or gatherings and 30 days notice of written comment requests.

FOR FURTHER INFORMATION CONTACT: Teri Deakins or Jeff Clawson at the above address, or telephone (307) 352–0256.

SUPPLEMENTARY INFORMATION: On September 28, 2001, Bridger Coal Company applied for a coal lease for approximately 7,054.34 acres in one tract (approximately 110 million recoverable tons of coal) adjacent to the Bridger Coal Mine in Sweetwater County, Wyoming. The tract is referred to as the Ten Mile Rim Tract, and was assigned case number WYW154595. Based on exploratory drilling results, the Ten Mile Rim Tract has been modified, with a decrease in acreage. The modification, filed on February 11, 2003, reduces the amount of acreage to 2,242.18 acres containing about 43 million tons of in-place coal reserves.

The following lands are contained in the modified lease application in Sweetwater County, Wyoming:

Sixth Principle Meridian, Wyoming

T. 21 N., R. 100 W.
Section 6: Lots 8 through 14, S½NE¼, SE¼NW¼, E½SW¼, SE¼
T. 22 N., R. 100 W.
Section 30: Lots 5 through 8, E½W½, E½
T. 22 N., R. 101 W.
Section 26: Lots 1 through 16
Section 34: Lots 1, 2, 6, 7, 8, 13, NE¼SE¼, SW¼SE¼
Containing 2,242.18 acres, more or less.

According to the modified application, the coal would be mined for sale to the Jim Bridger electrical power generating plant located adjacent to the existing mine, and would extend the life of the existing mine. The mine adjacent to the tract described above has an approved mining and reclamation plan from the State of Wyoming Land Quality Division and an approved air quality permit from the Wyoming Department of Environmental Quality, Air Quality Division.

The Draft EA analyzes two alternatives: The Proposed Action of leasing the tract and the No Action Alternative. Consistent with the coal

leasing regulations BLM has identified and considered other alternative tract configurations that would add or subtract Federal coal to avoid bypassing coal or to increase estimated fair market value of the unleased Federal coal in this area. The Draft EA also analyzes the No Action Alternative of rejecting the application to lease Federal coal. The Proposed Action and Alternative considered are in conformance with the Green River Resource Management Plan (1997).

The Office of Surface Mining Reclamation and Enforcement (OSM) is a cooperating agency in the preparation of the Draft EA. If the tract is leased, it must be incorporated into the existing mining and reclamation plan for the adjacent Bridger coal mine. Before the Federal coal in this tract can be mined the Secretary of the Interior must approve each revision to the MLA (Mineral Leasing Act) mining plan. OSM is the Department of the Interior agency that would be responsible for recommending approval, approval with conditions, or disapproval of the revised MLA plan to the Secretary of the Interior.

Dated: August 1, 2003.

Alan L. Kesterke,

Associate State Director.

Editorial Note: This document was received at the Officer of the **Federal Register** on January 16, 2004.

[FR Doc. 04–1360 Filed 2–2–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Public Meeting: Resource Advisory Council to the Lower Snake River District, Bureau of Land Management, U.S. Department of the Interior

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Lower Snake River District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held January 28, 2004, beginning 9 a.m. at the Bureau of Land Management, Lower Snake River District Office Sage Brush Conference Room, located at 3948 Development Ave, Boise, Idaho 83705. Public comment periods will be held after topics on the agenda. The meeting will adjourn at 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: MJ Byrne, Public Affairs Officer and RAC Coordinator, Lower Snake River District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3393.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in southwestern Idaho. At this meeting, the following actions will occur/topics will be discussed:

- Election of Officers;
- Review and finalize 2004 Annual Work Plan;
- Update on status of the Owyhee Initiative;
- Status of BLM-Idaho's Organizational Refinement;
- Briefing and discussion of the BLM proposed changes to grazing regulations;
- Status on the review of Idaho-BLM Rangeland Standards and Guidelines, status of the report, and implemented of recommendations;
- Status of BLM Idaho's OHV Strategic Plan, timeline and actions anticipated in implementation;
- Update on status of District's Fire Management Plan;
- Subcommittee Reports;
- Grouse Habitat Management, Off-Highway Vehicles (OHV) and Transportation Management, River Recreation and Resource Management Plans, and Fire and Fuels Management;
- Three Field Office Managers and Acting District Fire Manager provide updates on current issues and planned activities in their field office and the District.

Agenda items may change due to changing circumstances. All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below. Expedited publication is requested to give the public adequate notice.

Dated: January 28, 2004.

Howard Hedrick,

Associate District Manager.

[FR Doc. 04–2250 Filed 2–2–04; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0090).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled ''30 CFR 216.57—Stripper Royalty Rate Reduction Notification (Form MMS–4377, Stripper Royalty Rate Reduction Notification).''

DATES: Submit written comments on or before April 5, 2004.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 26165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also email your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation we have received your email, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, Fax (303) 231–3781 or email *sharron.gebhardt@mms.gov.*

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 216.57—Stripper Royalty Rate Reduction Notification (Form MMS–4377, Stripper Royalty Rate Reduction Notification).

OMB Control Number: 1010–0090.

Bureau Form Number: Form MMS–4377.

Abstract: The Secretary of the U.S. Department of the Interior (DOI) is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. MMS performs the royalty management functions for the Secretary.

The Bureau of Land Management, the surface management agency for Federal onshore leases, grants royalty rate reductions to operators of stripper oil properties producing an average of less than 15 barrels of oil per eligible well per well-day. See 43 CFR 3103.4–2. The purpose of these royalty rate reductions is to encourage continued production, provide an incentive for enhanced oil recovery projects, discourage abandonment of properties producing less than an average or less than 15 barrels of oil per eligible well per well-day, and reduce the operator's expenses. The royalty rate for a stripper oil property is lower than the royalty rate reflected in the lease and thus reduces the amount of revenues paid to the Federal Government. In order to perform the royalty management functions for DOI, MMS must receive a timely notification of any royalty rate changes. Reporters use the Form MMS–4377 to notify MMS of royalty rate changes.

No proprietary information will be submitted to MMS under this collection. No items of a sensitive nature are collected. The decision to request a royalty rate reduction is voluntary; however, failure to timely submit the notification will result in the rate being denied.

We have also changed the title of this ICR from ''Stripper Royalty Rate Reduction Notification (Form MMS–4377)'' to ''30 CFR 216.57—Stripper Royalty Rate Reduction Notification (Form MMS–4377, Stripper Royalty Rate Reduction Notification)'' to clarify the regulatory language we are covering under 30 CFR 216.57.

Frequency of Response: Annually.

Estimated Number and Description of Respondents: 900 operators of stripper oil properties producing an average of less than 15 barrels of oil per eligible well per well-day.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 1,080 hours. The following chart shows the breakdown of the estimated burden hours by CFR section and paragraph:

RESPONDENT ANNUAL BURDEN HOUR CHART

CFR Section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
30 CFR 216.57	Stripper royalty rate reduction notification. In accordance with its regulations at 43 CFR 3103.4–1, title ''Waiver, suspension, or reduction of rental, royalty, or minimum royalty,'' the Bureau of Land Management (BLM) may grant reduced royalty rates to operators of low producing oil leases to encourage continued production. Operators who have been granted a reduced royalty rate(s) by BLM must submit a Stripper Royalty Rate Reduction Notification (Form MMS–4377) to MMS for each 12-month qualifying period that a reduced royalty rate(s) is granted. [58 FR 64903, Dec 10, 1993]. Please note the BLM citation and title changed to 43 CFR 3103.4–2 Stripper well royalty reductions.	1.2	900	1,080
Total		1.2	900	1,080

Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden: We have identified no ''non-hour'' cost burdens.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides 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. Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affect agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major costs factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; of (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request, and the ICR will also be

posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We will also makes copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, 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.

MMS Federal Register Liaison Officer: Denise Johnson (202) 208–3976.

Dated: January 22, 2004.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 04–2087 Filed 2–2–04; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Upper San Joaquin River Basin Storage Investigation, Central Valley Project, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: The Department of the Interior, Bureau of Reclamation (Reclamation), will prepare an EIS, pursuant to the National Environmental Policy Act (NEPA), to evaluate proposed actions to increase the storage of water from the San Joaquin River. Potential uses of stored water may include: contribution to future restoration of the San Joaquin River, improvement of water quality in the San Joaquin River, or water deliveries that could facilitate additional conjunctive management or exchanges that improve the quality of water to urban areas.

DATES: Four scoping meetings will be held to solicit comments from interested parties to assist in determining the scope of the environmental analysis and to identify the significant issues related to the proposed action. The meeting dates are:

- Tuesday, March 16, 2004, 9:30–11:30 a.m., Sacramento, CA
- Tuesday, March 16, 2004, 6–8 p.m., Modesto, CA
- Wednesday, March 17, 2004, 6–8 p.m., Friant, CA
- Thursday, March 18, 2004, 6–8 p.m., Visalia, CA

Written comments on the scope of the environmental document should be mailed to Reclamation at the address below by April 16, 2004.

ADDRESSES: The meeting locations are as follows:

- Sacramento, CA—Federal Building, Cafeteria Conference Room 1, 2800 Cottage Way
- Modesto, CA—Modesto Irrigation District, Multipurpose Room, 1231 11th Street
- Friant, CA—Table Mountain Rancheria, Governmental Building, 23736 Sky Harbour Road
- Visalia, CA—Tulare County Farm Bureau, 737 Ben Maddox Way

Written comments on the scope of the alternatives and impacts to be considered should be sent to Mr. Jason Phillips, Bureau of Reclamation, Division of Planning, 2800 Cottage Way, Sacramento, CA 95825; or by telephone at (916) 978–5070, or faxed to (916) 978–5094.

FOR FURTHER INFORMATION CONTACT: Mr. Jason Phillips, Bureau of Reclamation, Division of Planning, at (916) 978–5070; or Waiman Yip, Project Manager, California Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236–0001, phone (916) 651–9280. If you would like to be included on the EIS/EIR mailing list, please contact Marian Echeverria at (916) 978–5105 or *mecheverria@mp.usbr.gov.*

SUPPLEMENTARY INFORMATION: The CALFED Programmatic EIS Record of Decision (ROD) described five potential surface storage projects and recommended additional study to determine the potential for the projects to meet identified objectives. One such project would involve water storage in the Upper San Joaquin River Basin through the enlargement of Friant Dam or other alternatives. Friant Dam on the San Joaquin River is owned and operated by Reclamation as part of the Central Valley Project (CVP). Federal authorization for preparation of a feasibility report was provided in Public Law 108–7, Division D, Title II, section 215, the Omnibus Appropriations legislation for Fiscal Year 2003. Reclamation is the responsible Federal agency for preparation of this report.

The ROD recognized that additional storage in the Upper San Joaquin River Basin could contribute to future restoration of the San Joaquin River. The reach of the San Joaquin River from Friant Dam to the confluence with the Merced River does not support a continuous natural riparian and aquatic ecosystem. Since completion of Friant Dam, most of the water supply in the San Joaquin River has been diverted for agricultural and urban uses with the exception of releases to satisfy riparian water rights upstream of Gravelly Ford and flood releases. Consequently, the reach from Gravelly Ford to Mendota Pool is often dry.

The ROD also recognized that releases of water from Friant Dam to the San Joaquin River could result in improved water quality in the San Joaquin River. Water quality in various segments of the San Joaquin River has been a problem for several decades due to low flow and discharges from agricultural areas, wildlife refuges, and municipal and industrial treatment plants. Initial locations of concern for water quality include areas near Stockton and at Vernalis, downstream of the Stanislaus River as the San Joaquin River enters the Delta. Over time, the requirements for water quality in the river have become more stringent, and the number of locations along the river at which specific water quality objectives are identified has increased.

Additional storage in the Upper San Joaquin River Basin could also result in increased reliability of surface water deliveries to CVP Friant Division contractors or other regional water users that could receive water through CVP facilities. Delivery of additional surface water would result in reduced groundwater overdraft conditions regionally, and would provide greater stability in regional water supplies. This improved reliability would increase opportunities for water exchanges with urban water users to improve the quality of urban water supplies.

The development of additional water storage could also provide opportunities to increase levels of flood protection downstream of Friant Dam, provide hydropower generation, increase recreation opportunities, and improve flows into the Delta.

Reclamation, in partnership with the State of California Department of Water Resources, has completed initial studies of potential storage options. Public

outreach has included informal coordination with farmers, water districts, State and Federal agencies, tribal interests, and other interested stakeholders to identify options that will be considered in detail in the feasibility report and EIS. In October 2003, Reclamation and DWR released a Phase 1 Investigation Report that provided information on preliminary alternatives under consideration. Project documents are available at *http://www.usbr.gov/mp/sccao.*

The environmental review will be conducted pursuant to NEPA, the Endangered Species Act and other applicable laws, to analyze the potential environmental impacts of implementing each of the feasible alternatives. All reasonable alternatives as required by NEPA and its implementing regulations will be considered. Public input on additional alternatives, or a combinations of alternatives, that should be considered will be sought through the initial scoping meetings. In addition, public input will be sought on the criteria that should be used to carry forward alternatives, or a combination of alternatives, for further consideration.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: December 2, 2003.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 04–1424 Filed 2–2–04; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–373 and 731–TA–770–775 (Review)]

Stainless Steel Wire Rod From Italy, Japan, Korea, Spain, Sweden, and Taiwan

AGENCY: International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the countervailing duty order on stainless steel wire rod from Italy and antidumping duty orders on stainless steel wire rod from Italy, Japan, Korea, Spain, Sweden, and Taiwan.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty order on stainless steel wire rod from Italy and the antidumping duty orders on stainless steel wire rod from Italy, Japan, Korea, Spain, Sweden, and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: January 28, 2004.

FOR FURTHER INFORMATION CONTACT: D.J. Na (202–708–4727), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background

On November 4, 2003, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (68 FR 65085, November 18, 2003). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

Participation in the Reviews and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the reviews will be placed in the nonpublic record on April 28, 2004, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on May 18, 2004, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in

writing with the Secretary to the Commission on or before May 11, 2004. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 13, 2004, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is May 7, 2004. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 27, 2004; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before May 27, 2004. On June 18, 2004, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 22, 2004, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: January 28, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–2099 Filed 2–2–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telemanagement Forum

Notice is hereby given that, on November 12, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Telemanagement Forum (''the Forum'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Accudata Technologies, Allen, TX; Aktavara AB, Stockholm, SWEDEN; AsiaInfo Technologies, Beijing, PEOPLE'S REPUBLIC OF CHINA; AUDITEC, Paris, FRANCE; AZURE SOLUTIONS, Ipswich, Suffolk, UNITED KINGDOM; BSB, Moscow, RUSSIA; Cape Clear Software, Donnybrook, Dublin, IRELAND; CDOT, Chanakya Puri, New Delhi, INDIA; Cominfo Consulting, Moscow, RUSSIA; Comstar Telecommunications, Moscow, RUSSIA; Creawor Beijing Technique Center, Zhuhai, Guangdong, PEOPLE'S REPUBLIC OF CHINA; DIATEM NETWORKS, Ottawa, Ontario, CANADA: Distocraft Oy, Helsinki, FINLAND; Dubai Internet City, Dubai, UNITED ARAB EMIRATES; EXA CORPORATION, Saiwai, Kawasaki, Kanagawa, JAPAN; Frost and Sullivan, Beijing, PEOPLE'S REPUBLIC OF CHINA; Fundacao CPqD, Campinas, BRAZIL; GIGA STREAM UMTS Tech. GmbH, Saarbruecken, GERMANY; IBS LTD, Moscow, RUSSIA; InteGreaT B.V., Bergen op Zoom, THE NETHERLANDS; IXI Mobile, Inc., Ra'anana, ISRAEL; Katz and Company, Imperial, PA; Keymile, Berne-Liebefeld, CH, SWITZERLAND; Mermarsat Limited, Harpenden, UNITED KINGDOM; MTN Nigeria Communications Ltd, Victoria Island, Lagos, NIGERIA; Murray Dunlop Ltd., Cam, Dursley, Gloucestershire, UNITED KINGDOM; Nakina Systems, Ottawa, Ontario, CANADA; NetProfits Limited, Erlangen, GERMANY; Neural Technologies, Petersfield, Hampshire, UNITED KINGDOM; Ovum Limited, London, UNITED KINGDOM; Operax AB, Luleaa, SWEDEN; PANDUIT CORPORATION, Tinley Park, IL: Partner Communications Co., Ltd., Rosh ha'ayin, ISRAEL; Pontis, Inc, Herzliya, Pituach, ISRAEL; PT ExcelComindo Pratama, Jakarta, INDONESIA; SAP AG, Newtown Square, PA; Saudi Telecom, Riyadh, Central, SAUDI ARABIA; SESA Software International, Rome, ITALY; SPIN aka Przedsiebiorstwo, Katowice, POLAND; TAZZ Networks, Plano, TX; THE OPEN GROUP, San Francisco, CA; TOT Corporation Public Company Limited, Thungsonghong, Laksi, Bangkok, THAILAND; University of Glasgow, Glasgow, Scotland, UNITED KINGDOM; West Global, IFSC, Dublin, IRELAND; West Ridge Networks, Littleton, MA; Westel Mobile Company, Budapest, Pest, HUNGARY; DSET CORPORATION, Pleasanton, CA (from August 1994 to March 13, 2003); ITEC SOLUTIONS, INC., Ottawa, Ontario, CANADA; (from September 1995 to September 3, 2003); and WIND TELECOMICAZIONI SPA, Milano, ITALY (from April 2000 to March 31, 2003) have been added as parties to this venture.

The following existing members have changed their names: Teleformance has changed its name to Telcoremance, Valbonne, FRANCE; Sykora GmbH has changed its name to TietoEnator Oyj, Buehl, GERMANY; 4C Telecom (formerly of Overland Park, KS) has changed its name to NetHarmonix, Burlington, VT; and Progress (formerly Excellon) has changed its name to Sonic Software, Bedford, MA.

The following members have cancelled or have had their memberships cancelled: Aran Technologies, Blackrock, Co. Dublin, IRELAND; Arkipelago Svenska AB, Stockholm, SWEDEN; Astracon, Inc., Englewood, CO; Australian Communications Industry Ltd., (formerly of North Sydney) Milsons Point, New South Wales, AUSTRALIA; Chiaro Networks, Inc., Richardson, TX; Claudia Liliana Bucheli Enriquez, Bogota, COLUMBIA; Concept Wave Software, Mississauga, Ontario,

CANADA; Cplane, Inc., Sunnyvale, CA; Geoff Coleman, Sherwood Park, Alberta, CANADA; IGS, Inc., Boulder, CO; Imagine Broadband Ltd., London, UNITED KINGDOM; KTICOM, Seoul, REPUBLIC OF KOREA; Literate Technologies, San Carlos, CA; NTT Comware Corporation, Chiba-shi, Chiba, JAPAN; Parc Technologies Ltd., London, UNITED KINGDOM; Riversoft, San Francisco, CA; Schema, Yehud, Kiryat Savionim, ISRAEL; Shulist Group Inc. Bolton, Ontario, CANADA; SkyOptik, Red Bank, NJ; SupportSoft, Inc., Redwood City, CA; Swanson Consulting Inc., Mountainville, NY; Tim Peru S.A.C., La Victoria, Lima, PERU; and Virtual Access, Dublin, IRELAND.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on May 30, 2003. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 16, 2003 (68 FR 42132).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–2148 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–11–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP) Docket No. 1392]

Program Announcement for the Internet Crimes Against Children Task Force Program

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of Solicitation.

SUMMARY: Based on the availability of appropriations, notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP) is requesting applications from State and local law enforcement agencies interested in participating in the Internet Crimes Against Children (ICAC) Task Force Program. In an effort to expand ICAC Regional Task Force coverage to areas that do not currently have an ICAC Regional Task Force presence, this solicitation is limited to State and local law enforcement agencies in the following States and localities: Illinois, Iowa, New Mexico, Oregon, West Virginia, and the Northern Virginia/Washington, DC, metropolitan area (excluding Maryland). (For the purpose of this solicitation, the Northern Virginia/Washington, DC, metropolitan area is defined as the cities of Washington, DC; Alexandria, VA; and Falls Church, VA; and all cities and towns in Virginia within and including Arlington County, Fairfax County, Loudoun County, Prince William County, and Stafford County.) Only one grant will be awarded per State/locality listed above. This program encourages communities to develop regional multidisciplinary, multijurisdictional task forces to prevent, interdict, and investigate sexual exploitation offenses committed by offenders who use online technology to victimize children.

DATES: Applications must be received by March 19, 2004.

FOR FURTHER INFORMATION CONTACT: Chris Holloway, ICAC Program Manager, Child Protection Division, Office of Juvenile Justice and Delinquency Prevention, at (202) 305–9838 or *holloway@ojp.usdoj.gov.*

SUPPLEMENTARY INFORMATION:

Purpose

The purpose of this program is to help State and local law enforcement agencies enhance their investigative response to offenders who use the Internet, online communication systems, or other computer technologies to sexually exploit children. Throughout this program announcement, ''Internet crimes against children'' refers to the sexual exploitation of children that is facilitated by computers and includes crimes of child pornography and online solicitation for sexual purposes.

Background

Unlike some adults who view the benefits of the Information Age dubiously, children and teenagers have seized the Internet's educational and recreational opportunities with astonishing speed. Adapting information technology to meet everyday needs, young people are increasingly going online to meet friends, get information, purchase goods and services, and complete school assignments. Currently, more than 28 million children and teenagers have access to the Internet; industry experts predict that they will be joined by another 50 million globally by 2005. Although the Internet gives children and teenagers access to valuable resources, it also increases their risk of being sexually exploited or victimized.

Cloaked in the anonymity of cyberspace, sex offenders can capitalize on the natural curiosity of children and seek victims with little risk of detection. Preferential sex offenders no longer need to lurk in parks and malls. Instead, they can roam from chat room to chat room, trolling for children susceptible to victimization. This alarming activity has grave implications for parents, teachers, and law enforcement officers because it circumvents conventional safeguards and provides sex offenders with virtually unlimited opportunities for unsupervised contact with children.

Today's Internet is also rapidly becoming the new marketplace for offenders seeking to acquire material for their child pornography collections. More insidious than sexually explicit adult pornography, child pornography depicts the sexual assault of children and is often used by child molesters to recruit, seduce, and control their victims. Child pornography is used to break down inhibitions, validate sex between children and adults as normal, and control victims throughout their molestation. When offenders lose interest in their victims, child pornography is often used as blackmail to ensure the child's silence. When posted on the Internet, pornography becomes an enduring and irretrievable record of victimization and a relentless violation of that child's privacy.

OJJDP recognizes that the increasing online presence of children, the lure of predators searching for unsupervised contact with underage victims, and the proliferation of child pornography present a significant threat to the health and safety of children and a formidable challenge to law enforcement today and into the foreseeable future. Three main factors complicate law enforcement's response to these challenges.

First, conventional definitions of jurisdiction are practically meaningless in the electronic universe of cyberspace; very few investigations begin and end within the same geographical area. Because they involve multiple jurisdictions, most investigations require close coordination and cooperation between Federal, State, and local law enforcement agencies.

Second, evidence collection in ICAC investigations typically requires specialized expertise and equipment. Because preferential sex offenders tend to be avid recordkeepers, their computers, magnetic media, and related

equipment can be valuable sources of evidence. However, routine forensic examination procedures are insufficient for seizing, preserving, and analyzing this information. In addition, the seizure of computers and related technology may lead to specific legal issues regarding property and privacy rights.

Third, routine interviewing practices are inadequate for collecting testimonial evidence from child victims of Internet crimes. Some children deny they are victims because they fear embarrassment, ridicule from their peers, or discipline from their parents. Other victims bond with the offender, remain susceptible to further manipulation, or resent what they perceive as interference from law enforcement. Investigators who do not fully understand the dynamics of juvenile sexual exploitation risk losing critical information that could help convict perpetrators or identify additional victims. When appropriate, medical and psychological evaluations should be a part of law enforcement's response to cases involving child victims. In addition to ensuring that injuries or diseases related to the victimization are treated, forensic medical examinations provide crucial corroborative evidence.

The above factors almost routinely complicate the investigative process. Although no two cases raise identical issues of jurisdiction, evidence collection, and victim services, it is logical to presume that investigations characterized by a multijurisdictional, multidisciplinary approach will more likely result in successful prosecutions.

Current Strategies

A variety of Federal activities are helping and can further help law enforcement respond to these offenses. For example, the Innocent Images National initiative, managed by the Federal Bureau of Investigation's (FBI's) Cyber Division, Innocent Images Unit, works specifically on cases involving computer-facilitated child sexual exploitation. The Bureau of Immigration and Customs Enforcement (BICE) (formerly the U.S. Customs Service [USCS]) and the U.S. Postal Inspection Service (USPIS) have successfully investigated hundreds of child pornography cases.

The Child Exploitation and Obscenity Section (CEOS) of the U.S. Department of Justice prosecutes Federal violations and offers advice and litigation support to Federal, State, and local prosecutors working on child pornography and sexual exploitation cases.

With support from OJJDP and private sector funding, the National Center for Missing and Exploited Children (NCMEC) serves as the nation's primary resource center and clearinghouse for issues involving missing and exploited children. NCMEC's training division coordinates a comprehensive training and technical assistance program that includes prevention and awareness activities. Gathering information from citizens and Internet service providers, the CyberTipline (*http://www.missingkids.com*) collects online reports regarding the computer-facilitated sexual exploitation of children and rapidly forwards this information to the law enforcement agencies with investigative jurisdiction. Brought online in March 1998, the CyberTipline has provided law enforcement officers with information that has enabled them to arrest individuals seeking sex with underage victims and to safely recover and return children enticed from home by sex offenders.

NCMEC's law enforcement training and technical assistance program was developed in partnership with OJJDP, the FBI, BICE, USPIS, and CEOS. NCMEC has also developed an education and awareness campaign that features the Kids and Company curriculum, the Know the Rules teen awareness program, and two pamphlets (*Child Safety on the Information Highway* and *Teen Safety on the Information Highway*) that provide information about safe Internet practices for children and youth. These programs and materials are offered free of charge, and OJJDP encourages communities working on child victimization issues to use them. Additional information about NCMEC's services for children, parents, educators, and law enforcement officers can be obtained by calling 800–THE–LOST or by accessing NCMEC's Web site at *http://www.missingkids.com.*

Since fiscal year 1998, OJJDP has awarded funds to 40 State and local law enforcement agencies to develop regional multijurisdictional and multiagency task forces to prevent, interdict, and investigate ICAC offenses. The following jurisdictions currently receive ICAC Regional Task Force Program funding: Alabama Department of Public Safety; Arkansas State Police; Bedford County, Virginia, Sheriff's Department; Broward County, Florida, Sheriff's Department; Colorado Springs, Colorado, Police Department; Connecticut State Police; Cuyahoga County, Ohio, District Attorney; Dallas, Texas, Police Department; Delaware County, Pennsylvania, District Attorney; Gainesville, Florida, Police Department; Georgia Bureau of Investigation; Hawaii Office of the Attorney General; Indiana State Police; Kentucky State Police; Knoxville, Tennessee, Police Department; Las Vegas, Nevada, Metropolitan Police Department; Los Angeles, California, Police Department; Louisiana Office of the Attorney General; Maryland State Police; Massachusetts Department of Public Safety; Michigan State Police; Nebraska State Patrol; New Jersey State Police; New York State Police; North Carolina Division of Criminal Investigation; Oklahoma State Bureau of Investigation; Phoenix, Arizona, Police Department; Portsmouth, New Hampshire, Police Department; Sacramento County, California, Sheriff's Office; Saint Paul, Minnesota, Police Department; San Diego, California, Police Department; San Jose, California, Police Department; Seattle, Washington, Police Department; Sedgewick County, Kansas, Sheriff's Office; South Carolina Office of the Attorney General; Utah Office of the Attorney General; Wisconsin Department of Justice; and the Wyoming Division of Criminal Investigation. These agencies have become regional clusters of ICAC technical and investigative expertise, offering prevention and investigation services to children, parents, educators, law enforcement officers, and other individuals working on child sexual exploitation issues. Collectively, task force agencies have made more than 1,200 arrests and provided forensic or investigative assistance in more than 4,500 cases.

Despite these accomplishments, law enforcement agencies continue to be increasingly challenged by sex offenders who use computer technology to victimize children. To help meet this challenge, OJJDP is continuing the ICAC Regional Task Force Program, which will competitively award cooperative agreements to State and local law enforcement agencies seeking to improve their investigative responses to the computer-facilitated sexual exploitation of children.

Program Strategy

The ICAC Task Force Program seeks to enhance the nationwide response to child victimization by maintaining and expanding a State and local law enforcement network composed of regional task forces. The program requires communities to develop multijurisdictional, multiagency responses and provides funding to State and local law enforcement agencies to help them acquire the knowledge, personnel, and specialized equipment needed to prevent, interdict, and investigate ICAC offenses. Although the ICAC Task Force Program emphasizes

law enforcement investigations, OJJDP encourages jurisdictions to include intervention, prevention, and victim services activities as part of their comprehensive approach.

OJJDP Program Management

During the past 5 years of managing the ICAC Task Force Program, OJJDP has made the following observations:

• The Internet challenges traditional thinking about law enforcement jurisdiction and renders city, county, and State boundaries virtually meaningless. Because of this jurisdictional ambiguity, offenders are often able to frustrate enforcement actions and conceal their criminal activities.

• Nearly all ICAC investigations (95 percent) involve communication and coordination efforts among Federal, State, and local law enforcement agencies. Without meaningful case coordination, law enforcement agencies may inadvertently investigate identical suspects and organizations, target undercover operatives of other law enforcement agencies, or disrupt clandestine investigations of other agencies.

• The obvious need for interagency cooperation and coordination has sustained interest in maintaining standards for ICAC undercover investigations. Representatives from Federal, State, and local law enforcement agencies have repeatedly expressed concern about initiating investigations that are based on referrals from outside agencies—referrals that may be predicated on information acquired through inappropriate officer conduct or investigative techniques.

• The clandestine nature of undercover operations, the anonymity of Internet users, and the unclear jurisdictional boundaries of cyberspace significantly exacerbate these investigative concerns. Undercover operations, when executed and documented properly, collect virtually unassailable evidence regarding a suspect's predilection to sexually exploit children. These operations allow law enforcement agencies to go on the offensive and, most important, protect children from revictimization. Although carefully managed undercover operations by well-trained officers can be very effective, these operations also generate concerns regarding legal, coordination, communication, and resource management issues.

• Although Internet awareness appears to be growing, many children, teenagers, and parents are not sufficiently informed about the potential dangers and repercussions of releasing personal information to, or meeting with, individuals encountered online.

• Although Federal agencies are responsible for monitoring illegal interstate and telecommunications activities, protecting children is primarily the responsibility of State and local law enforcement agencies. The production of child pornography or the sexual assault of a child—whether originating online or not—usually creates both a jurisdictional interest and a responsibility for State and local authorities.

• Despite the belief that these cases are usually manufactured by undercover operations in which officers pose as minors in chat rooms, most ICAC investigations are initiated in response to a citizen complaint or a request from law enforcement. Unfortunately, these cases often involve multiple victims who require a response by both local law enforcement and victim services.

• Internet crime is placing a new demand on forensic resources. Computers are piling up in evidence rooms across the country because many agencies do not have the forensic capacity to meet the needs of investigative efforts.

• A generation ago, officers beginning their law enforcement careers would be issued a uniform, a service weapon, and a notebook. Those items rarely changed during a 20-year career. Today, changes in equipment and software occur seemingly overnight. Officers are hard pressed to stay current not only with technological changes but also with a motivated offender community that is adapting these new technologies to exploit children.

To address these observations and concerns, the ICAC Task Force Program implements the following management strategies:

• Maintaining and expanding the nationwide network of State and local law enforcement agencies participating in the program.

• Ensuring that ICAC Task Force personnel are adequately trained and equipped.

• Establishing and/or maintaining ICAC Task Force investigative standards to facilitate interagency case referrals.

• Advocating coordination and collaboration among Federal, State, and local law enforcement agencies investigating ICAC offenses.

• Fostering meaningful information sharing to avoid redundant investigations or activities that could disrupt the ongoing investigations of other agencies.

• Maintaining an ICAC Task Force Board composed of local law enforcement executives and prosecutors to advise OJJDP, formulate policy recommendations, and assess the law enforcement community's needs for training and technical assistance related to investigating Internet crimes.

• Convening an annual ICAC Task Force training conference to focus on child exploitation, emerging technology, and its relevance to criminal activity and enforcement efforts, and to enhance the networking essential for sustaining an effective State and local law enforcement response to online crime.

OJJDP established the ICAC Task Force Program Standards through a collaborative process involving the 10 original ICAC Task Force agencies, the FBI, NCMEC, USCS, USPIS, CEOS, and the Executive Office for United States Attorneys. The standards were designed by the task force agencies to foster information sharing, coordinate investigations, ensure the probative quality of undercover operations, and facilitate interagency case referrals by standardizing investigative practices. In 2002, the ICAC standards were revised and updated to reflect 20 additional ICAC Regional Task Forces and an expanded program focus on the protection of children.

OJJDP has also established an ICAC Task Force Board (the Board) to help administer the ICAC Task Force Program. As a condition of the award, each grantee must designate a policy-level law enforcement official or prosecutor to be a Board member. Although its primary responsibility is to serve as an advisory group to OJJDP, the Board also encourages case coordination and facilitates information sharing on trends, innovative investigative techniques, and prosecution strategies. Technical advice is provided to the Board by NCMEC, CEOS, the FBI, BICE, and USPIS.

Goal

The program's goal is to enhance the ICAC investigative response of State and local law enforcement agencies.

Objectives

Projects must accomplish the following objectives:

• Develop or expand multiagency, multijurisdictional regional task forces that include, but are not limited to, representatives from law enforcement, prosecution, victim services, and child protective services agencies. Regional task forces should include large regional geographic areas, entire States, or, when applicable, multiple States. Relevant nongovernment organizations may also be included. OJJDP strongly encourages applicants to invite Federal law

enforcement agencies to participate in the task force.

• Institute policies and procedures that comply with the ICAC Task Force Program Standards (see ''OJJDP Program Management'' above). Requests from eligible law enforcement agencies for copies of the ICAC Program Operational and Investigative Standards must be faxed on official letterhead to the ICAC Program Manager at 202–353–9093.

• Enhance investigative capacity by properly equipping and training ICAC Task Force investigators. Task force investigators should be computer literate, knowledgeable about child exploitation issues, and familiar with Federal and State statutes and case law pertaining to ICAC investigations.

• Develop and maintain case management systems to record offenses and investigative results, make or receive outside agency referrals of ICAC cases, and comply with the reporting requirements of the ICAC Monthly Performance Report (MPR).

• Develop response protocols or memorandums of understanding that foster collaboration, information sharing, and service integration among public and private organizations that provide services to sexually exploited children.

Eligibility Requirements

Applicants must be State and/or local law enforcement agencies located in Illinois, Iowa, New Mexico, Oregon, West Virginia, and the Northern Virginia/Washington, DC, metropolitan area (excluding Maryland). (For the purpose of this solicitation, the Northern Virginia/Washington, DC, metropolitan area is defined as the cities of Washington, DC; Alexandria, VA; and Falls Church, VA; and all cities and towns in Virginia within and including Arlington County, Fairfax County, Loudoun County, Prince William County, and Stafford County.) Joint applications from two or more eligible agencies are welcome; however, one applicant must be clearly designated as the primary applicant (for correspondence, award, and management purposes) and the other(s) designated as coapplicant(s).

Selection Criteria

OJJDP is committed to establishing a network of State and local law enforcement agencies to respond to offenses involving online enticement and child pornography. Within this network, ICAC Task Forces positioned throughout the country will serve as regional sources of technical, educational, and investigative expertise, providing assistance to parents, teachers, law enforcement officers, and other professionals working on child sexual exploitation issues. Successful applicants will be expected to serve as regional clusters of ICAC technical and investigative expertise, collaborate with existing ICAC Task Forces, and become part of a nationwide law enforcement network designed to protect children from computer-facilitated victimization. To accomplish this goal, regional task forces should include large regional geographic areas, entire States, or, when applicable, multiple States.

Applications should include evidence of multijurisdictional and multiagency law enforcement partnerships and multidisciplinary partnerships among public agencies, private organizations, community-based groups, and prosecutors' offices. Successful applicants will develop or enhance an investigative ICAC response that includes prevention, education, and victim services activities.

All applications will be peer reviewed. OJJDP will review peer review results, and the U.S. Department of Justice will make the final award determinations. Applicants will be evaluated and rated according to the criteria outlined below.

Application Procedures

The Office of Justice Programs (OJP) requires that applications be submitted through its online Grants Management System (GMS). This online application system is designed to streamline the processing of requests for funding. A toll-free telephone number (888–549–9901) is available to provide applicants with technical assistance as they work through the online application process.

Beginning October 1, 2003, a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number must be included in every application for a new award or renewal of an award. The DUNS number will be required whether an applicant is submitting an application on paper, through OJP's Grants Management System, or using the government-wide electronic portal (Grants.gov). An application will not be considered complete until a valid DUNS number is provided by the applicant. Individuals who would personally receive a grant or cooperative agreement from the Federal government are exempt from this requirement.

Organizations should verify that they have a DUNS number or take the steps necessary to obtain one as soon as possible. Applicants can receive a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 800–333–0505.

Applicants should use the following application guidelines when preparing their application for this cooperative agreement. Applications must be electronically submitted to OJP through GMS no later than 5 p.m., e.t., on March 19, 2004. However, in order to allow adequate time to register with GMS, applicants must create a ''user profile'' before March 4, 2004. Applicants who have previously registered with GMS and have a GMS password should log on to GMS prior to March 4, 2004, to determine whether the password is still valid. If the password has expired, please follow the on-screen instructions or call the GMS Hotline (888–549–9901). OJJDP will begin accepting applications immediately. Applications submitted via GMS must be in the following word processing formats: Microsoft Word (''.doc''), PDF files (''.pdf''), or Text Documents (''.txt'').

Application Requirements

Applicants to the Internet Crimes Against Children Task Force Program solicitation must submit the following information online through GMS:

• *Application for Federal Assistance (SF–424).* This form is generated by completing the Overview, Applicant Information, and Project Information screens in GMS.

• *Assurances and Certifications.* The Assurances and Certifications must be reviewed and accepted electronically by the authorizing official or the designated authorizing official.

• *Budget Detail Worksheet (Attachment #1).* The Budget Detail Worksheet—including budget worksheets and detailed budget narratives for each year in the project period—accounts for 15 of the possible 100 points allotted by the peer reviewers.

• *Program Narrative (Attachment #2).* The Program Narrative—including Problem(s) To Be Addressed, Goals and Objectives, Project Design, and Management and Organizational Capability—accounts for 85 of the possible 100 points allotted by the peer reviewers. Point values for specific sections of the Program Narrative are as follows: Problem(s) To Be Addressed (10 points), Goals and Objectives (10 points), Project Design (35 points), and Management and Organizational Capability (30 points).

• *Other Program Attachments (Attachment #3).* The Other Program Attachments—including resumes of key personnel, signed letters of support, and information on additional funding activities (see ''Coordination of Federal Efforts'' below)—will be used by the peer reviewers to enhance their

evaluation of the project design and management and organization sections of the narrative. These materials are required and must be attached *in one file* to your GMS application.

Detailed instructions and descriptions of each of the required elements are provided below. **Note:** Applications that do not include all the required elements will not be considered for funding.

Application for Federal Assistance (SF–424)

The Application for Federal Assistance is a standard form used by most Federal agencies. The Catalog of Federal Domestic Assistance (CFDA) number for this program is 16.543.

Assurances and Certifications

Applicants are required to review and accept the Assurances and Certifications. Please verify that the name, address, phone number, fax number, and e-mail address of the authorizing official on these online forms are correct.

• *Assurances.* Applicants must comply with the Assurances to receive Federal funds under this program. It is the responsibility of the recipient of the Federal funds to fully understand and comply with these requirements. Failure to comply may result in the withholding of funds, termination of the award, or other sanctions.

• *Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and the Drug-Free Workplace Requirement.* Applicants are required to review and check the box on the certification form included in the online application process. This form commits the applicant to compliance with the certification requirements under 28 CFR Part 69, ''New Restrictions on Lobbying,'' and 28 CFR Part 67, ''Government-Wide Debarment and Suspension (Nonprocurement) and Government-Wide Requirements for Drug-Free Workplace (Grants).''

The authorizing official must review the Assurances and Certifications forms in their entirety. To accept the Assurances and Certifications in GMS, click on the Assurances and Certifications link and click the ''Accept'' button at the bottom of the screen.

Budget Detail Worksheet (Attachment #1) (15 points)

Applicants must provide a proposed budget that is complete, detailed, reasonable, allowable, and cost effective in relation to the activities described in the program narrative. Budgets must allow for required travel, including four trips for one individual to attend the quarterly ICAC Task Force Board meetings. Budgets must also allow for the participation of at least two agency representatives at the annual ICAC Training Conference.

Applicants must submit budget worksheets and budget narratives *in one file.* The worksheet provides the detailed computation for each budget item (often in spreadsheet format). The narrative justifies or explains each budget item and relates it to project activities.

• *Budget Worksheet.* The budget worksheet must list the cost of each budget item and show how the cost was calculated. For example, costs for personnel should show the annual salary rate and the percentage of time devoted to the project for each employee to be paid through grant funds. The budget worksheet should present a complete and detailed itemization of all proposed costs.

• *Budget Narrative.* The budget narrative should closely follow the content of the budget worksheet and provide justification for all proposed costs. For example, the narrative should explain how fringe benefits were calculated, how travel costs were estimated, why particular items of equipment or supplies must be purchased, and how overhead or indirect costs (if applicable) were calculated. The budget narrative should justify the specific items listed in the budget worksheet (particularly supplies, travel, and equipment) and demonstrate that all costs are reasonable.

A sample Budget Detail Worksheet form that can be used as a guide to help applicants prepare the budget worksheet and budget narrative is available at *http://www.ojp.usdoj.gov/oc.* (Follow link to Standard Forms, item #3, Budget Detail Worksheet.)

Program Narrative (Attachment #2) (85 total points)

Problem(s) To Be Addressed (10 points)

Applicants must clearly identify the need for this project in their communities and demonstrate an understanding of the program concept. Applicants must include data that illustrate the size and scope of the problem in their State or region. If statistics or other research findings are used to support a statement or position, applicants must provide the relevant source information.

Goals and Objectives (10 points)

Applicants must establish clearly defined, measurable, and attainable goals and objectives for this program that are congruent with those outlined in the ''Goals'' and ''Objectives'' sections of this solicitation.

Project Design (35 points)

Applicants must explain in clear terms how the State or regional task force will be developed and implemented. Applicants must define the region, State, or, when applicable, the multistate area in which the task force intends to concentrate its efforts. Applicants must present a clear workplan that contains program elements directly linked to achieving the project objectives. The workplan must indicate project milestones, product due dates, and the nature of the products to be delivered.

Management and Organizational Capability (30 points)

The management structure and staffing described in the application must be adequate and appropriate for the successful implementation of the project. Applicants must identify individuals responsible for the project and their time commitments. Applicants must provide a schedule of major tasks and milestones. Applicants must describe how activities that prevent Internet crimes against children will be continued after Federal funding is no longer available.

Other Program Attachments (Attachment #3)

At a minimum, resumes of key personnel, signed letters of support from State and local prosecution offices and the local district United States Attorney must be included. Information pertaining to the ''Coordination of Federal Efforts'' section of this solicitation (see below) should also be included.

Application Format

The narrative portion of this application (excluding forms, assurances, and appendixes) must not exceed 35 double-space pages, with 1-inch margins, written in a standard 12-point font. The double-spacing requirement applies to all parts of the program narrative, including any lists, tables, bulleted items, or quotations. These standards are necessary to maintain fair and uniform consideration among all applicants. If the narrative does not conform to these standards, OJJDP will deem the application ineligible for consideration.

Project and Award Period

These cooperative agreements will be funded for up to an 18-month budget and project period. Funding beyond the

initial project period will be contingent on the grantee's performance and the availability of funds.

Award Amount

OJJDP estimates that the total amount available for this program will be $1.8 million. OJJDP intends to award six cooperative agreements of up to $300,000 each for the 18-month project period. Funding is contingent upon congressional appropriations.

Performance Measurement

To ensure compliance with the Government Performance and Results Act, Public Law 103–62, this solicitation notifies applicants that they will be required to collect and report on data that measure the results of the program implemented by this cooperative agreement. To ensure the accountability of these data, for which OJP is responsible, grantees are required to provide the following data:

- The number of investigations.
- The number of computer forensic examinations.

Under this solicitation, grantees will be required to supply OJJDP with the above performance information. In addition, OJJDP will measure the performance of the ICAC Task Force Program. Data collection will be covered within the existing ICAC Monthly Performance Report (MPR) forms. MPR is a required data-reporting document that was created by OJJDP to collect ICAC data related to arrests, subpoenas, search warrants, technical assistance (investigative and computer forensic), and prevention and intervention activities performed by ICAC Regional Task Forces and ICAC Investigative Satellites. Data gathered from MPRs will help law enforcement track the number of arrests made and the types of offenses (*e.g.*, enticement and/or child pornography possession, distribution, and manufacturing) that suspects are charged with.

Information collected from MPRs will provide law enforcement with crucial baseline data necessary for a future evaluation of the ICAC Task Force Program after it has been fully established throughout the country. Obtaining this information will facilitate future program planning and will allow OJP to provide Congress with measurable program results of federally funded programs.

Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice requests that applicants provide information on the following: (1) Active Federal grant award(s) supporting this or related efforts, including awards from the U.S. Department of Justice; (2) any pending application(s) for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) or (2) with the funding sought by this application. For each Federal award, applicants must include the program or project title, the Federal grantor agency, the amount of the award, and a brief description of its purpose.

''Related efforts'' is defined for these purposes as one of the following:

- Efforts for the same purpose (*i.e.*, the proposed award would supplement, expand, complement, or continue activities funded with other Federal grants).
- Another phase or component of the same program or project (*e.g.*, to implement a planning effort funded by other Federal funds or to provide a substance abuse treatment or education component within a criminal justice project).
- Services of some kind (*e.g.*, technical assistance, research, or evaluation) rendered to the program or project described in the application.

Faith-based and community organizations

It is OJP policy that faith-based and community organizations that statutorily qualify as eligible applicants under OJP programs are invited and encouraged to apply for assistance awards. Faith-based and community organizations will be considered for an award on the same basis as any other eligible applicants and, if they receive assistance awards, will be treated on an equal basis with non faith-based and community organization grantees in the administration of such awards. No eligible applicant or grantee will be discriminated against on the basis of its religious character or affiliation, religious name, or the religious composition of its board of directors or persons working in the organization.

Limited English proficiency

National origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI and the Safe Streets Act, recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including oral and written translation when necessary. The U.S. Department of Justice has issued guidance for grantees to assist them in complying with Title VI requirements. The guidance document can be accessed on the Internet at *http://www.lep.gov*, or by contacting OJP's Office for Civil Rights at 202–307–0690, or by writing to the following address: Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice, 810 7th Street NW., Eighth Floor, Washington, DC 20531.

Lobbying

The Anti-Lobbying Act, 18 U.S.C. 1913, recently was amended to expand significantly the restriction on use of appropriated funding for lobbying. This expansion also makes the anti-lobbying restrictions enforceable via large civil penalties, with civil fines between $10,000 and $100,000 per each individual occurrence of lobbying activity. These restrictions are in addition to the anti-lobbying and lobbying disclosure restrictions imposed by 31 U.S.C. 1352.

The Office of Management and Budget (OMB) is currently in the process of amending the OMB cost circulars and the common rule (codified at 28 CFR part 69 for DOJ grantees) to reflect these modifications. However, in the interest of full disclosure, all applicants must understand that no federally appropriated funding made available under this grant program may be used, either directly or indirectly, to support the enactment, repeal, modification or adoption of any law, regulation, or policy, at any level of government, without the express approval by OJP. Any violation of this prohibition is subject to a minimum $10,000 fine for each occurrence. This prohibition applies to all activity, even if currently allowed within the parameters of the existing OMB circulars.

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Dated: January 27, 2004.

J. Robert Flores,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 04–2089 Filed 2–2–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request; Submitted for Public Comment and Recommendations; Job Corps Health Questionnaire

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment & Training Administration is soliciting comments concerning the proposed revision of the Health Questionnaire, Form ETA 6–53, a copy of which is attached to this notice.

DATES: Written comments must be submitted on or before April 5, 2004.

ADDRESSES: Send comments to Barbara J. Grove, RN, National Nurse Consultant, Office of Job Corps, Room N–4456, 200 Constitution Avenue, NW., Washington, DC 20210. E-Mail: *grove.barbara@dol.gov*; Telephone number (202) 693–3116 (this is not a toll-free number); Fax number (202) 693–3850 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Barbara J. Grove, RN, National Nurse Consultant, Office of Job Corps, Room N–4456, 200 Constitution Avenue, NW. Washington, DC 20210. E-Mail: *grove.barbara@dol.gov*; Telephone number (202) 693–3116 (this is not a toll-free number); Fax number (202) 693–3850 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: I. *Background:* The Job Corps program is described in its enabling legislation under Public Law 105–220, Workforce Investment Act of 1998. Section 145 establishes standards and procedures for obtaining data from each applicant relating to their needs. The Department of Labor's regulation at 20 CFR 670.410 further details the recruitment and screening of applicants. Individuals who wish to enroll in the Job Corps program must first be determined to be eligible and selected for enrollment. This process is carried out by admissions agencies, including state employment services, contracted to recruit young people for the Job Corps program. The admission process ensures that applicants meet all the admission criteria as defined in the *Policy and Requirement Handbook (PRH) Chapter 1, Outreach and Admissions, July 2001*. Nonmedical personnel in the admission's office (admission counselors) conduct the admission interview and complete the required application forms. The ETA 6–53 is completed on all applicants who have been determined to be eligible and selected for the Job Corps Program.

II. *Desired Focus of Comments:* Currently, the Department of Labor is soliciting comments concerning the proposed collection of information in the revised Job Corps Health Questionnaire, particularly comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission or responses.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above in the addressee section of this notice.

III. *Current Actions:* After the applicant has been determined to be eligible and then selected for the Job Corps Program, the applicant is assigned to a center. After being assigned to a center, the ETA 6–53 is completed on all applicants. If additional health information is needed from previous health care providers, this information is collected and the admission packet in its entirety is sent to the center of assignment. When the application is received on center, it is reviewed; if there are health related issues, the application is forwarded to the center's health services. After reviewing the application, if it is felt that the applicant's health needs cannot be met on center, the folder is sent to the Regional Office for review. The Regional Health Consultant then reviews the folder and a recommendation is made to the Regional Director. The Regional Director makes the final determination regarding enrollment of the applicant. If the application is denied, the applicant will be referred to other state and/or local agencies.

Experience throughout the Job Corps indicates that the Health Questionnaire

is an excellent guide in identifying current and potential applicant health needs. Its use results in considerable savings of time, by both center health staff and regional health consultants and staff, and of money, by reducing high medical program costs due to medical separations.

Revisions of the ETA 6–53 have been made to reflect the Workforce Investment Act, and to be more sensitive to applicants with health needs.

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: Job Corps Health Questionnaire, ETA 6–53.

OMB Number: 1205–0033.

Agency Number: ETA 6–53.

Record Keeping: The applicant is not required to retain the records; admission counselors or contractor's main offices are required to retain records of applicants who are enrolled in the program for three years from the date of application.

Affected Public: Individuals or households.

Frequency: The form would be completed on each applicant.

Total Responses: 102,833.

Average Time for Responses: It takes approximately 5 minutes to complete the form. (It may take longer for some applicants.)

Estimated Total Burden Hours: 8,569. [102,833 (number of applications) / 12 (number of applications that can be completed in an hour) = 8,569]

Total Burden Cost: Operating and maintenance services associated with these forms are contracted yearly by the Federal government with outreach and admissions contractors, according to designated recruiting areas. This is one of the many functions the contractors perform for which precise costs cannot be identified. Based on the past experience of recruitment contractors, however, the annual cost for contractor staff and related cost is estimated to be about $821,399. An additional cost of $13,238 is added for the applicant's time. Making the total cost $834,637. For the approximately 70 percent of the Job Corps applicants who have never worked, no value is determined. For the remaining 30 percent of applicants who have been in the work force previously for any length of time, whether full time or less, the current minimum wage of $5.15 is used to determine the value of the applicant time.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request: they will also become a matter of public record.

Dated: January 27, 2004.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 04–2121 Filed 2–2–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment & Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before April 5, 2004.

ADDRESSES: Send comments to Office of Job Corps, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number (202) 693–3000, fax number (202) 693–2767.

FOR FURTHER INFORMATION CONTACT: Tina Hess, Office of Job Corps, 200 Constitution Avenue, NW., Washington, DC 20210, telephone number (202) 693–3125, fax number (202) 693–3850, e-mail *Hess-Williams.Tina@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Job Corps program authorized by the Workforce Investment Act (WIA) of 1998, is designed to serve low-income young women and men, 16 through 24, who are in need of additional vocational, educational and social skills training, and other support services in order to gain meaningful employment, return to school, or enter the Armed Forces. Job Corps is operated by the Department of Labor through a nationwide network of 118 Job Corps centers. The program is primarily a residential program operating 24 hours per day, seven days per week, with non-resident enrollees limited by legislation to 20 percent of national enrollment. These centers presently accommodate more than 40,000 students. To ensure that the centers are filled with youth who are low-income as well as capable of and committed to doing the work necessary to achieve the benefits of Job Corps, certain eligibility requirements have been established by the legislation.

The purpose of this collection is to gather information from applicants to determine their eligibility for Job Corps. These forms are critical to the screening process. They are the initial forms completed by the Job Corps admissions counselors for each applicant.

II. Desired Focus of Comments

Currently, the Office of Job Corps is soliciting comments concerning the proposed extension collection of the Job Corps Enrollee Allotment Determination to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above in the **ADDRESSES** section of this notice.

III. Current Actions

Type of Review: Extension.

Agency: Employment & Training Administration.

Title: Job Corps Enrollee Allotment Determination.

OMB Number: 1205–0030.

Agency Number: ETA 658.

Recordkeeping: The applicant is not required to retain records; admissions counselors or contractor main offices are required to retain records of applicants who enroll in the program for three years from the date of application.

Affected Public: Individuals or households/Federal Government.

Total Respondents: 1,100.

Frequency: Annually.

Total Responses: 1,100.

Average Time per Response: 3 minutes.

Estimated Total Burden Hours: 55 hours.

Total Burden Cost: $715.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 27, 2004.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 04–2122 Filed 2–2–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Job Corps Placement and Assistance Record

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before April 5, 2004.

ADDRESSES: Send comments to the Office of Job Corps, 200 Constitution Ave., NW., N–4507, Washington, DC 20210. E-Mail Internet Address: *cody.gayle@dol.gov;* Telephone number: (202) 693–3000. Fax number: (202) 693–2767.

FOR FURTHER INFORMATION CONTACT: Gayle Cody, Office of Job Corps, 200 Constitution Ave., NW., Rm N–4507, Washington, DC 20210. E-Mail Internet Address: *cody.gayle@dol.gov;* Telephone number: (202) 693–3105. Fax number: (202) 693–3113.

SUPPLEMENTARY INFORMATION:

I. Background

The Job Corps program authorized by the Workforce Investment Act (WIA) of 1998, is designed to serve low-income young women and men, 16 through 24, who are in need of additional vocational, educational and social skills training, and other support services in order to gain meaningful employment, return to school, or enter the Armed Forces. Job Corps is operated by the Department of Labor through a nationwide network of 118 Job Corps centers. The program is primarily a residential program operating 24 hours per day, seven days per week, with non-resident enrollees limited by legislation to 20 percent of national enrollment. These centers presently accommodate more than 40,000 students.

The form ETA 678 is the only source of information about a student's training and subsequent placement in a job, further education, or military service. It is used to evaluate overall program effectiveness. The purpose of Job Corps is to train young people for the job market; the data collected on this automated form provides information as set forth in 20 CFR, subpart A, section 670.100.

II. Desired Focus of Comments

Currently, the Office of Job Corps is soliciting comments concerning the proposed extension of form ETA 678 Job Corps Placement and Assistant Record to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above in the **ADDRESSES** section of this notice.

III. Current Actions

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Job Corps Placement and Assistance Record.

OMB Number: 1205–0035.

Agency Number: ETA 678.

Recordkeeping: The respondent is not required to retain records; Career Transition Service providers and center staff are required to retain records of graduates and former enrollees, who are placed in a job, further education, or military service for three years.

Affected Public: Individuals or households/Business or other for-profit/Not-for-profit institutions/State, Local, or Tribal Government.

Cite/Reference/Form/etc: 20 CFR, subpart A, section 670.100.

Estimated Total Burden Hours: 3,661 burden hours.

Form/activity	Total respondents	Frequency	Total responses	Average time per response (minutes)	Burden hours
ETA–678	37,372 placed students	Ongoing	37,372	5	3,114
	10,946 non-placed students	Ongoing	10,946	3	547
Total	48,318	Ongoing	48,318	N/A	3,661

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $47,593.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 27, 2004.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administrator.

[FR Doc. 04–2123 Filed 2–2–04; 8:45 am]

BILLING CODE 4510–30–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2004–1 CARP DTRA4]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Initiation of voluntary negotiation period.

SUMMARY: The Copyright Office is announcing the initiation of a voluntary negotiation period for determining reasonable rates and terms for two compulsory licenses which, in one case, provides for a public performance of a sound recording by a new subscription service, and in the second instance, allows for the making of an ephemeral phonorecord of a sound recording in furtherance of making the permitted public performance. The rates and terms will be for the period beginning January 1, 2005 and ending on December 31, 2006.

EFFECTIVE DATE: The voluntary negotiation period begins on February 3, 2004.

ADDRESSES: Copies of voluntary license agreements and petitions, if sent by mail, should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered by a commercial, non-government courier or messenger, they must be delivered to: The Congressional Courier Acceptance Site, located at 2nd and D Streets, NE., between 8:30 a.m. and 4 p.m. If hand delivered by a party, copies of voluntary license agreements and petitions should be addressed to Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, First and Independence Avenue, SE., Washington, DC 20559–6000, and delivered to the Public Information Office of the Copyright Office in Room LM–401 between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: On January 6, 2004, the Office announced the voluntary negotiation period for adjusting rates and terms for the statutory licenses which provide for the public performance of a sound recording by means of a digital audio transmission, 17 U.S.C. 114, and the making of related ephemeral recordings, 17 U.S.C. 112(e), for the two-year license period beginning January 1, 2005. *See* 69 FR 689 (January 6, 2004). That notice specifically noted that the negotiations were for establishing rates and terms applicable to eligible nonsubscription transmissions and the related ephemeral recordings. However, the notice should also have stated that the negotiation process and any subsequent proceedings before a copyright arbitration royalty panel are to include the rates and terms applicable to a new subscription service for the same time period.

For purposes of the section 114 and the section 112 licenses, an ''eligible nonsubscription transmission'' and a ''new subscription service'' are defined in the following way. An ''eligible nonsubscription transmission'' is a noninteractive, digital audio transmission which, as the name implies, does not require a subscription for receiving the transmission. The transmission must also be made as part of a service that provides audio programming consisting in whole or in part of performances of sound recordings the purpose of which is to provide audio or entertainment programming, but not to sell, advertise, or promote particular goods or services. A ''new subscription service,'' on the other hand, is a service that performs sound recordings by means of noninteractive subscription digital audio transmissions. A ''new subscription service'' is not to be confused with the three preexisting subscription services, Music Choice, DMX Music, Inc., and Muzak, L.P., or the two preexisting satellite digital audio radio services, XM Satellite Radio, Inc. and Sirius Satellite Radio, Inc. *See* 17 U.S.C. 114(j)(6) and (8). Rates and terms applicable to these particular services for use of the section 112 and section 114 licenses are adjusted every five years under a different standard. *See* 17 U.S.C. 114(f)(1) and 68 FR 39873 (July 3, 2003).

Because the procedures and standards for setting the statutory rates and terms applicable to eligible nonsubscription transmissions are the same as the standards for transmissions made by new subscription services, rates and terms for the public performance of a sound recording and the making of the necessary ephemeral phonorecords for both transmission categories will be considered together in a single proceeding, just as they were during the initial rate setting proceeding. *See* 68 FR 27596 (May 20, 2003). Consequently, the rate setting process initiated with the publication of the January 6 notice shall consider both eligible nonsubscription transmissions and transmissions made by new subscription services.

Dated: January 28, 2004.

David Carson,

General Counsel.

[FR Doc. 04–2147 Filed 2–2–04; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two teleconference meetings of the Leadership Initiatives Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows:

Arts Education: February 12, 2004, from 3 p.m. to 5 p.m. from Room 703. This meeting will be closed.

International: February 12, 2004, from 1 p.m. to 1:30 p.m. from Room 709. This meeting will be closed.

These meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5691.

Dated: January 29, 2004.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 04–2263 Filed 2–2–04; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

All of these meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not announced on an individual basis in the Federal Register. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: *http://www.nsf.gov/home/pubinfo/advisory.htm*. This information may also be requested by telephoning (703) 292–8182.

Dated: January 28, 2004.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 04–2082 Filed 2–2–04; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND PLACE: 9 a.m., Tuesday, February 10, 2004.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The one item is Open to the public.

MATTER TO BE CONSIDERED: 7610 Highway Accident Report—School Bus Run-off-Bridge Accident, Omaha, Nebraska, October 13, 2001.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, February 6, 2004.

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: January 30, 2004.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 04–2274 Filed 1–30–04; 12:46 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–336 and 50–423]

Dominion Nuclear Connecticut, Inc; Notice of Receipt and Availability of Application for Renewal of Millstone Power Station, Units 2 and 3 Facility Operating License Nos. DPR–65 and NPF–49 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or Commission) has received an application, dated January 20, 2004, from Dominion Nuclear Connecticut, Inc., filed pursuant to Sections 104b (Operating License No. DPR–65) and 103 (Operating License No. NPF–49) of the Atomic Energy Act of 1954, as amended, and 10 CFR part 54, to renew the operating licenses for the Millstone Power Station, Units 2 and 3, respectively. Renewal of the license would authorize the applicant to operate each facility for an additional 20-year period beyond the period specified in the respective current operating licenses. The current operating license for the Millstone Unit 2 (DRP–65) expires on July 31, 2015, and the current operating license for Millstone Unit 3 expires on November 25, 2025. The Millstone Power Station Unit 2 is a pressurized-water reactor designed by Combustion Engineering, and Unit 3 is a pressurized-water reactor designed by Westinghouse Electric Corporation. Both units are located in Waterford, Connecticut. The acceptability of the tendered application for docketing, and other matters including an opportunity to request for a hearing, will be the subject of subsequent **Federal Register** notices.

Copies of the application are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room under accession number ML040270166. The ADAMS Public Electronic Reading Room is accessible from the NRC web site at *http://www.nrc.gov/reading-rm/adams.html*. In addition, the application is available on the NRC Web page at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html,* while the application is under review. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, extension 301–415–4737, or by email to *pdr@nrc.gov*.

A copy of the license renewal application for the Millstone Power Station, Units 2 and 3, is also available to local residents near the Millstone Power Station at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385–2806, and at the Three Rivers Community College, Thames River Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 28th day of January 2004.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 04–2113 Filed 2–2–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244]

Rochester Gas and Electric Corporation; R.E. Ginna Nuclear Power Plant; Notice of Availability of the Final Supplement 14 to the Generic Environmental Impact Statement Regarding License Renewal for the R.E. Ginna Nuclear Power Plant

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published a final plant-specific supplement to the ''Generic Environmental Impact Statement (GEIS)'', NUREG–1437, regarding the renewal of operating license DPR–18 for R.E. Ginna Nuclear Power Plant (Ginna), for an additional 20 years of operation. Ginna is owned

by Rochester Gas and Electric Corporation (RG & E), and is located in Wayne County, New York, approximately 20 miles east of Rochester, New York. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative methods of power generation.

It is stated in Section 9.3 of the report: based on (1) the analysis and findings in the GEIS (NRC 1996; 1999); (2) the Ginna ER [Environmental Report] (RG & E 2002b); (3) consultation with other Federal, State, and local agencies; (4) the staff's own independent review; and (5) the staff's consideration of the public comments received, the recommendation of the staff is that the Commission determine that the adverse environmental impacts of license renewal for Ginna, including cumulative impacts, are not so great that preserving the option of license renewal for energy-planning decisionmakers would be unreasonable.

The final Supplement 14 to the GEIS is available for public inspection in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov* (the Public Electronic Reading Room). Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. The final supplement to the GEIS is also available for public inspection at the Ontario Public Library, located at 1850 Ridge Road, Ontario, New York, and the Rochester Public Library, located at 115 South Avenue, Rochester, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Schaaf, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Mr. Schaaf may be contacted at (301) 415–1312 or *RGS@nrc.gov*.

Dated at Rockville, Maryland, this 22nd day of January, 2004.

For the Nuclear Regulatory Commission.

Pao Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. E4–169 Filed 2–2–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 148th meeting on February 24–27, 2004, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance except for portions that will be closed to discuss and protect information as well as unclassified safeguards information pursuant to 5 U.S.C. 552b(c)(1) and (3).

The schedule for this meeting is as follows:

Tuesday, February 24, 2004

8 a.m.–8:10 a.m.: Opening Statement (Open)—The Chairman will open the meeting and turn it over to the Working Group Chairman.

Working Group: Biosphere Dose Assessments for the Proposed Yucca Mountain High-Level Waste Repository (Open)

10 a.m.–8:20 a.m.: The Working Group Chairman will discuss the purposes of these working group sessions.

8:20 a.m.–8:50 a.m.: Keynote Presentation: What are the key issues in Biosphere Dose Assessments? How do the assessments enhance confidence by estimating potential doses? (Open)—The Committee will hear and discuss views on biosphere dose assessments by a distinguished expert.

8:50 a.m.–9:50 a.m.: Introduction to Biosphere Dose Assessment: NRC Staff Expectations Regarding Content of Potential Yucca Mountain License Application (Open)—The Committee will hear presentations by NRC staff representatives regarding the potential Yucca Mountain license application.

10:10 a.m.–11:10 a.m.: U.S. Department of Energy (DOE) Approach to Conducting Biosphere Dose Assessments for Yucca Mountain (Open)—The Committee will hear a presentation by DOE representatives regarding the biosphere dose assessments for Yucca Mountain.

11:10 a.m.–12 Noon: Public Comments (Open)—The Committee will hear comments from the public.

1 p.m.–5:15 p.m.: Technical Session Discussions: Elements of a Biosphere Dose Assessment Program (Open)—The Committee will hear presentations on two key areas of interest: environmental pathway analysis and metabolic models.

5:15 p.m.–5:45 p.m.: Public Comments (Open)—The Committee will hear comments from the public.

Wednesday, February 25, 2004

8 a.m.–8:10 a.m.: Opening Statement (Open)—The Working Group Chairman will make opening remarks regarding the conduct of today's sessions.

Working Group: Biosphere Dose Assessments for the Proposed Yucca Mountain High-Level Waste Repository—Continued (Open)

8:10 a.m.–9:40 a.m.: NRC's Risk Insights Initiative: Impact on Biosphere Dose Assessment Plans (Open)—The Committee will hear presentations by NRC and DOE representatives regarding agreement information needs to be included in a potential Yucca Mountain License Application.

9:55 a.m.–12 Noon: Presentations by Stakeholder Organizations (Open)—The Committee will hear presentations by stakeholder organizations.

1 p.m.–1:30 p.m.: NRC's Office of Nuclear Regulatory Research (RES) Perspective on Biosphere Dose Assessments (Open)—The Committee will hear a presentation by NRC RES representative regarding biosphere dose assessments.

1:30 p.m.–2:45 p.m.: Working Group Roundtable Panel Discussion (Open)

3 p.m.–4 p.m.: Panel and Committee Summary Discussion (Open)

4 p.m.–4:30 p.m.: Public Comments (Open)

4:30 p.m.–4:45 p.m.: Closing Comments by the Working Group Chairman (Open)

4:45 p.m.–5:45 p.m.: Discussion of ACNW Letter Report (Open)—The Committee will outline the principal points to be included in a potential letter report resulting from these Working Group sessions.

Thursday, February 26, 2004

11:30 a.m.–11:40 a.m.: Opening Remarks by the ACNW Chairman (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

11:40 a.m.–12:30 p.m.: Waste Management—Related Safety Research Report (Open)—The Committee will discuss recent Member activities relevant to the ACNW review of NRC waste management-related safety research as well as discuss a proposed report.

1:30 p.m.–4:30 p.m.: Radiological Dispersal Devices (Closed)—The Committee will be briefed by the NRC staff on the current status of work in progress on health and safety and public protection issues related to radiological dispersal devices.

4:45 p.m.–6:30 p.m.: Preparation of ACNW Reports (Open)—The Committee will discuss potential ACNW reports on matters discussed during this meeting. It may also discuss possible reports on matters discussed during prior meetings.

Friday, February 27, 2004

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACNW Chairman (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–10 a.m.: Risk Insights Report (Open)—The Committee will be updated by and hold discussions with representatives of the NRC staff on recent risk insight activities.

10:15 a.m.–11:15 a.m.: Report on Key Technical Issue (KTI) Status and DWM Evaluation of DOE's Bundling Approach

(Open)—The Committee will be briefed by a representative of the NRC staff on the status of Yucca Mountain KTIs and the results of its evaluation of DOE ''Bundles'' received to date.

11:15 a.m.–2:45 p.m.: Preparation of ACNW Reports (Open/Closed)—The Committee will continue discussion of proposed ACNW reports. In addition, the Committee will discuss a proposed ACNW report on Radiological Dispersal Device (Closed).

2:45 p.m.–3 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 16, 2003 (68 FR 59643). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Mr. Howard J. Larson, Special Assistant (Telephone 301–415–6805), between 7:30 a.m. and 4 p.m. ET, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Howard J. Larson as to their particular needs.

In accordance with Subsection 10(d) Pub.L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss and protect information as well as unclassified safeguards information pursuant to 5 U.S.C. 552b(c)(1) and (3).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted, therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Video Teleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: January 28, 2004.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 04–2115 Filed 2–2–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on February 10–11, 2004, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting may be closed to public attendance to discuss Westinghouse proprietary information per 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday and Wednesday, February 10–11, 2004–8:30 a.m. until the conclusion of business

The Subcommittee will discuss the resolution of open thermal-hydraulic issues related to the AP1000 design, including ADS–4 entrainment, long term cooling, boron concentration, and computer code modeling differences. The Subcommittee will hear presentations by and hold discussions with representatives of Westinghouse and the NRC staff regarding these matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Ralph Caruso (Telephone: 301–415–8065) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: January 23, 2004.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 04–2114 Filed 2–2–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of February 2, 9, 16, 23, March 1, 8, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 2, 2004

There are no meetings scheduled for the Week of February 2, 2004.

Week of February 9, 2004—Tentative

There are no meetings scheduled for the Week of February 9, 2004.

Week of February 16, 2004—Tentative

Wednesday, February 18, 2004

9:30 a.m.

Briefing on Status of Office of Chief Financial Officer Programs, Performance, and Plans (Public Meeting) (Contact: Edward L. New, 301–415–5646)

This meeting will be webcast live at the Web address: *http://www.nrc.gov.*

Week of February 23, 2004—Tentative

Wednesday, February 25, 2004

9 a.m.

Discussion of Security Issues (Closed—Ex. 1)

Thursday, February 26, 2004

9:30 a.m.

Meeting with UK Regulators to Discuss Security Issues (Closed—Ex. 1)

Week of March 1, 2004—Tentative

Tuesday, March 2, 2004

9:30 a.m.

Meeting with Advisory Committee on the Medical Uses of Isotopes (ACMUI) & NRC Staff (Public Meeting) (Contact: Angela Williamson, 301–415–5030)

This meeting will be webcast live at the Web address: *http://www.nrc.gov.*

Wednesday, March 3, 2004

9:30 a.m.

25th Anniversary Three Mile Island (TMI) Unit 2 Accident Presentation (Public Meeting) (Contact: Sam Walker, 301–415–1965)

This meeting will be webcast live at the Web address: *http://www.nrc.gov.*

2:45 p.m.

Discussion of Security Issues (Closed—Ex. 1)

Thursday, March 4, 2004

1:30 p.m.

Briefing on Status of Office of Nuclear Material Safety and Safeguards (NMSS) Programs, Performance, and Plans—Waste Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address: *http://www.nrc.gov.*

Week of March 8, 2004—Tentative

Tuesday, March 9, 2004

9:30 a.m.

Briefing on Status of Office of Nuclear Material Safety and Safeguards (NMSS) Programs, Performance, and Plans—Material Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address: *http://www.nrc.gov.*

1:30 p.m.

Discussion of Security Issues (Closed—Ex. 1)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Timothy J. Frye, (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: January 29, 2004.

Timothy J. Frye,

Technical Coordinator, Office of the Secretary.

[FR Doc. 04–2238 Filed 1–30–04; 10:12 am]

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NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, January 9, 2004, through January 22, 2004. The last biweekly notice was published on January 20, 2004 (69 FR 2735).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By March 4, 2004, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for

leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: December 3, 2003, as supplemented by letter dated January 14, 2004.

Description of amendment request: Appendix B, Additional Conditions, to Operating License No. DPR–23 for H. B. Robinson Steam Electric Plant (HBRSEP), Unit No. 2, contains the following condition: ''Operation of H. B. Robinson Steam Electric Plant, Unit No. 2, is limited to 504 effective full power days. This additional condition shall remain in effect until approval of a license amendment that removes this limitation.'' The proposed change will delete the condition described above.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

An evaluation of the proposed change has been performed in accordance with 10 CFR 50.91(a)(1) regarding no significant hazards considerations using the standards in 10 CFR 50.92(c). A discussion of these standards as they relate to this amendment request follows:

1. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change to Appendix B of the HBRSEP, Unit No. 2, Operating License

deletes a restriction on effective full-power days (EFPD) that was incorporated to ensure the source term used for radiological dose analyses remains bounded by the analyses of record for operation at the approved, uprated power level. The restriction was imposed solely for the post-accident radiological analyses assumption. Since this restriction is only related to post-accident analytical assumptions, it is unrelated to the probability of an accident occurring. Therefore, the proposed Operating License change does not involve a significant increase in the probability of an accident previously evaluated.

The proposed change can impact the consequences of previously evaluated accidents by impacting the core inventory of radionuclides for operating periods exceeding the existing 504 EFPD restriction. An evaluation of the potential impact of removing the EFPD restriction on the accident consequences has determined that any increase in consequences would be less than 10% of the difference between the existing dose analysis results and the acceptable dose limits. The proposed change therefore results in less than a minimal increase in accident consequences. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The proposed change to Appendix B of the HBRSEP, Unit No. 2, Operating License deletes a restriction on effective full-power days (EFPD) that was incorporated to ensure the source term used for radiological dose analyses remain bounded by the dose analyses of record for operation at the approved, uprated power level. The restriction was imposed solely for post-accident radiological analyses assumptions. Since this restriction is only related to post-accident analytical assumptions, it is unrelated to the possibility of an accident occurring. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The applicable margin of safety is that related to the dose consequences of analyzed accidents. The proposed change results in potential increased consequences that are less than 10% of the difference between the existing dose analyses results and acceptable dose limits. This is less than a minimal increase in accident consequences, as defined by NEI [Nuclear Energy Institute] 96–07, Revision 1, which is endorsed by Regulatory Guide 1.187. Therefore, this change does not involve a significant reduction in a margin of safety.

Based on the above discussion, Progress Energy Carolinas, Inc. [Carolina Power & Light Company] has determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Steven R. Carr, Associate General Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Allen G. Howe.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: October 22, 2003.

Description of amendment request: The proposed amendment would delete requirements from the Technical Specifications (TSs) to maintain hydrogen recombiners and hydrogen and oxygen monitors. A notice of availability for this technical specification improvement using the consolidated line item improvement process (CLIIP) was published in the **Federal Register** on September 25, 2003 (68 FR 55416). Licensees were generally required to implement upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to combustible gas control were imposed by Order for many facilities and were added to or included in the TSs for nuclear power reactors currently licensed to operate. The revised 10 CFR 50.44, ''Standards for combustible gas control system in light-water-cooled power reactors,'' eliminated the requirements for hydrogen recombiners and relaxed safety classifications and licensee commitments to certain design and qualification criteria for hydrogen and oxygen monitors.

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The licensee affirmed the applicability of the model NSHC determination in its application dated October 22, 2003.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen and oxygen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. RG [Regulatory Guide] 1.97 Category 1, is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen and oxygen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44 the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents. Also, as part of the rulemaking to revise 10 CFR 50.44, the Commission found that Category 2, as defined in RG 1.97, is an appropriate categorization for the oxygen monitors, because the monitors are required to verify the status of the inert containment.

The regulatory requirements for the hydrogen and oxygen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3, [classification of the oxygen monitors as Category 2,] and removal of the hydrogen and oxygen monitors from TS will not prevent an accident management strategy through the use of the severe accident management

guidelines (SAMGs), the emergency plan (EP), the emergency operating procedures (EOPs), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TS, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TS, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen and oxygen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen and oxygen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

Category 2 oxygen monitors are adequate to verify the status of an inerted containment.

Therefore, this change does not involve a significant reduction in the margin of safety. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related oxygen monitors. Removal of hydrogen and oxygen monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Peter Marquardt, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226–1279.

NRC Section Chief: L. Raghavan.

Exelon Generation Company, LLC, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: December 22, 2003.

Description of amendment request: Exelon Generation Company, LLC, the licensee, is proposing a change to the Limerick Generating Station (LGS), Unit 1, Technical Specifications (TSs) contained in Appendix A to the Operating License. This proposed change will revise the TS section on safety limits to incorporate revised safety limit minimum critical power ratios (SLMCPRs) based on cycle-specific analysis performed by Global Nuclear Fuel for LGS, Unit 1, Cycle 11.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Changing the SLMCPRs does not require any physical plant modifications, physically affect any plant components, or involve changes in plant operation. Therefore, the probability of an accident previously evaluated remains unchanged. The operability of plant systems designed to mitigate any consequences of accidents has not changed, therefore, the consequences of an accident previously evaluated are not expected to increase.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve any modifications of the plant configuration for allowable modes of operation. The SLMCPRs are not accident initiators, and their revision will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The proposed SLMCPRs provide a margin of safety by ensuring that no more than 0.1% of the fuel rods are in a boiling transition if the operating limit minimum critical power ratios are exceeded during any mode of operation. Although the SLMCPRS are being reduced from 1.10 to 1.07 for two loop operation, and from 1.11 to 1.08 for single loop operation, the SLMCPRs continue to ensure that during normal operation and abnormal operational transients at least 99.9% of all fuel rods in the core do not experience transition boiling if the limit is not violated when all uncertainties are considered, thereby preserving the fuel cladding integrity. Therefore, the proposed TS change will not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward Cullen, Vice President & General Counsel, Exelon Generation Company, LLC, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Darrell Roberts, Acting.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: November 25, 2003.

Description of amendment request: Exelon Generation Company, LLC, the licensee, is proposing a change to the Limerick Generating Station (LGS), Units 1 and 2, Technical Specifications (TSs) contained in Appendix A to Operating Licenses NPF–39 and NPF–85, respectively. This proposed change will add a footnote to TS 3.4.3.2.e to indicate that reactor coolant system (RCS) pressure isolation valve (PIV) leakage is excluded from any other allowable RCS operational leakage specified in TS Section 3.4.3.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. PIV leakage is not operational leakage. PIV leakage limits are used in conjunction with the system specifications for the PIVs to ensure that plant operation is appropriately limited. The

PIV leakage limit provides for monitoring the condition of the RCPB [Reactor Coolant Pressure Boundary] to detect PIV degradation. Although the proposed change will result in a change to the current method of calculating the RCS operational leakage, the proposed change does not affect the actual PIV leakage limit itself, and therefore, does not affect the ability to detect PIV degradation. The proposed change does not affect the basis for the safety analysis used to determine the probability or consequences of an accident since PIV leakage is not considered in any design basis accident.

Although the effect of the proposed change will allow for the potential increase in identified leakage, the total RCS operational leakage is still limited by the Technical Specifications (TS) Limiting Condition for Operation (LCO) which itself is not being changed. In addition, current TS Applicability, Action and Surveillance requirements for detection, monitoring, and appropriately limiting operational leakage are not being changed.

The proposed change does not alter the leakage detection system monitors, design features, operation, or accident analysis assumptions which could affect the ability of the reactor coolant pressure boundary (RCPB) to mitigate the consequences of a previously evaluated accident. The proposed change will not increase the likelihood of the malfunction of another system, structure or component which has been assumed as an accident initiator or credited in the mitigation of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The operational leakage requirements for the RCPB leakage, unidentified leakage, and total leakage ensures corrective action can be taken to protect the RCPB from degradation. The PIV leakage provides an indication that the PIVs, between the RCS and the connecting systems, are degraded or degrading.

No change in the ability to perform the design function of the leak detection system, the protection afforded by the operational leakage requirements, or PIV leakage requirements is involved. No change in the operation of the leak detection system or PIVs is required. Instrumentation setpoints, monitoring frequencies and leakage limitations associated with RCS operational leakage and PIV leakage are not affected by the proposed change. No modifications to the PlVs or RCS leak detection system or associated components are required to implement the proposed change. Therefore, no new failure mechanism, malfunction, or accident initiator is considered credible.

Additionally, the proposed change does not affect other plant design, hardware, or system operation. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. The proposed change does not involve a relaxation of the criteria used to establish safety limits, a relaxation of the bases for the limiting safety system settings, or a relaxation of the bases for the limiting conditions for operation, other than excluding PIV leakage from the other RCS operational leakage.

Controlling values for the RCS operational leakage and PIV leakage are included in current TS testing measurements, monitors, detection methods and procedures. The proposed change will not modify these requirements or the accident analysis assumptions regarding the performance of the RCS operational leakage and PIV leakage monitoring which could potentially challenge safety margins established to ensure fuel cladding integrity, as well as reactor coolant and containment system integrity.

The safety analyses of the RCPB integrity and the ability to mitigate accidents do not require revision in order to implement the proposed change. Modification of the existing margins is not required.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward Cullen, Vice President & General Counsel, Exelon Generation Company, LLC, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Darrell Roberts, Acting.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: October 14, 2003.

Description of amendment request: The proposed changes would eliminate License information that no longer applies to a license that has permanently ceased operation. The proposed changes would also simplify the Technical Specifications. Maine Yankee proposes to remove certain design and administrative requirements, relocate them to the Defueled Safety Analysis Report (DSAR) (i.e., Updated Final Safety Analysis Report for Maine Yankee), or the Quality Assurance Program and make other minor administrative changes. The DSAR is controlled by 10 CFR 50.59, and the Quality Assurance Program is controlled by 10 CFR 50.54(a). The Technical Specification relocation is being proposed pursuant to the criteria contained in 10 CFR 50.36, and is consistent with NRC Administrative Letter 95–06. Additionally, Maine Yankee proposes to eliminate technical specifications which will no longer be applicable following the transfer of the last fuel assembly from the spent fuel pool to spent fuel storage cask.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed License changes delete License information that does not apply to a plant that has permanently ceased operation. These changes are in compliance with 10 CFR Part 50 regulations and are not associated with the probability or consequences of accidents previously evaluated.

The proposed Technical Specification changes reflect the complete transfer of all spent nuclear fuel from the Spent Fuel Pool (SFP) to the Independent Spent Fuel Storage Installation (ISFSI). Design basis accidents related to the Spent Fuel Pool are discussed in the MY Defueled Safety Analysis Report (DSAR). These postulated accidents are predicated on spent nuclear fuel being stored in the Spent Fuel Pool. With the removal of the spent fuel from the Spent Fuel Pool, there are no remaining safety related systems required to be monitored and there are no remaining credible design basis accidents related to the SFP.

The proposed relocation of the specified minimum distance to the Exclusion Area Boundary from the Technical Specification to the DSAR has no impact on the probability or consequences of the remaining applicable design basis accidents.

The proposed changes do not affect design functions of structures, systems or components (SSC's) associated with the safe storage of fuel or radioactive material. Nor do any of these changes increase the likelihood of the malfunction of an SSC. The proposed changes do not affect operating procedures or administrative controls that have the function of preventing or mitigating any design basis accidents.

The MY DSAR provides a discussion of radiological events postulated to occur as a result of decommissioning with the bounding consequence resulting from a materials handling event. The proposed changes do not have an adverse impact on decommissioning activities or any of their postulated consequences.

In addition, the proposed Technical Specification changes are consistent with the guidance provided in NRC Administrative Letter 95–06. Therefore, these proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed License changes delete License information that does not apply to a plant that has permanently ceased operation. These changes are in compliance with 10 CFR Part 50 regulations and are not associated with any accidents previously evaluated.

These proposed Technical Specification changes relocate requirements from the Technical Specifications to the Defueled Safety Analysis Report, eliminate Technical Specifications associated with the storage of spent fuel in the SFP, and relocate Technical Administrative Controls to the MY Quality Assurance Program. With the complete removal of spent fuel assemblies from the plant there are no safety related SSC's that remain at the plant. Thus, these proposed changes will not have any affect on the operation or design function of safety related SSC's. These changes do not create new component failure mechanisms, malfunctions or accident initiators. Therefore, these proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed License changes delete License information that does not apply to a plant that has permanently ceased operation. These changes are in compliance with 10 CFR Part 50 regulations and do not involve a reduction in a margin of safety.

The design basis and accident assumptions within the MY DSAR and the Defueled Technical Specifications relating to spent fuel are no longer applicable. The proposed Technical Specification changes do not affect remaining plant operations, systems, or components supporting decommissioning activities. In addition, the proposed changes do not result in a change in initial conditions, system response time, or in any other parameter affecting the course of a decommissioning activity accident analysis.

The relocation of the specified minimum distance to the Exclusion Area Boundary from the Technical Specifications to the Defueled Safety Analysis Report is consistent with the criterion set forth in 10 CFR 50.36 (c)(4). This criterion states that design features to be included in the Technical Specifications are those features of the facility such as materials of construction and geometric arrangement, which if altered or modified, would have a significant effect on safety and are not covered in other Technical Specification categories. The minimum distance to the Exclusion Area Boundary is established to maintain compliance within the limits specified in 10 CFR Part 100. The relocation of the specified minimum distance to the Exclusion Area Boundary to the DSAR continues to provide the safety analysis controls to assure compliance with 10 CFR Part 100 regulation.

Conclusion

Based on the above, Maine Yankee concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendment involves no significant hazards consideration.

Attorney for licensee: Joe Fay, Esquire, Maine Yankee Atomic Power Company, 321 Old Ferry Road, Wiscasset, Maine 04578.

NRC Section Chief: Claudia M. Craig.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: December 19, 2003.

Description of amendment requests: The proposed license amendment request (LAR) would revise Technical Specification (TS) 5.5.9, ''Steam Generator (SG) Tube Surveillance Program.'' The LAR proposes new SG wedge region exclusion zones for outside diameter stress corrosion cracking (ODSCC) alternate repair criteria (ARC) at tube support plate (TSP) intersections and for primary water stress corrosion cracking (PWSCC) ARC at dented TSP intersections. The wedge region exclusion zones currently approved for the ODSCC ARC and for the PWSCC ARC are based on a loss-of-coolant accident (LOCA) plus safe shutdown earthquake (SSE) loads analysis performed in 1992. The new wedge region exclusion zones are based on new analyses of LOCA plus SSE loads completed in 2003 using plant-specific accident loads.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Application of a smaller steam generator (SG) wedge region exclusion zone will allow more degraded tubes to remain in service under alternate repair criteria (ARC). Previously approved ARC limits will be applied to tubes outside the exclusion zone, and therefore the probability and consequences of tube burst or leakage is not significantly increased following a steam line break (SLB).

Exclusion zones tubes are inspected by bobbin coil every outage and by rotating pancake coil (RPC) if the bobbin coil detects degradation. SG tubes containing RPC-confirmed crack-like degradation at wedge region exclusion zone intersections will be repaired. Because in-service tube intersections in wedge region exclusion zones do not have detectable cracking, they will not be susceptible to in-leakage if deformed following a loss-of-coolant-accident (LOCA) plus seismic event. Therefore, the consequences of a LOCA plus seismic event are not increased.

Thus, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of revised SG ARC wedge region exclusion zones will allow more degraded tubes to remain in service under ARC. Implementation of ARC has been previously approved and does not introduce any significant change to the plant design basis. A single or multiple tube rupture event would not be expected in a SG in which ARC has been applied.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Revised wedge region exclusion zones are based on a DCPP-specific analysis for the combined effects of a LOCA and safe shutdown earthquake (SSE) loads. The number of wedge region tubes that are predicted to deform has been decreased when compared to the prior analysis, which used highly conservative assumptions. The revised analysis incorporates DCPP-specific LOCA and seismic loads that were not available when the prior analysis was performed. The revised analysis also yields conservative results, such that the number of tubes in the exclusion zone (262 per SG) bound the number of tubes predicted to deform (120 per SG). Tubes located in the revised wedge region exclusion zone will continue to be subject to enhanced eddy current inspection requirements and will be excluded from application of ARC. Thus, existing tube integrity requirements continue to be met for

these tubes and there is no change to the dose contribution from tube leakage. Offsite and control room doses will continue to meet the appropriate guidelines and regulations established in Standard Review Plan 15.1.5 and 6.4, 10 CFR part 100, and 10 CFR part 50, Appendix A General Design Criterion (GDC) 19.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: January 7, 2004.

Description of amendment requests: The license amendment request (LAR) would revise Sections 5.5.9, ''Steam Generator (SG) Tube Surveillance Program,'' and 5.6.10, ''Steam Generator (SG) Tube Inspection Report'' of the Diablo Canyon Technical Specifications. The proposed changes would allow application of a 4-volt alternate repair criteria (ARC) in intersections of steam generator (SG) tube hot-legs with the four lowest SG tube support plates (TSPs). The 4-volt ARC will only apply to Model 51 SG tubes experiencing outside diameter stress corrosion cracking (ODSCC) at the intersections of the tube hot legs and the four lowest TSPs. In addition, the proposed change includes the application of leak-before-break (LBB) to the main steam line (MSL) piping inside containment in order to exclude the dynamic effects of a main steam line break (MSLB) in the short length of piping upstream of the MSL flow restrictor (large MSLB) from consideration for determining the loads on the SG TSPs following an MSLB.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

A 4-volt steam generator (SG) bobbin coil probe voltage-based alternate repair criteria (ARC) for axial outside diameter stress corrosion cracking (ODSCC) at tube support plate (TSP) locations is proposed for the hot-leg region of the SG tube at the 4 lowest TSP locations (TSPs 1 through 4). In order to implement the proposed 4-volt ARC, sufficient SG tubes will be expanded in the hot-leg region of TSPs 1 through 4 to limit the TSP deflections following a limiting main steam line break (MSLB) event.

SG tubes pass through holes drilled in the TSP. The inside diameter of the drilled holes closely approximates the outside diameter of the tubes. Generally, the TSP precludes those tube spans within the drilled holes from deforming beyond the diameters of the drilled holes, thus, precluding tube burst in the restrained regions. However, design basis MSLB events may vertically displace a TSP, removing its support from the tube spans passing through it. For TSPs at hot-leg locations in which sufficient SG tubes have been expanded at the TSP intersection, the deflections of the TSP following a limiting MSLB event are small, the TSPs remain essentially stationary during all conditions, and the SG tube spans within the drilled TSP holes are restrained. Thus, for intersections of SG tube hot-legs and TSPs 1 through 4, axial tube burst is eliminated as a credible event and the larger bobbin voltage for the proposed 4-volt ARC can be allowed while still meeting the tube structural requirements of Regulatory Guide (RG) 1.121 [, ''Bases for Plugging Degraded PWR Steam Generator Tubes'']. For the calculated displacement of the affected TSPs following a limiting design basis MSLB event, based on application of leak-before-break to the main steam system piping inside containment, tube hot-leg spans enclosed within TSPs 1 through 4 have a tube burst probability of much less than 10–5 collectively. This is orders of magnitude less than the 10–2 probability-of-burst criterion specified by Generic Letter (GL) 95–05 [, ''Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking,] and represents negligible axial tube burst probabilities for affected tube hot-leg spans intersecting TSPs. Thus, repair limits to preclude burst are not needed and tube repair limits for intersections of SG tube hot-legs and TSPs 1 through 4 may be based primarily on limiting leakage to acceptable levels during accident conditions.

Cracks that include cellular corrosion may yield under axial loads, resulting in tensile tearing of the tube at that location. A tensile load requirement to prevent this establishes a structural limit for the tube expansion based ODSCC ARC. In order to establish a lower bound for the structural limit, tensile tests were used to measure the force required to separate a tube that exhibits cellular corrosion. Additionally, pulled SG tubes with cellular and/or inter-granular attack (IGA) tube wall degradation were evaluated and the tensile strength of the tube was conservatively calculated from the remaining noncorroded cross-section of the tube. The tensile strength calculation assumed that the degraded portions do not contribute to the axial load carrying ability of the tube. Data from these tests shows that circumferential cracks exhibiting bobbin coil probe indication voltages greater than 100 volts at the lower 95 percent confidence level require tube pressure differentials above the operating limit of 3-times normal operating differential pressure in order to produce circumferential ruptures (i.e., axial separation at the plane of the crack due to axial tensile tearing). The proposed 4-volt ARC has a safety factor of 25 to circumferential ruptures, which ensures the 4-volt ARC does not significantly increase the chances of a steam generator tube rupture (SGTR) at intersections of SG tube hot-legs and TSPs 1 through 4.

In addressing the potential combined Loss-of-coolant accident (LOCA) and earthquake effects on SG components as required by General Design Criterion (GDC) 2 of Appendix A to 10 CFR part 50, analysis has shown that SG tube deformation or collapse may occur in certain regions of the SG. SG tube collapse reduces RCS flow and could cause partial through-wall tube cracks to become full through-wall tube-cracks during tube deformation or collapse resulting in potential secondary-to-primary in-leakage to the reactor coolant system (RCS). Tubes for which deformation may occur are excluded from application of the voltage-based ARC per current TS 5.5.9.d.1.j (iv). TS 5.5.9.d.1.j (iv) will continue to apply and is not adversely affected by the 4-volt ARC. Therefore tubes for which deformation may occur will not be left in service under the 4-volt ARC.

GL 95–05 states that licensees must perform SG tube postaccident leak rate and SG tube burst probability analyses before returning to power from outages during which they perform SG

inspections. Licensees must include the results in a report to the NRC within 90 days after restart. If an analysis reveals that postaccident leak-rate or burst-probability exceeds limits, the licensee must report it to the NRC and assess the safety significance of this finding.

For the proposed 4-volt ARC, the axial tensile tearing tube rupture probability is calculated for indications found at intersections of tube hot-legs and TSPs 1 through 4. The sum of MSLB axial tube burst probability for cold-leg TSP intersections, MSLB axial tube burst probability for hot-leg intersections at TSPs 5 through 7, axial tensile tearing tube rupture probability for TSPs 1 through 4, and the burst probability for indications left in service under other ARCs must be compared to the GL 95–05 reporting value of 10^{-2}. Due to the negligible burst probability for axial ODSCC indications at intersections of tube hot-legs and TSPs 1 through 4, calculation of the axial burst probability is not required for these indications.

The design basis MSLB outside of containment produces the limiting radiological consequence from any SG tube leakage due to SG tube indications that are postulated to exist at the initiation of an accident. Verification prior to each operating cycle, that the sum of MSLB leak rates from indications left in service under all ARC (including the proposed 4-volt ARC) are less than the leak rate limit assumed in the MSLB radiological consequences analysis, will ensure that site boundary doses for this accident remain within an acceptable fraction of the guidelines of Title 10 of the Code of Federal Regulations, Part 100, (10 CFR part 100) and that doses to the control room operators remain within the 10 CFR part 50, Appendix A GDC 19 limits.

The application of leak-before-break (LBB) to the MSL piping inside containment does not alter the way in which plant equipment is operated and cannot initiate an accident. The application of LBB to the main steam system does not affect the plant operating conditions and will not challenge the ability of the main steam system to perform its design function or to mitigate an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Use of the proposed SG tube 4-volt ARC does not significantly change the operating conditions of the SG. Application of the 4-volt ARC does not significantly increase the probability of either single or multiple tube ruptures. SG tube integrity remains adequate for all plant operating conditions. The GL 95–05 SG tube integrity limits will be confirmed through in-service inspection and monitoring of primary-to-secondary leakage.

The Diablo Canyon Units 1 and 2 Technical Specifications (TS) impose a normal SG primary-to-secondary leak rate limit of 150 gallons per day (gpd) per SG to minimize the potential for excessive leakage during all plant conditions. The 150 gpd limit provides added margin to accommodate contingent leakage should a stress corrosion crack grow at a greater than expected rate or extend outside the TSP. The proposed 4-volt ARC does not adversely impact the TS 150 gpd limit. Normal operating leakage is not expected to significantly increase due to indications left in service under the proposed 4-volt ARC.

The application of LBB to the MSL piping inside containment does not involve any physical alteration to the plant or any change in which the plant is operated which could introduce a new failure mode. The use of LBB does not involve plant equipment being operated in a different manner.

Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

RG 1.121 describes a method for meeting GDCs 14, 15, 31, and 32 of Appendix A to 10 CFR 50 by reducing the probability or consequences of SGTR through application of criteria for removing degraded tubes from service. These criteria set limits of degradation for SG tubing through inservice inspection. Analyses show that tube integrity will continue to meet the criteria of Regulatory Guide 1.121 after implementation of the proposed 4-volt ARC. Even under the worst case ODSCC occurrence at TSP elevations left in service under the 4-volt ARC, the 4-volt ARC will not cause or significantly increase the probability of a SGTR event.

Verification prior to each operating cycle, that the sum of MSLB leak rates from indications left in service under all ARC (including the proposed 4-volt ARC) are less than the leak rate limit assumed in the MSLB radiological consequences analysis, will ensure that site boundary doses for this accident remain within an acceptable fraction of the guidelines of 10 CFR 100 and that doses to the control room operators remain within the limits of GDC 19 of Appendix A to 10 CFR 50.

Inspections conducted for the proposed 4-volt ARC are the same as required by GL 95–05 with adjustment of the rotating pancake coil inspection requirements for hot-leg TSPs 1 through 4 intersections to reflect the higher 4-volt ARC limit. All hot-leg TSPs 1 through 4 intersections with bobbin coil voltages greater than 4 volts will be inspected with Plus Point coil and a Plus Point coil minimum sample inspection of intersections with bobbin indications less than or equal to 4 volts will be applied to hot-leg TSPs 1 through 4. The Plus Point coil data will be evaluated to confirm that the principal degradation mechanism continues to be ODSCC.

Plugging SG tubes reduces RCS flow margin. The 4-volt ARC will reduce the number of tubes that must be plugged. Thus, the 4-volt ARC will conserve RCS flow margin, preserving operational and safety benefits that would otherwise be reduced by unnecessary plugging.

The application of LBB to the MSL piping inside containment will not adversely affect operation of plant equipment and will not result in a change to design basis accident initial conditions or the setpoints at which protective actions are initiated. With application of LBB, the main steam system will continue to perform its function as assumed in the accident analyses.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Tennessee Valley Authority, Docket No. 50–259, Browns Ferry Nuclear Plant Unit 1, Limestone County, Alabama

Date of amendment request: November 3, 2003.

Description of amendment request: The proposed amendment would lower the allowable value for Function 7.b, Scram Discharge Volume Water Level—High Float Switches in Technical Specification (TS) Table 3.3.1.1–1, Reactor Protection System Instrumentation. As part of the proposed change, the licensee would

also remove the Low Scram Pilot Air Header Pressure switches from service.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. Modifications to the Scram Discharge Instrument Volume (SDIV) System are being implemented to ensure that the SDIV high water level instrumentation will respond adequately to provide redundant, diverse trip functions for a Scram Discharge Volume (SDV) inleakage event. The proposed change does not involve any change to the design or functional requirements of plant systems and the surveillance test methods will be unchanged. The proposed change will not give rise to any increase in operating power level, fuel operating limits, or effluents. The proposed change does not affect any accident precursors. In addition, the proposed change will not significantly increase any radiation levels. Since the scram function will be successfully performed, lowering the allowable value for the Scram Discharge Volume Water Level—High Float Switches and removal of the scram pilot air header pressure trip system does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The design criteria for the Scram Discharge System is contained in the Safety Evaluation Report on the Boiling Water Reactor (BWR) Scram Discharge System, which was transmitted by NRC letter dated December 9, 1980, to All BWR Licensees. Modifications to the SDV System have been evaluated to demonstrate that the high water level instrumentation in the SDIV will respond adequately to provide the required trip function. No new system failure modes are created as a result of removing the low scram pilot air header trip, since the redundant and diverse SDIV high water level instruments will initiate a successful reactor scram. Therefore, lowering the allowable value for the Scram Discharge Volume Water Level—High Float Switches and removal of the scram pilot air header pressure trip system does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No. The water level in the SDIV is monitored by both resistance-temperature type detectors and float switches. Redundancy and diversity in the instrumentation that initiates the scram signal is maintained even with the lowering of the allowable value for the Scram Discharge Volume Water Level—High Float Switches and removal of the low scram pilot air header pressure trip function. Modifications to the SDIV System have been evaluated to demonstrate that the high water level instrumentation will respond adequately to provide the required trip function for an inleakage event. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Tennessee Valley Authority, Docket No. 50–259, Browns Ferry Nuclear Plant Unit 1, Limestone County, Alabama

Date of amendment request: November 10, 2003.

Description of amendment request: The proposed amendment includes the necessary Technical Specification (TS) changes for the planned replacement of the power range monitoring portion of the existing Neutron Monitoring System with a digital upgrade. These changes would expand the current allowable operating domain to the Maximum Extended Load Line Limit region of the power/flow chart.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Power Range Neutron Monitor (PRNM) Changes:

The proposed TS changes are associated with the Nuclear Measurement Analysis and Control (NUMAC) PRNM retrofit design. The proposed changes involve modification of the Limiting Conditions for Operation (LCOs) and Surveillance Requirements for equipment designed to mitigate events which result in power increase transients. For the Average Power Range Monitor (APRM) system, the mitigating action is to block control rod withdrawal or initiate a reactor scram which terminates the power increase when setpoints are exceeded. For the Rod Block Monitor (RBM) system, the mitigating action is to block continuous control rod withdrawal prior to exceeding the Minimum Critical Power Ratio safety limit during a postulated Rod Withdrawal Error event. The worst case failure of either the APRM or the RBM systems is failure to initiate its mitigating action (failure to scram or block rod withdrawal). Failure to initiate these mitigating actions will not increase the probability of an accident. Thus, the proposed changes do not increase the probability of an accident previously evaluated.

For the APRM and the RBM systems, the NUMAC PRNM design, together with revised operability requirements and revised surveillance requirements, results in equipment which continues to perform the same mitigation functions conditions with reliability equal to or greater than the equipment which it replaces. Because there is no change in mitigation functions and because reliability of the functions is maintained, the proposed changes do not involve an increase in the consequences of an accident previously evaluated.

APRM and RBM Technical Specification (ARTS) improvements and operation in an expanded core power/flow domain, the Maximum Extended Load Line Limit (MELLL) Changes:

The proposed ARTS/MELLL changes permit expansion of the current allowable power/flow operating region and will apply a newer methodology for assuring that fuel thermal and mechanical design limits are satisfied. Operation in the MELLL region with the ARTS changes has been evaluated and there is adequate design margin for operation in the MELLL region for all events and parameters considered. Because operation in the MELLL region maintains adequate design margin, the proposed changes do not increase the probability of an accident previously evaluated.

In support of operation in the MELLL region, the proposed change modifies flow-biased APRM scram and rod block setpoints and implements new RBM power-biased setpoints. No direct credit for the flow-biased APRM scram or APRM flow-biased rod block is taken in mitigation of any design basis event. Therefore, design margins are not degraded by the proposed changes.

The proposed changes to the RBM system will assure that a Rod Withdrawal Error is not a limiting event and that the RBM continues to enforce rod blocks under appropriate conditions.

Therefore, the proposed changes do not increase the probability or the consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed PRNM and ARTS/MELLL changes involve modification and replacement of the existing power range neutron monitoring equipment, modification of the setpoints and operational requirements for the APRM and RBM systems, implementation of a new methodology for administering compliance with fuel thermal limits, and operation in an extended power/flow domain. These proposed changes do not modify the basic functional requirements of the affected equipment, create any new system interfaces or interactions, nor create any new system failure modes or sequence of

events that could lead to an accident. The worst case failure of the affected equipment is failure to perform a mitigation action, and failure of this equipment to perform a mitigating action does not create the possibility of a new or different kind of accident. No new external threats or release pathways are created. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

PRNM Changes: These proposed TS changes are associated with the NUMAC PRNM retrofit design. The NUMAC PRNM change does not impact reactor operating parameters or the functional requirements of the PRNM system. The replacement equipment continues to provide information, enforce control rod blocks, and initiate reactor scrams under appropriate specified conditions. The proposed change does not revise any safety margin requirements. The replacement APRM/RBM equipment has improved channel trip accuracy compared to the current system, and meets or exceeds system requirements previously assumed in setpoint analysis. Thus, the ability of the new equipment to enforce compliance with margins of safety equals or exceeds the ability of the equipment which it replaces. Therefore, the proposed changes do not involve a reduction in a margin of safety.

ARTS/MELLL Changes: Operation in the MELLL region does not affect the ability of the plant safety-related trips or equipment to perform their functions, nor does it cause any significant increase in offsite radiation doses resulting from any analyzed event. Analyses have demonstrated that, for operation in the MELLL region, adequate margin to design limits is maintained. Implementation of the ARTS improvements provides flow- and power-dependent thermal limits which maintain existing margins of safety in normal operation, anticipated operational occurrences, and accident events. Implementation of power-biased RBM setpoints improves the margin of safety in a postulated Rod Withdraw Error (RWE) by assuring that the RWE is not a limiting event. Thus, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: December 18, 2003.

Brief description of amendments: The proposed amendments would revise Technical Specification (TS) 3.9.6, ''Residual Heat Removal (RHR) and Coolant Circulation Low Water Level'' to correct completion times for Actions B.2 and B.3. Action B.2 should have a completion time of immediately and Action B.3 should have a completion time of 4 hours.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR), Section 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change is considered to be a correction of an editorial error. The proposed revision to TS 3.9.6 is consistent with the current CPSES [Comanche Peak Steam Electric Station] licensing basis. Therefore the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change is considered to be an editorial correction and does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed change is considered to be an editorial correction and does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: December 31, 2003.

Brief description of amendments: The proposed amendments would revise Technical Specification (TS) 3.8.1, ''AC Sources—Operating'' to extend the allowable completion times for the required actions associated with restoration of an inoperable diesel generator (DG) and an inoperable offsite circuit (*i.e.*, startup transformer). The proposed amendments will also revise TS 3.8.9, ''Distribution Systems—Operating'' to extend the allowable completion times for the required actions associated with restoration of an inoperable alternating current (AC) electrical power distribution system (*i.e.*, 6.9 kV AC safety bus).

Basis for proposed no significant hazards consideration determination: As required by title 10 of the Code of Federal Regulations (10 CFR), Section 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed Technical Specification changes do not significantly increase the probability of occurrence of a previously evaluated accident because the 6.9 kV AC components (*i.e.*, Diesel Generators (DGs), startup transformers (STs), and safety-related (Class 1E) busses) are not initiators of previously evaluated accidents involving a loss of offsite power. The proposed changes to the Technical Specification Action Completion Times do not affect any of the assumptions used in the deterministic or the Probabilistic Safety Assessment (PSA) analysis[.]

The proposed Technical Specification changes will continue to ensure the 6.9 kV AC components perform their function when called upon. Extending the Technical Specification Completion Times to 10 days does not affect the design of the DGs, the operational characteristics of the DGs, the interfaces between the DGs and other plant systems, the function, or the reliability of the DGs. Thus, the DGs will be capable of performing either accident mitigation function and there is no impact to the radiological consequences of any accident analysis. To fully evaluate the effect of the changes to the 6.9 kV AC components, Probabilistic Safety Analysis (PSA) methods and deterministic analysis were utilized. The results of this analysis show no significant increase in the Core Damage Frequency.

The Configuration Risk Management Program (CRMP) in Technical Specification 5.5.18 is an administrative program that

assesses risk based on plant status. Adding the requirement to implement the CRMP for Technical Specification 3.8.1 and 3.8.9 requires the consideration of other measures to mitigate consequences of an accident occurring while a 6.9 kV AC component is inoperable.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not result in a change in the manner in which the electrical distribution subsystems provide plant protection. There are no design changes associated with the proposed changes. The changes to Completion Times do not change any existing accident scenarios, nor create any new or different accident scenarios.

The changes do not involve a physical alteration of the plant (*i.e.*, no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not impacted by these changes. The proposed changes will not result in plant operation in a configuration outside the design basis. The calculated impact on risk is insignificant and is consistent with the acceptance criteria contained in Regulatory Guides 1.174 and 1.177. The proposed activities involve[] changes to certain Completion Times. The proposed changes remain bounded by the existing Surveillance Requirement Completion Times and therefore have no impact to the margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: June 27, 2003, as revised by letter dated December 19, 2003, (previously published in the **Federal Register** on July 22, 2003 [68 FR 43396]).

Description of amendment request: The licensee's letter dated December 19, 2003, revises the original amendment application dated June 27, 2003. The original amendment request was described as that which would revise the Technical Specifications (TSs) to (1) extend the allowed outage time (AOT) or required action completion time (CT) for an inoperable diesel generator (DG) by adding the phrase ''*OR* 108 hours once per cycle for each DG'' to the completion time for Required Action B.4 in TS 3.8.1, ''AC Sources-Operating,'' and (2) delete the second CT given in certain required actions in TS 3.6.6, ''Containment Spray and Cooling Systems;'' TS 3.7.5, ''Auxiliary Feedwater (AFW) System;'' TS 3.8.1; and TS 3.8.9, ''Distribution System—Operating.'' The revised application dated December 19, 2003, requests changes to only Required Actions A.3 and B.4 for TS 3.8.1 to extend the AOT, or required action CT, for an inoperable DG.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes for increasing the ''second'' Completion Times under TS 3.8.1 do not affect the design, operational characteristics, or intended functions of the equipment addressed by TS 3.8.1. With no direct effects on the subject equipment (or any other plant equipment or features), the proposed ''second'' Completion Time changes are not associated with any initiating condition for any accident previously evaluated, and therefore would not affect the probability of such accidents. Further, the consequences of evaluated accidents are independent of mitigating equipment allowed outage times as long as adequate availability of the equipment is ensured.

''Second'' Completion Times are primarily administrative in nature and are only intended to prevent successive, overlapping or contiguous entries and exits from Conditions within a Technical Specification LCO [Limiting Condition for Operation], which could otherwise result in an extended period of time for which the LCO is not met. The new, extended ''second'' Completion Times preserve this intent and were determined by the same method used to establish the original/existing second Completion Time limits, albeit with a longer, risk-informed Completion Time established for an inoperable diesel generator.

The proposed changes to the ''second'' Completion Times of TS 3.8.1 support the extended Completion Time/AOT specified for an inoperable diesel generator as proposed in AmerenUE's June 27, 2003 amendment application (Reference 1 [in AmerenUE's revised application dated December 19, 2003]). The acceptability and conformance to regulatory guidance for that change is addressed in [AmerenUE's June 27, 2003 amendment application], and the conclusions reached therein, including those reached with respect to significant hazards consideration, remain unchanged for that proposed change.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are primarily administrative in nature and do not involve a change in the design, configuration, or operational characteristics of the plant.

No physical alteration of the plant is involved, as no new or different type of equipment is to be installed. The changes do not alter any assumptions made in the safety analyses, and no alteration in the procedures for ensuring that the plant remains within analyzed limits is involved. As such, no new failure modes or mechanisms that could cause a new or different kind of accident from any previously evaluated are being introduced.

Therefore, the proposed changes do not create the possibility of a new or different accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes to the affected second Completion Times do not alter the manner in which safety limits or limiting safety system settings are determined. The safety analysis acceptance criteria are not impacted by [these] change[s], and the proposed changes will not permit plant operation in a configuration [that is] outside the design basis.

The proposed, extended second Completion Time limits were established in the same manner as the original limits, and meet the same intent, except that a longer risk-informed DG AOT has been used to establish the proposed second Completion Time limits[.] The basis and acceptability of that time limit is addressed in the June 27, 2003 amendment application (as supported by this supplemental/revision[, dated December 19, 2003]), and the conclusions reached therein still apply, including those reached with respect to [no] significant hazards consideration. [The June 27, 2003, amendment application stated: ''Further, with regard to plant risk, the risk assessment performed for the DG AOT extension determined that the quantifiable increase in plant risk is acceptably small.'']

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Section Chief: Stephen Dembek.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: December 15, 2003.

Description of amendment request: The amendment would revise Technical Specifications (TSs) 3.3.9, ''Boron Dilution Mitigation System (BDMS),'' and 3.9.2, ''Unborated Water Source Isolation Valves.'' The proposed changes would replace the phrase ''unborated water'' by the word ''dilution'' in several places and delete references to isolation valves BGV0178 and BGV0601. A Note would also be added to TS 3.9.2 about dilution source path valves may be unisolated.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a significant increase in the probability or consequences of an inadvertent boron dilution accident by isolating the BTRS [boron thermal regeneration system] anion resin vessels in MODE 6 or by isolating the purge line for detector SJRE001 during flushing activities in MODE 6. By recognizing these potential dilution sources and by making TS 3.3.9 and TS 3.9.2 more generic for consideration of all potential dilution sources, plant administrative controls are revised such that the plant is put in a safer condition than before. Specific isolation [valve numbers] are removed from TS 3.3.9 and TS 3.9.2. They are relocated from the [Technical] Specifications to the appropriate TS Bases. This is an administrative only change and is consistent with the [Improved] Standard Technical Specifications, NUREG–1431[, that the Callaway Technical Specifications are based upon]. Allowing a dilution source path to be unisolated under administrative controls, described in TS Bases 3.9.1 during refueling decontamination activities, is acceptable as allowed by Amendment [No.] 97 to the Callaway Operating License and does not involve a significant increase in the probability or consequences of an inadvertent boron dilution accident.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident. Although other potential dilution sources are identified for administrative control, the evaluation of a MODE 6 dilution event remains unchanged. Isolating the BTRS anion vessels or isolating the purge line for detector SJRE001 during flushing activities in MODE 6 and making TS 3.3.9 and TS 3.9.2 more generic does not impact the operability of any safety related equipment required for plant operation. No new equipment will be added and no new limiting single failures are created. The plant will continue to be operated within the envelope of the existing safety analysis. In addition specific isolation [valve numbers] are removed from TS 3.3.9 and TS 3.9.2. They are relocated from the [Technical] Specifications to the appropriate TS Bases. This is an administrative only change and is consistent with the [Improved] Standard Technical Specifications, NUREG–1431 [, that the Callaway Technical Specifications are based upon]. Allowing a dilution source path to be unisolated under administrative controls, described in TS Bases 3.9.1 during refueling decontamination activities, is acceptable as allowed by Amendment [No.] 97 to the Callaway Operating License and does not create the possibility of a new or different kind of inadvertent boron dilution accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not reduce the margin of safety. Although other potential dilution sources are identified for administrative control and TS 3.3.9 and TS 3.9.2 are made more generic for consideration of all potential dilution sources, the evaluated margin of safety for a dilution event in MODE 6 remains the same. Recognition of other potential dilution sources, isolation of the BTRS anion resin beds and the purge line for detector SJRE001 during flushing activities in MODE 6, places the plant in a safer condition than before. In addition specific isolation [valve numbers] are removed from TS 3.3.9 and TS 3.9.2. They are relocated from the [Technical] Specifications to the appropriate TS Bases. This is an administrative only change and is consistent with the [Improved] Standard Technical Specifications, NUREG–1431 [, that the Callaway Technical Specifications are based upon]. Finally, allowing a dilution source path to be unisolated under administrative controls, described in TS Bases 3.9.1 during refueling decontamination activities, is acceptable as allowed by Amendment [No.] 97 to the Callaway Operating License and does not involve a significant reduction in a margin of safety due to an inadvertent boron dilution event.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: December 17, 2003.

Description of amendment request: The amendment would revise Technical Specifications (TSs) 3.3.1, ''Reactor Trip System (RTS) Instrumentation,'' 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation,'' and 3.3.9, ''Boron Dilution Mitigation System (BDMS).'' The purpose of the amendment is to adopt the completion time, test bypass time, and surveillance frequency time changes approved by the NRC in Topical Reports WCAP–14333–P–A, ''Probabilistic Risk Analysis of the RPS [reactor protection system] and ESFAS Test Times and Completion Times,'' and WCAP–15376–P–A, ''Risk-Informed Assessment of the RTS and ESFAS Surveillance Test Intervals and Reactor Trip Breaker Test and Completion Times.'' The proposed changes would revise the required actions for certain action conditions; increase the completion times for several required actions (including some notes); delete notes in certain required actions; increase frequency time intervals (including certain notes) in several surveillance requirements (SRs); add an action condition and required actions; revise notes in certain SRs; and revise Table 3.3.2–1. There are also several administrative corrections to the format of the TSs (*e.g.*, moving the ''AND'' in the required actions for Condition O in TS 3.3.2).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since no hardware changes are proposed. The same

reactor trip system (RTS) and engineered safety feature actuation system (ESFAS) instrumentation will continue to be used. The protection systems will continue to function in a manner consistent with the plant design basis. These changes to the Technical Specifications [in the amendment] do not result in a condition where the design, material, and construction standards that were applicable prior to the change are altered.

The proposed changes will not modify any system interface. The proposed changes will not affect the probability of any event initiators [because the proposed changes are not event initiators]. There will be no degradation in the performance of or an increase in the number of challenges imposed on safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance. The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR [Callaway Final Safety Analysis Report].

The determination that the results of the proposed changes are acceptable [to be considered for plant-specific Technical Specifications] was established in the NRC Safety Evaluations prepared for WCAP–14333–P–A (issued by letter dated July 15, 1998) and for WCAP–15376–P–A (issued by letter dated December 20, 2002). Implementation of the proposed changes will result in an insignificant risk impact. Applicability of these conclusions has been verified through plant-specific reviews and implementation of the generic analysis results in accordance with the respective NRC Safety Evaluation conditions [for the two WCAPs].

The proposed changes to the Completion Times, test bypass times, and Surveillance Frequencies reduce the potential for inadvertent reactor trips and spurious ESF [engineered safety feature] actuations, and therefore do not increase the probability of any accident previously evaluated. The proposed changes do not change the response of the plant to any accidents and have an insignificant impact on the reliability of the RTS and ESFAS signals. The RTS and ESFAS will remain highly reliable and the proposed changes will not result in a significant increase in the risk of plant operation. This is demonstrated by showing that the impact on plant safety as measured by the increase in core damage frequency (CDF) is less than 1.0E–06 per year and the increase in large early release frequency (LERF) is less than 1.0E–07 per year. In addition, for the Completion Time changes, the incremental conditional core damage probabilities (ICCDP) and incremental conditional large early release probabilities (ICLERP) are less than 5.0E–07 and 5.0E–08, respectively. These changes meet the acceptance criteria in Regulatory Guides 1.174 and 1.177. Therefore, since the RTS and ESFAS will continue to perform their [safety] functions with high reliability as originally assumed, and the increase in risk as measured by ΔCDF, ΔLERF, ICCDP, ICLERP risk metrics is within the acceptance criteria of existing [NRC] regulatory guidance, there will not be a significant increase in the consequences of any accidents.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended [safety] function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. The proposed changes are consistent with safety analysis assumptions and resultant consequences.

Therefore, [the] change[s do] not increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. The proposed changes will not affect the normal method of plant operation. No performance requirements will be affected or eliminated. The proposed changes will not result in physical alteration to any plant system nor will there be any change in the method by which any safety-related plant system performs its safety function. There will be no setpoint changes or changes to accident analysis assumptions.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of these changes. There will be no adverse effect or challenges imposed on any safety-related system as a result of these changes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not affect the acceptance criteria for any analyzed event nor is there a change to any Safety Analysis Limit (SAL). There will be no effect on the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, DNBR [departure from nucleate boiling ratio] limits, F_Q [heat flux hot channel factor], FΔH [nuclear enthalpy rise hot channel factor], LOCA PCT [loss-of-coolant accident peak cladding temperature], peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the [NRC] Standard Review Plan will continue to be met.

Redundant RTS and ESFAS trains are maintained, and diversity with regard to the signals that provide reactor trip and engineered safety features actuation is also maintained. All signals credited as primary or secondary, and all operator actions credited in the accident analyses will remain the same. The proposed changes will not result in plant operation in a configuration outside the design basis. The calculated impact on risk is insignificant and meets the acceptance criteria contained in Regulatory Guides 1.174 and 1.177. Although there was no attempt to quantify any positive human factors benefit due to increased Completion Times and bypass test times, it is expected that there would be a net benefit due to a reduced potential for spurious reactor trips and actuations associated with testing.

Implementation of the proposed changes is expected to result in an overall improvement in safety, as follows:

(a) Reduced testing will result in fewer inadvertent reactor trips, less frequent actuation of ESFAS components, less frequent distraction of operations personnel without significantly affecting RTS and ESFAS reliability.

(b) Improvements in the effectiveness of the operating staff in monitoring and controlling plant operation will be realized. This is due to less frequent distraction of the operators and shift supervisor to attend to instrumentation Required Actions with short Completion Times.

(c) Longer repair times associated with increased Completion Times will lead to higher quality repairs and improved reliability.

(d) The Completion Time extensions for the reactor trip breakers will provide the utilities additional time to complete test and maintenance activities while at power, potentially reducing the number of forced outages related to compliance with reactor trip breaker Completion Times, and provide consistency with the Completion Times for the logic trains.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 15, 2003.

Description of amendment request: The licensee is proposing to revise Technical Specification (TS) Section 3.3.1, ''Reactor Trip System (RTS)

Instrumentation,'' and TS 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation,'' to adopt completion time, test bypass time (in Notes for several Required Actions), and surveillance frequency changes approved by the NRC in WCAP–14333–P–A, Revision 1, ''Probabilistic Risk Analysis of the RPS and ESFAS Test Times and Completion Times,'' dated October 1998, and WCAP–15376–P–A, Revision 1, ''Risk-Informed Assessment of the RTS and ESFAS Surveillance Test Intervals and Reactor Trip Breaker Test and Completion Times,'' dated March 2003.

As part of this amendment, for TS 3.3.1, the Required Actions for Condition D, one power range neutron flux-high channel inoperable, are revised, and a Note for the Required Actions for Condition R is deleted.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since no hardware changes are proposed. The same reactor trip system (RTS) and engineered safety feature actuation system (ESFAS) instrumentation will continue to be used. The protection systems will continue to function in a manner consistent with the plant design basis. These changes to the Technical Specifications do not result in a condition where the design, material, and construction standards that were applicable prior to the change are altered.

The proposed changes will not modify any system interface. The proposed changes will not affect the probability of any event initiators. There will be no degradation in the performance of or an increase in the number of challenges imposed on safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance. The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the USAR [Updated Safety Analysis Report].

The determination that the results of the proposed changes are acceptable was established in the NRC Safety Evaluations prepared for WCAP–14333–P–A (issued by letter dated July 15, 1998) and for WCAP–15376–P–A (issued by letter dated December 20, 2002). Implementation of the proposed changes will result in an insignificant risk impact. Applicability of these conclusions has been verified through plant-specific reviews and implementation of the generic analysis results in accordance with the respective NRC Safety Evaluation conditions.

The proposed changes to the Completion Times, test bypass times, and Surveillance Frequencies reduce the potential for inadvertent reactor trips and spurious ESF [engineered safety feature] actuations, and therefore do not increase the probability of any accident previously evaluated. The proposed changes do not change the response of the plant to any accidents and have an insignificant impact on the reliability of the RTS and ESFAS signals. The RTS and ESFAS will remain highly reliable and the proposed changes will not result in a significant increase in the risk of plant operation. This is demonstrated by showing that the impact on plant safety as measured by the increase in core damage frequency (CDF) is less than 1.0E–06 per year and the increase in [the] large early release frequency (LERF) is less than 1.0E–07 per year. In addition, for the Completion Time changes, the incremental conditional core damage probabilities (ICCDP) and incremental conditional large early release probabilities (ICLERP) are less than 5.0E–07 and 5.0E–08, respectively. These changes meet the acceptance criteria in Regulatory Guides 1.174 and 1.177. Therefore, since the RTS and ESFAS will continue to perform their functions with high reliability as originally assumed, and the increase in risk as measured by ΔCDF, ΔLERF, ICCDP, ICLERP risk metrics is within the acceptance criteria of existing regulatory guidance, there will not be a significant increase in the consequences of any accidents.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. The proposed changes are consistent with safety analysis assumptions and resultant consequences.

Therefore, [the proposed changes do] not increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. The proposed changes will not affect the normal method of plant operation. No performance requirements will be affected or eliminated. The proposed changes will not result in [a] physical alteration to any plant system nor will there be any change in the method by which any safety-related plant system performs its safety function. There will be no setpoint changes or changes to accident analysis assumptions.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of these changes. There will be no adverse effect or challenges imposed on any safety-related system as a result of these changes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not affect the acceptance criteria for any analyzed event nor is there a change to any Safety Analysis Limit (SAL). There will be no effect on the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, DNBR limits, F_Q, FΔH, LOCA [loss-of-coolant accident] PCT [peak cladding temperature], peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

Redundant RTS and ESFAS trains are maintained, and diversity with regard to the signals that provide reactor trip and engineered safety features actuation is also maintained. All signals credited as primary or secondary, and all operator actions credited in the accident analyses will remain the same. The proposed changes will not result in plant operation in a configuration outside the design basis. The calculated impact on risk is insignificant and meets the acceptance criteria contained in Regulatory Guides 1.174 and 1.177. Although there was no attempt to quantify any positive human factors benefit due to increased Completion Times and bypass test times, it is expected that there would be a net benefit due to a reduced potential for spurious reactor trips and actuations associated with testing.

Implementation of the proposed changes is expected to result in an overall improvement in safety, as follows:

(a) Reduced testing will result in fewer inadvertent reactor trips, less frequent actuation of ESFAS components, [and] less frequent distraction of operations personnel without significantly affecting RTS and ESFAS reliability.

(b) Improvements in the effectiveness of the operating staff in monitoring and controlling plant operation will be realized. This is due to less frequent distraction of the operators and shift supervisor to attend to instrumentation Required Actions with short Completion Times.

(c) Longer repair times associated with increased Completion Times will lead to higher quality repairs and improved reliability.

(d) The Completion Time extensions for the reactor trip breakers will provide the utilities additional time to complete test and maintenance activities while at power, potentially reducing the number of forced outages related to compliance with reactor trip breaker Completion Times, and provide consistency with the Completion Times for the logic trains.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action *see* (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1(800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: January 29, 2003, as supplemented by letter dated September 15, 2003.

Brief description of amendment: The amendment proposes a one-time Technical Specification change to extend the test interval for the next Appendix J Type A test and the next drywell bypass leakage rate test from 10 to 15 years.

Date of issuance: January 8, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 160.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 10, 2003 (68 FR 34661).

The supplemental letter of September 15, 2003, contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** Notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 8, 2004.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: May 29, 2003.

Brief description of amendments: The amendments revised the Updated Final Safety Analysis Report to implement the Boiling Water Reactor Vessel and Internals Project reactor pressure vessel integrated surveillance program as the basis for demonstrating compliance with the requirements of Appendix H to 10 CFR part 50.

Date of issuance: January 14, 2004.

Effective date: As of the date of issuance.

Amendment Nos.: 229 and 257.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments revised the Updated Final Safety Analysis Report.

Date of initial notice in ***Federal Register:*** August 19, 2003 (68 FR 49814).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 14, 2004.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: October 10, 2003, as supplemented December 30, 2003.

Brief description of amendment: The amendment revises Technical Specification (TS) 3.7.3, ''Control Room Emergency Filtration (CREF) System,'' Surveillance Requirement (SR) 3.7.3.6, to permit a one-time deferral of SR 3.7.3.6 until startup from the next refueling outage (RF–10) to preclude a mid-cycle shutdown solely for the performance of this SR. SR 3.7.3.6 requires verifying that unfiltered in-leakage from CREF system duct work outside the control room envelope that is at negative pressure during accident conditions is within limits. This SR is required to be performed every 36 months, and can be performed only when the CREF system is not required to be OPERABLE (*i.e.*, in MODES 4 or 5, with no operations with a potential for draining the reactor vessel and with no fuel movement of recently irradiated fuel in progress).

Date of issuance: January 16, 2004.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 158.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 25, 2003 (68 FR 66134).

The December 30, 2003, supplemental letter provided additional clarifying information that was within the scope of the original application and did not change the Nuclear Regulatory Commission staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 16, 2004.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: March 24, 2003, as supplemented by letters dated June 25 and October 15, 2003.

Brief description of amendments: The amendments revise the Technical Specifications (TS) to relocate certain reactor coolant system cycle-specific parameter limits from the TSs to the Core Operating Limits Report, and revises the minimum allowable reactor coolant system flow rate.

Date of issuance: January 14, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 219 and 201.

Renewed Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 18, 2003 (68 FR 54749), November 18, 2003 (68 FR 65090).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 14, 2004.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: November 14, 2002, as supplemented by letter dated April 14, 2003.

Brief description of amendments: The amendments revised the Technical Specification 3.3.1 ''Reactor Protective System (RPS) Instrumentation,'' Surveillance Requirement 3.3.1.3 to add a correlation slope to the formula for axial power imbalance error.

Date of Issuance: January 15, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 337, 337 and 338.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 10, 2002 (67 FR 75870).

The supplement dated April 14, 2003, provided clarifying information that did not change the scope of the November 14, 2002, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 15, 2004.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: July 1, 2003, as supplemented December 10, 2003.

Brief description of amendments: The amendments revise Appendix A, Technical Specifications (TS), of Facility Operating License Nos. NPF–11 and NPF–18. Specifically, the changes delete one and add two references to the list of analytical methods in TS 5.6.5, ''Core Operating Limits Report (COLR),'' that can be used to determine core operating limits. The deleted reference is to an analytical method that is no longer applicable to LaSalle County Station (LSCS). The new references will allow LSCS to use General Electric Company (GE) methods for the determination of fuel assembly critical power of Framatome Advanced Nuclear Fuel, Inc. (Framatome) Atrium-9B and Atrium-10 fuel. The changes are the result of a LSCS decision to insert GE14 fuel during the upcoming refueling outage at LSCS Unit 1 in January 2004. GE's safety analysis methodologies have been previously used at LSCS and GE14 fuel is currently in use at other Exelon Generation Company, LLC (Exelon), stations.

The first added reference, ''GEXL96 Correlation for Atrium-9B Fuel,'' lists a method that was previously approved by the NRC for use by licensees. The second added reference, ''GEXL97 Correlation for Atrium-10 Fuel,'' lists a GE method for determining the critical power for Atrium-10 fuel. This correlation had not been previously reviewed and approved by the NRC for use by licensees. Additionally, editorial changes are made to existing references.

Date of issuance: January 9, 2004.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 164 and 150.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2003 (68 FR 64135). The supplement dated December 10, 2003, provided clarifying information that did not change the scope of the July 1, 2003, application nor the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 9, 2004.

No significant hazards consideration comments received: No.

GPU Nuclear Corporation and Saxton Nuclear Experimental Corporation (SNEC), Docket No. 50–146, Saxton Nuclear Experimental Facility (SNEF)

Date of application for amendment: April 22, 2002, as supplemented on December 5, 2002, and September 30 and December 22, 2003.

Brief description of amendment: The amendment allows removal of the upper half of the SNEF containment vessel and makes a change to the organization to add the position of Vice-President GPU Nuclear Oversight to reflect the merger of GPU Inc. and FirstEnergy Corp.

Date of Issuance: January 9, 2004.

Effective Date: January 9, 2004.

Amendment No.: 19.

Amended Facility License No. DPR–4: Amendment changed the Technical Specifications.

Date of initial notice in the ***Federal Register:*** January 7, 2003, with a correction notice published on January 22, 2003. The letters of September 30 and December 22, 2003, supplied clarifying information that did not expand the scope of the January 5, 2003, or January 22, 2003, **Federal Register** Notices. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 9, 2004.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: October 17, 2002, as supplemented December 10, 2003.

Brief description of amendment: The amendment revises Technical Specification Table 3.3.1–2 by modifying a constant in the variable thermal margin/low pressure (TM/LP) trip equation. The change reduces calculated values for the variable TM/LP trip setpoint, and results from improvements in plant equipment used to establish the TM/LP trip setpoint. Ultrasonic feedwater flow measurement devices, which were recently installed at Palisades, result in less uncertainty applied in the methodology used for determining core power level. The devices used to calculate the TM/LP trip setpoint were previously replaced with digital thermal margin monitors having less uncertainty.

Date of issuance: January 8, 2004.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 214.

Facility Operating License No. DPR–20. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 2, 2003 (68 FR 52235).

The December 10, 2003, letter provided additional information in support of the initial application, did not expand the scope of the application as originally noticed, and did not effect the NRC's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 8, 2004.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: July 18, 2003, as revised by letter dated August 28, 2003, and supplemental letters dated October 31 and December 15, 2003.

Brief description of amendment: The amendment revises the renewed operating license and technical specifications to increase the licensed rated power by 1.6 percent from 1500 megawatts thermal (MWt) to 1524 MWt.

Date of issuance: January 16, 2004.

Effective date: January 16, 2004, and shall be implemented within 30 days of the date of issuance. Modifications associated with the measurement uncertainty recapture power uprate will be completed prior to implementation. This includes: (1) Implementation of control room alarm functions, and (2) Figure 2–1 of the Pressure-Temperature Limits Report will be revised prior to the reactor vessel reaching 39.9 effective full power years of operation.

Amendment No.: 224.

Renewed Facility Operating License No. DPR–40: The amendment revised the Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** September 18, 2003 (68 FR 54751).

The October 31 and December 15, 2003, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 16, 2004.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of application for amendment: December 4, 2002, as supplemented by letters dated June 24, and October 23, 2003.

Brief description of amendment: The amendment revised the Technical Specification regarding the turbine building high temperature primary containment isolation value specified in Table 3.3.6.1–1, Item 1f.

Date of issuance: January 12, 2004.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 181.

Renewed Facility Operating License No. NPF–5: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 21, 2003 (68 FR 2807).

The supplements dated June 24 and October 23, 2003, provided clarifying information that did not change the scope of the December 4, 2002, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 12, 2004.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: February 26, 2003, as supplemented by letter dated July 25, 2003.

Brief description of amendments: The amendments revised the Technical Specifications Section 5.5.17, ''Containment Leakage Rate Testing Program,'' to reflect a one time deferral of the Type-A Containment Integrated Leak Rate Test (ILRT). The 10-year interval between ILRTs is to be extended to 15 years from the previous ILRTs that were completed in March 2002 for Unit 1 and March 1995 for Unit 2.

Date of issuance: January 12, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 130 and 108.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 13, 2003 (68 FR 25658).

The supplement dated July 25, 2003, provided clarifying information that did not change the scope of the February 26, 2003, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 12, 2004.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 26th day of January 2004.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–2017 Filed 2–2–04; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Railroad Unemployment Insurance Act Applications.

(2) *Form(s) submitted:* SI–1a, SI–1b, SI–3, SI–7, SI–8, ID–7H, ID–11A, ID–11–B.

(3) *OMB Number:* 3220–0039.

(4) *Expiration date of current OMB clearance:* 5/31/2004.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households, Business or other for-profit.

(7) *Estimated annual number of respondents:* 44,600.

(8) *Total annual responses:* 260,900.

(9) *Total annual reporting hours:* 26,321.

(10) *Collection description:* Under section 2 of the Railroad Unemployment Insurance Act, sickness benefits are payable to qualified railroad employees who are unable to work because of

illness or injury. The collection obtains information from railroad employees and physicians needed to determine eligibility to and the amount of such benefits.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312) 751–3363 or *Charles.Mierzwa@RRB.GOV*.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@RRB.GOV* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 04–2081 Filed 2–2–04; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Boardwalk Equities Inc. To Withdraw Its Common Stock, No Par Value, From Listing and Registration on the New York Stock Exchange, Inc. File No. 1–15162

January 27, 2004.

Boardwalk Equities Inc., an Alberta, Canada corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, no par value (''Security''), from listing and registration on the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of NYSE by complying with all applicable laws in effect in the Province of Alberta, in which it is incorporated, and with the NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

The Board of Directors (''Board'') of the Issuer approved a resolution on January 8, 2004 to withdraw the Issuer's Security from listing on the NYSE. The Issuer states that the primary reason for the Board's decision to withdraw its Security from the NYSE is the increased regulatory burden and expense to the Issuer if the Security were to remain listed on the NYSE. The Board recognized that the holders of the Security would continue to enjoy liquidity in their investment since the Security is, and will continue to be, listed on the Toronto Stock Exchange.

Any interested person may, on or before February 18, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters should refer to File No. 1–15162. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–2093 Filed 2–2–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49137; File No. S7–24–89]

Joint Industry Plan; Notice of Filing of Amendment No.13A of the Reporting Plan for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, Submitted by the National Association of Securities Dealers, Inc., the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the Pacific Exchange, Inc., the American Stock Exchange LLC, and the Philadelphia Stock Exchange, Inc.

January 28, 2004.

I. Introduction

Pursuant to Rule 11Aa3–2[1] and Rule 11Aa3–1[2] under the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''), notice is hereby given that on October 31, 2003, the Cincinnati Stock Exchange, Inc. (''CSE'') on behalf of itself and the National Association of Securities Dealers, Inc. (''NASD''), the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Stock Exchange, Inc. (''CHX''), the Pacific Exchange, Inc. (''PCX''), and the Philadelphia Stock Exchange, Inc. (''PHLX'') (hereinafter referred to as ''Participants''), as members of the operating committee (''Operating Committee'' or ''Committee'')[3] of the Plan submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposal to amend the Plan (''13A Amendment'').[4] The proposal reflects several changes unanimously adopted by the Committee.[5] The Commission is publishing this notice to solicit comments from interested persons on the 13A Amendment generally.

II. Plan Background

The Plan governs the collection, consolidation, and dissemination of quotation and transaction information for The Nasdaq Stock Market, Inc. (''Nasdaq'') National Market (''NNM'') and Nasdaq SmallCap securities listed on Nasdaq or traded on an exchange pursuant to unlisted trading privileges (''UTP'').[6] The Plan provides for the collection from Plan Participants and the consolidation and dissemination to vendors, subscribers, and others of quotation and transaction information

[1] 17 CFR 240.11Aa3–2.

[2] 17 CFR 240.11Aa3–1.

[3] The Committee is made up of all the Participants.

[4] The Commission notes that CSE recently changed its name to National Stock Exchange. However, a Plan amendment that would change the name of CSE to National Stock Exchange for Plan purposes has not been submitted to the Commission. *See* Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003) (File No. SR–CSE–2003–12).

[5] CSE was chair of the Operating Committee at the time the 13A Amendment was filed with the Commission. Subsequently, PCX and its subsidiary the Archipelago Exchange were elected co-chairs of the Operating Committee for the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (''Nasdaq UTP Plan'' or ''Plan'') by the Participants.

[6] Section 12 of the Act generally requires an exchange to trade only those securities that the exchange lists, except that Section 12(f) of the Act permits UTP under certain circumstances. For example, Section 12(f) of the Act, among other things, permits exchanges to trade certain securities that are traded over-the-counter (''OTC/UTP''), but only pursuant to a Commission order or rule. For a more complete discussion of the Section 12(f) requirement, *see* November 1995 Extension Order, *infra* note 9.

in ''eligible securities.'' [7] The Plan contains various provisions concerning its operation, including the following: Implementation of the Plan; Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information; Reporting Requirements (including hours of operation); Standards and Methods of Ensuring Promptness, Accuracy and Completeness of Transaction Reports; Terms and Conditions of Access; Description of Operation of Facility Contemplated by the Plan; Method and Frequency of Processor Evaluation; Written Understandings of Agreements Relating to Interpretation of, or Participation in, the Plan; Calculation of the Best Bid and Offer (''BBO''); Dispute Resolution; and Method of Determination and Imposition, and Amount of Fees and Charges.

The Commission originally approved the Plan on a pilot basis on June 26, 1990.[8] The parties did not begin trading until July 12, 1993, accordingly, the pilot period commenced on July 12, 1993. The Plan has since been in operation on an extended pilot basis.[9]

By way of background, the Operating Committee submitted the Amendment No. 13 to the Nasdaq UTP Plan (''13th Amendment'') to address amendments related to (1) The Nasdaq Stock Market, Inc.'s (''Nasdaq'') separation from NASD and anticipated registration as a national securities exchange, and (2) the implementation of an Internal Securities Information Processor (''Internal SIP'') designed to separate Nasdaq's functions as a securities market from its functions as the securities information processor (''SIP'' or ''Processor'') for the Nasdaq UTP Plan. The Internal SIP began operating in July 2002. The Legacy securities information processing system application (the ''Legacy SIP'') operated in parallel with this new system until March 31, 2003. In addition, certain other changes raised during the Operating Committee deliberations were proposed as part of Amendment 13. The changes in the 13th Amendment were grouped in four categories:

Category 1: changes that would become effective upon Nasdaq's exchange registration;

Category 2: changes that would become effective upon the launch of the Internal SIP;

Category 3: changes that would become effective upon the end of the parallel period and the elimination of the Legacy SIP; and

Category 4: changes where timing was not an issue.

The changes detailed in Categories 2, 3 and 4 were approved by the Commission.[10] The changes detailed in Category 1 have not been approved because Nasdaq's exchange registration has not been approved.

The NASD, acting through its subsidiary, Nasdaq, proposed the 13A Amendment to address changes to the Plan related to the elimination of the Legacy SIP. As a condition to its decision to sunset the operation of the Legacy SIP on March 31, 2003, the Operating Committee determined to adopt the proposed changes contained in the 13A Amendment. As described below, the current proposed 13A Amendment also affects certain changes proposed in the 13th Amendment, Category 1 revisions currently pending approval with the Commission.[11]

III. Description and Purpose of the Amendment

The proposed text of the Plan, as amended, is attached as Exhibit A. These proposed changes are intended to clarify the operation of the Internal SIP pending Nasdaq's exchange registration. The following is a summary of the changes to the Plan proposed in the 13A Amendment.

1. Section III.T. of the Plan,[12] which defines ''Quotation Information,'' would be amended to reflect that both the NASD Alternative Display Facility and the Nasdaq markets send individual market participant information to the Processor.[13]

2. Section III.Z. of the Plan would redefine ''NQDS.'' [14] ''NQDS'' will now be defined as ''the data stream of information that provides the best quotations and sizes from each Nasdaq Participant.'' In addition, Section III.Z. would add a definition for ''Nasdaq Participant,'' which is ''an entity that is registered as a market maker or an electronic communications network in Nasdaq or otherwise utilizes the facilities of Nasdaq pursuant to

[7] The Plan defines ''Eligible Securities'' as any NNM or Nasdaq SmallCap listed security, as defined in Nasdaq Rule 4200: (i) As to which UTP have been granted to a national securities exchange pursuant to Section 12(f) of the Act; or (ii) which also is listed on a national securities exchange other than Nasdaq. Moreover, the definition states that ''Eligible Securities'' shall not include any security that is defined in an ''Eligible Security'' within Section VII of the Consolidated Tape Association Plan.

[8] *See* Securities Exchange Act Release No. 28146, 55 FR 27917 (July 6, 1990) (''1990 Plan Approval Order'').

[9] *See* Securities Exchange Act Release Nos. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994); 35221 (January 11, 1995), 60 FR 3886 (January 19, 1995); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995); 36226 (September 13, 1995), 60 FR 49029 (September 21, 1995); 36368 (October 13, 1995), 60 FR 54091 (October 19, 1995); 36481 (November 13, 1995), 60 FR 58119 (November 24, 1995) (''November 1995 Extension Order''); 36589 (December 13, 1995), 60 FR 65696 (December 20, 1995); 36650 (December 28, 1995), 61 FR 358 (January 4, 1996); 36934 (March 6, 1996), 61 FR 10408 (March 13, 1996); 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996); 37689 (September 16, 1996), 61 FR 50058 (September 24, 1996); 37772 (October 1, 1996), 61 FR 52980 (October 9, 1996); 38457 (March 31, 1997), 62 FR 16880 (April 8, 1997); 38794 (June 30, 1997); 62 FR 36586 (July 8, 1997); 39505 (December 31, 1997) 63 FR 1515 (January 9, 1948); 40151 (July 1, 1998) 63 FR 36979 (July 8, 1998); 40896 (December 31, 1998), 64 FR 1834 (January 12, 1999); 41392 (May 12, 1999) 64 FR 27839 (May 21, 1999) (''May 1999 Approval Order''); 42268 (December 23, 1999), 65 FR 1202 (January 6, 2000); 43005 (June 30, 2000), 65 FR 42411 (July 10, 2000); 44099 (March 23, 2001), 66 FR 17457 (March 30, 2001); 44348 (May 24, 2001), 66 FR 29610 (May 31, 2001); 44552 (July 13, 2001), 66 FR 37712 (July 19, 2001); 44694 (August 14, 2001), 66 FR 43598 (August 20, 2001); 44804 (September 17, 2001), 66 FR 48299 (September 19, 2001); 45081 (November 19, 2001), 66 FR 59273 (November 27, 2001); 44937 (October 15, 2001), 66 FR 53271 (October 19, 2001); 46139 (June 28, 2001), 67 FR 44888 (July 5, 2002); 46381 (August 19, 2002), 67 FR 54687 (August 23, 2002); 46729 (October 25, 2002), 67 FR 66685 (November 1, 2002); 48318 (August 12, 2003), 68 FR 49534 (August 18, 2003); and 48882 (December 4, 2003), 68 FR 69731 (December 15, 2003).

[10] *See* Securities Exchange Act Release Nos. 46139 (June 28, 2001 [sic]), 67 FR 44888 (July 5, 2002) (putting into effect summarily Category 2 of the 13th Amendment on a temporary basis not to exceed 120 days); and 46381 (August 19, 2002), 67 FR 54687 (August 23, 2002) (approving the extension of the Plan through August 19, 2003); and 46729 (October 25, 2002), 67 FR 66685 (November 1, 2002) (approving the amendments in Categories 2, 3 and 4 on a pilot basis through August 19, 2003, to be coterminous with the expiration of the Plan and continuing the exemption under Rule 11Aa3–2(f) under the Act, 17 CFR 240.11Aa3–2(f), from compliance with Section VI.C.1 of the Plan as required by Rule 11Aa3–2(d) under the Act, 17 CFR 240.11Aa3–2(d), *see* Securities Exchange Act Release No. 46139). *See also* Securities Exchange Act Release No. 48882 (December 4, 2003), 68 FR 69731 (December 15, 2003) (extending the Plan through December 15, 2004).

[11] *See* Securities Exchange Act Release No. 46139 (June 28, 2001), 67 FR 44888 (July 5, 2002).

[12] In the 13A Amendment, the Plan section number for ''Quotation Information'' is erroneously listed as III.R. This error was based on an anticipated renumbering of Section III, which would occur when Item 6 of the Category 1 changes to the 13th Amendment is approved.

[13] The Commission approved Nasdaq's Order Display Facility, Order Collector Facility, and Trading Platform (collectively, ''SuperMontage'') contingent upon the NASD offering a quote and trade reporting alternative thereto, subsequently named the Alternative Display Facility (''ADF''). *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (''SuperMontage Order'').

[14] NQDS had previously been defined in Section III.O. of the Plan as ''the Nasdaq Quotation Dissemination Service, a data stream of information that provides Vendors and Subscribers with quotations and sizes from all Participants and Nasdaq market participants.'' The definition in Section III.O. and related references to NQDS in the Plan were proposed to be eliminated through Item 7 of the Category 1 amendments. NQDS would be redefined in proposed Section III.Z., therefore, the conflicting reference contained in Section III.O. would be deleted. In addition, Item 7 of the pending Amendment 13, Category 1 revisions would be revised to reference Section III.Z. instead of Section III.O.

applicable NASD rules but does not include an NASD Participant as defined in Section III.G. of this Plan.'' A definition of NASD Participant would be added in Section III.G.[15] Sections III.G. through III.X. would be accordingly renumbered to Sections III.H. through III.Y.

3. Section VI.B. and VI.C.3. of the Plan would be amended to clarify who will act as the Processor for NQDS given the timing of Nasdaq's exchange registration and the appointment of an independent processor. Specifically, so long as Nasdaq is not registered as a national securities exchange but is still the Plan's Processor, these revisions would clarify that the Processor shall collect, consolidate, disseminate, and distribute the quotation information contained in NQDS. The revisions would also provide that, in the event a new Processor is selected for the Plan's other data feeds while Nasdaq's exchange registration is still pending, the Operating Committee would need to determine whether to allow Nasdaq or a third party to act as the Processor for NQDS.

4. Finally, the 13A Amendment would amend Plan Exhibit 1, which governs the distribution of revenue attributable to the sale of market data collected pursuant to the Plan. Paragraph 3 of Plan Exhibit 1 would be amended to clarify the NQDS continues to be one of the data feeds subject to Paragraph 3. It also would be amended to reflect the change in the name of the ''Level 1 Service'' to the ''UTP Quote Data Feed'' (Section III.I) and the ''Nasdaq Last Sale Information Service'' to ''UTP Trade Data Feed'' (Section M), as well as reflect the addition of the OTC Montage Data Feed (Section III.O).[16]

[15] The definition of ''NASD Participant'' in Section III.G. originally would have been added through Item 4 of the Category 1 amendments. However, because the term is necessary to distinguish between the NASD ADF and Nasdaq market participants (and is already used in various provisions of the Plan), this definition is included as part of the 13A Amendment. As a result, Item 4 of the Category 1 amendments would be removed from the list of the pending 13th Amendment changes. In addition, because NASD ADF and Nasdaq are now operating under two distinct marketplace identifiers (D and Q, respectively), Section VIII.C. of the Plan would be amended to reflect this. As a result, Item 10 of the Category 1 amendments would be removed from the list of the pending 13th Amendment changes.

[16] The change in definition of the UTP Quote, UTP Trade and OTC Montage Data Feeds was approved as part of the Category 2 amendments, but the cross-references were instead listed as part of Item 15 of the Category 1 changes). In drafting the Amendment 13A resolution, the Operating Committee assumed these changes were effective. The Processor continued to disseminate the Level 1, Level 2 and Nasdaq Last Sale Information Service for a parallel period to enable market data vendors to have a smooth transition to the new feeds. To the extent there is Plan revenue attributable to the parallel operation of these feeds, that revenue is governed by Paragraph 3 as though those terms had not been deleted.

IV. Solicitation of Comments

The Commission seeks general comments on the 13A Amendment. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–24–89. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposal that are filed with the Commission, and all written communications relating to the proposal 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. Amendment 13A is being published as Exhibit A to this proposal. Copies of the proposal will also be available for inspection and copying at the office of the Secretary of the Committee, currently located at Pacific Exchange, Inc. and Archipelago Exchange L.L.C., 100 South Wacker Drive, Suite 2000, Chicago, 60606. All submissions should be submitted by February 24, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

J. Lynn Taylor,

Assistant Secretary.

Exhibit A

Additions are *underlined*, and deletions are in [brackets]

Amendment No. 13A—Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis

The undersigned registered national securities association and national securities exchanges (collectively referred to as the ''Participants''), have jointly developed and hereby enter into this Nasdaq Unlisted Trading Privileges Plan (''Nasdaq UTP Plan'' or ''Plan'').

I. Participants

The Participants include the following:

A. Participants

1. American Stock Exchange, LLC, 86 Trinity Place, New York, New York 10006.
2. Boston Stock Exchange, 100 Franklin Street, Boston, Massachusetts 02110.
3. Chicago Stock Exchange, 440 South LaSalle Street, Chicago, Illinois 60605.
4. Cincinnati Stock Exchange, 440 South LaSalle Street, 26th Floor, Chicago, Illinois 60605.
5. National Association of Securities Dealers, Inc., 1735 K Street, NW., Washington, D.C. 20006.
6. Pacific Exchange, Inc., 301 Pine Street, San Francisco, CA 94104.
7. Philadelphia Stock Exchange, 1900 Market Street, Philadelphia, Pennsylvania 19103.

B. Additional Participants

Any other national securities association or national securities exchange, in whose market Eligible Securities become traded, may become a Participant, provided that said organization executes a copy of this Plan and pays its share of development costs as specified in Section XIII.

II. Purpose of Plan

The purpose of this Plan is to provide for the collection, consolidation and dissemination of Quotation Information and Transaction Reports in Eligible Securities from the Participants in a manner consistent with the Exchange Act.

It is expressly understood that each Participant shall be responsible for the collection of Quotation Information and Transaction Reports within its market and that nothing in this Plan shall be deemed to govern or apply to the manner in which each Participant does so.

III. Definitions

A. ''Current'' means, with respect to Transaction Reports or Quotation Information, such Transaction Reports or Quotation Information during the fifteen (15) minute period immediately following the initial transmission thereof by the Processor.

B. ''Eligible Security'' means any Nasdaq National Market or Nasdaq SmallCap security, as defined in NASD Rule 4200: (i) As to which unlisted trading privileges have been granted to a national securities exchange pursuant to Section 12(f) of the Exchange Act or which become eligible for such trading pursuant to order of the Securities and Exchange Commission; or (ii) which also is listed on a national securities exchange.

C. ''Commission'' and ''SEC'' shall mean the U.S. Securities and Exchange Commission.

D. ''Exchange Act'' means the Securities Exchange Act of 1934.

E. ''Market'' shall mean (i) when used with respect to Quotation Information, the NASD in the case of a Nasdaq market maker or a

[17] 17 CFR 200.30–3(a)(27).

Nasdaq-registered electronic communications network/alternative trading system (hereafter collectively referred to as ''Nasdaq market participants'') acting in such capacity, or the Participant on whose floor or through whose facilities the quotation was disseminated; and (ii) when used with respect to Transaction Reports, the Participant through whose facilities the transaction took place or was reported, or the Participant to whose facilities the order was sent for execution.

F. ''NASD'' means the National Association of Securities Dealers, Inc.

G. ''NASD Participant'' means as NASD member that is registered as a market maker or an electronic communications network or otherwise utilizes the facilities of the NASD pursuant to applicable NASD rules.

[G]*H.* ''NASD Transaction Reporting System'' means the System provided for in the NASD's Transaction Reporting Plan filed with and approved by the Commission pursuant to SEC Rule 11Aa3–1, governing the reporting of transactions in Nasdaq securities.

[H]*I.* ''UTP Quote Data Feed'' means the service that provides Subscribers with the National Best Bid and Offer quotations, size and market center identifier, as well as the Best Bid and Offer quotations, size and market center identifier from each individual Participant in Eligible Securities.

[I]*J.* ''Nasdaq Level 2 Service'' means the Nasdaq service that provides Subscribers with query capability with respect to quotations and sizes in securities included in the Nasdaq System, best bid and asked quotations, and Transaction Reports.

[J]*K.* ''Nasdaq Level 3 Service'' means the Nasdaq service that provides Nasdaq market participants with input and query capability with respect to quotations and sizes in securities included ion the Nasdaq System, best bid and asked quotations, and transaction Reports.

[K]*L.* ''Nasdaq System'' means the automated quotation system operated by Nasdaq.

[L]*M.* ''UTP Trade Data Feed'' means the service that provides Vendors and Subscribers with Transaction Reports.

[M]*N.* ''Nasdaq Security'' or ''Nasdaq-listed Security'' means any security listed on the Nasdaq National Market or Nasdaq SmallCap Market.

[N]*O.* ''News Service'' means a person that receives Transaction Reports or Quotation Information provided by the Systems or provided by a Vendor, on a Current basis, in connection with such person's business of furnishing such information to newspapers, radio and television stations and other news media, for publication at least fifteen (15) minutes following the time when the information first has been published by the Processor.

[O]*P.* [''NQDS'' means the Nasdaq Quotation Dissemination Service, a data stream of information that provides Vendors and Subscribers with quotations and sizes from all Participants and Nasdaq market participants.] ''OTC Montage Data Feed'' means the data stream of information that provides Vendors and Subscribers with quotations and sizes from each Participant.

[P]*Q.* ''Participant'' means a registered national securities exchange or national securities association that is a signatory to this Plan.

[Q]*R.* ''Plan'' means this Nasdaq UTP Plan, as from time to time amended according to its provisions, governing the collection, consolidation and dissemination of Quotation Information and Transaction Reports in Eligible Securities.

[R]*S.* ''Processor'' means the entity selected by the Participants to perform the processing functions set forth in the Plan.

[S]*T.* ''Quotation Information'' means all bids, offers, displayed quotation sizes, the market center identifiers and, in the case of NASD *and Nasdaq,* the NASD *and Nasdaq* market participant that entered the quotation, withdrawals and other information pertaining to quotations in Eligible Securities required to be collected and made available to the Processor pursuant to this Plan.

[T]*U.* ''Regulatory Halt'' means a trade suspension or halt called for the purpose of dissemination of material news, as described at Section X hereof or that is called for where there are regulatory problems relating to an Eligible Security that should be clarified before trading therein is permitted to continue.

[U]*V.* ''Subscriber'' means a person that receives Current Quotation Information or Transaction Reports provided by the Processor or provided by a Vendor for its own use or for distribution on a non-Current basis, other than in connection with its activities as a Vendor.

[V]*W.* ''Transaction Reports'' means reports required to be collected and made available pursuant to this Plan containing the stock symbol, price, and size of the transaction executed, the Market in which the transaction was executed, and related information, including a buy/sell/cross indicator and trade modifiers, reflecting completed transactions in Eligible Securities.

[W]*X.* ''Upon Effectiveness of the Plan'' means July 12, 1993, the date on which the Participants commenced publication of Quotation Information and Transaction Reports on Eligible Securities as contemplated by this Plan.

[X]*Y.* ''Vendor'' means a person that receives Current Quotation Information or Transaction Reports provided by the Processor or provided by a Vendor, in connection with such person's business of distributing, publishing, or otherwise furnishing such information on a Current basis to Subscribers, news Services or other Vendors.

Z. ''NQDS'' means the data stream of information that provides Vendors and Subscribers with the best quotations and sizes from each Nasdaq Participant. A Nasdaq Participant is an entity that is registered as a market maker or an electronic communications network in Nasdaq or otherwise utilizes the facilities of The Nasdaq Stock Market pursuant to applicable NASD rules but does not include an NASD Participant as defined in Section III.G. of this Plan.

IV. Administration of Plan

A. Operating Committee: Composition

The Plan shall be administered by the Participants through an operating committee (''Operating Committee''), which shall be composed of one representative designated by each Participant. Each Participant may designate an alternate representative or representatives who shall be authorized to act on behalf of the Participant in the absence of the designated representative. Within the areas of its responsibilities and authority, decisions made or action taken by the Operating Committee, directly or by duly delegated individuals, committees as may be established from time to time, or others, shall be binding upon each Participant, without prejudice to the rights of any Participant to seek redress from the SEC pursuant to Rule 11Aa3–2 under the Exchange Act or in any other appropriate forum.

An Electronic Communications Network, Alternative Trading System, Broker-Dealer or other securities organization (''Organization'') which is not a Participant, but has an actively pending Form 1 Application on file with the Commission to become a national securities exchange, will be permitted to appoint one representative and one alternate representative to attend regularly scheduled Operating Committee meetings in the capacity of an observer/advisor. If the Organization's Form 1 petition is withdrawn, returned, or is otherwise not actively pending with the Commission for any reason, then the Organization will no longer be eligible to be represented in the Operating Committee meetings. The Operating Committee shall have the discretion, in limited instances, to deviate from this policy if, as indicated by majority vote, the Operating Committee agrees that circumstances so warrant.

Nothing in this section or elsewhere within the Plan shall authorize any person or organization other than Participants and their representatives to participate on the Operating Committee in any manner other than as an advisor or observer, or in any Executive Session of the Operating Committee.

B. Operating Committee: Authority

The Operating Committee shall be responsible for:

1. Overseeing the consolidation of Quotation Information and Transaction Reports in Eligible Securities from the Participants for dissemination to Vendors, Subscribers, News Services and others in accordance with the provisions of the Plan;
2. Periodically evaluating the Processor;
3. Setting the level of fees to be paid by Vendors, Subscribers, News Services or others for services relating to Quotation Information or Transaction Reports in Eligible Securities, and taking action in respect thereto in accordance with the provisions of the Plan;
4. Determining matters involving the interpretation of the provisions of the Plan;
5. Determining matters relating to the Plan's provisions for cost allocation and revenue-sharing; and
6. Carrying out such other specific responsibilities as provided under the Plan.

C. Operating Committee: Voting

Each Participant shall have one vote on all matters considered by the Operating Committee.

1. The affirmative and unanimous vote of all Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to:

a. Amendments to the Plan;

b. Amendments to contracts between the Processor and Vendors, Subscribers, News Services and other receiving Quotation Information and Transaction Reports in Eligible Securities;

c. Replacement of the Processor, except for termination for cause, which shall be governed by Section V(B) hereof;

d. Reductions in existing fees relating to Quotation Information and Transaction Reports in Eligible Securities; and

e. Except as provided under Section IV(C)(3) hereof, requests for system changes; and

f. All other matters not specifically addressed by the Plan.

2. With respect to the establishment of new fees or increases in existing fees relating to Quotation Information and Transaction Reports in Eligible Securities, the affirmative vote of two-thirds of the Participants entitled to vote shall be necessary to constitute the action of the Operating Committee.

3. The affirmative vote of a majority of the Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to:

a. Requests for system changes reasonably related to the function of the Processor as defined under the Plan. All other requests for system changes shall be governed by Section IV(C)(1)(e) hereof.

b. Interpretive matters and decisions of the Operating Committee arising under, or specifically required to be taken by, the provisions of the Plan as written;

c. Interpretive matters arising under Exchange Act Rules 11Aa3–1 and 11Ac1–1; and

d. Denials of access (other than for breach of contract, which shall be handled by the Processor).

4. It is expressly agreed and understood that neither this Plan nor the Operating Committee shall have authority in any respect over any Participant's proprietary systems. Nor shall the Plan or the Operating Committee have any authority over the collection and dissemination of quotation or transaction information in Eligible Securities in any Participant's marketplace or, in the case of NASD, from NASD Participants.

D. Operating Committee: Meetings

Regular meetings of the Operating Committee may be attended by each Participant's designated representative and/or its alternate representative(s), and may be attended by one or more other representatives of the parties. Meetings shall be held at such times and locations as shall from time to time be determined by the Operating Committee.

Quorum: Any action requiring a vote only can be taken at a meeting in which a quorum of all Participants is present. For actions requiring a simple majority vote of all Participants, a quorum of greater than 50% of all Participants entitled to vote must be present at the meeting before such a vote may be taken. For actions requiring a ⅔ majority vote of all Participants, a quorum of at least ⅔ of all Participants entitled to vote must be present at the meeting before such a vote may be taken. For actions requiring a unanimous vote of all Participants, a quorum of all Participants entitled to vote must be present at the meeting before such a vote may be taken.

A Participant is considered present at a meeting only if a Participant's designated representative or alternate representative(s) is either in physical attendance at the meeting or is participating by conference telephone, or other acceptable electronic means.

Any action sought to be resolved at a meeting must be sent to each Participant entitled to vote on such matter at least one week prior to the meeting via electronic mail, regular U.S. or private mail, or facsimile transmission, provided however that this requirement may be waived by the vote of the percentage of the Committee required to vote on any particular matter, under Section C above.

Any action may be taken without a meeting if consent in writing, setting forth the action so taken, is sent to and signed by all Participant representatives entitled to vote with respect to the subject matter thereof. All the approvals evidencing the consent shall be delivered to the Chairman of the Operating Committee to be filed in the Operating Committee records. The action taken shall be effective when the minimum number of Participants entitled to vote have approved the action, unless the consent specifies a different effective date.

The Chairman of the Operating Committee shall be elected annually by and from among the Participants by a majority vote of all Participants entitled to vote. The Chairman shall designate a person to act as Secretary to record the minutes of each meeting. The location of meetings shall be rotated among the locations of the principal offices of the Participants, or such other locations as may from time to time be determined by the Operating Committee. Meetings may be held by conference telephone and action may be taken without a meeting if the representatives of all Participants entitled to vote consent thereto in writing or other means the Operating Committee deems acceptable.

E. Advisory Committee

1. Composition:

a. Each Plan Participant may designate three representatives to participate in the Advisory Committee. The representatives shall each be an employee of a member of that Participant, a professor or other academic involved in the scholarly study of the securities industry, or an expert in one or more areas of the securities industry.

b. Each representative shall serve a one-year term on the Advisory Committee.

2. Authority:

The Advisory Committee shall have the opportunity to:

a. Meeting twice yearly, each meeting to occur one day prior to a meeting of the Operating Committee.

b. Discuss any matter related to the operation of the Plan.

c. Present written comments or inquiries to the Operating Committee regarding matters related to the operation of the Plan.

d. Respond to written inquiries from the Operating Committee seeking comment from the Advisory Committee on matters related to the operation of the Plan.

V. Selection and Evaluation of the Processor

A. Generally

The Processor's performance of its functions under the Plan shall be subject to review by the Operating Committee at least every two years, or from time to time upon the request of any two Participants but not more frequently than once each year. Based on this review, the Operating Committee may choose to make a recommendation to the Participants with respect to the continuing operation of the Processor. The Operating Committee shall notify the SEC of any recommendations the Operating Committee shall make pursuant to the Operating Committee's review of the Processor and shall supply the Commission with a copy of any reports that may be prepared in connection therewith.

B. Termination of the Processor for Cause

If the Operating Committee determines that the Processor has failed to perform its functions in a reasonably acceptable manner in accordance with the provisions of the Plan or that its reimbursable expenses have become excessive and are not justified on a cost basis, the Processor may be terminated at such time as may be determined by a majority vote of the Operating Committee.

C. Factors To Be Considered in Termination for Cause

Among the factors to be considered in evaluating whether the Processor has performed its functions in a reasonably acceptable manner in accordance with the provisions of the Plan shall be the reasonableness of its response to requests from Participants for technological changes or enhancements pursuant to Section IV(C)(3) hereof. The reasonableness of the Processor's response to such requests shall be evaluated by the Operating Committee in terms of the cost to the Processor of purchasing the same service from a third party and integrating such service into the Processor's existing systems and operations as well as the extent to which the requested change would adversely impact the then current technical (as opposed to business or competitive) operations of the Processor

D. Processors Right To Appeal Termination for Cause

The Processor shall have the right to appeal to the SEC a determination of the Operating Committee terminating the Processor for cause and no action shall become final until the SEC has ruled on the matter and all legal appeals of right therefrom have been exhausted.

E. Process for Selecting New Processor

At any time following effectiveness of the Plan, but no later than upon the termination of the Processor, whether for cause pursuant to Section IV(C)(1)(c) or V(B) of the Plan or upon the Processor's resignation, the Operating Committee shall establish procedures for selecting a new Processor (the

''Selection Procedures''). The Operating Committee, as part of the process of establishing Selection Procedures, may solicit and consider the timely comment of any entity affected by the operation of this Plan. The Selection Procedures shall be established by a two-thirds majority vote of the Plan Participants, and shall set forth, at a minimum:

1. The entity that will:

a. Draft the Operating Committee's request for proposal for bids on a new processor;

b. Assist the Operating Committee in evaluating bids for the new processor; and

c. Otherwise provide assistance and guidance to the Operating Committee in the selection process.

2. The minimum technical and operational requirements to be fulfilled by the Processor;

3. The criteria to be considered in selecting the Processor; and

4. The entities (other than Plan Participants) that are eligible to comment on the selection of the Processor.

Nothing in this provision shall be interpreted as limiting Participants' rights under Section IV or Section V of the Plan or other Commission order.

VI. Functions of the Processor

A. Generally

The Processor shall collect from the Participants, and consolidate and disseminate to Vendors, Subscribers and News Services, Quotation Information and Transaction Reports in Eligible Securities in a manner designed to assure the prompt, accurate and reliable collection, processing and dissemination of information with respect to all Eligible Securities in a fair and non-discriminatory manner. The Processor shall commence operations upon the Processor's notification to the Participants that it is ready and able to commence such operations.

B. Collection and Consolidation of Information

For as long as Nasdaq is the Processor, the Processor shall be capable of receiving Quotation Information and Transaction Reports in Eligible Securities from Participants by the Plan-approved, Processor sponsored interface, and shall consolidate and disseminate such information via the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed to Vendors, Subscribers and News Services. *For so long as Nasdaq is not registered as a national securities exchange and for so long as Nasdaq is the Processor, the Processor shall also collect, consolidate, and disseminate the quotation information contained in NQDS.* For so long as Nasdaq is not registered as a national securities exchange and after Nasdaq is no longer the Processor for other SIP datafeeds, either Nasdaq or a third party will act as the Processor to collect, consolidate, and disseminate the quotation information contained in NQDS.

C. Dissemination of Information

The Processor shall disseminate consolidated Quotation Information and Transaction Reports in Eligible Securities via the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed to authorized Vendors, Subscribers and News Services in a fair and non-discriminatory manner. The Processor shall specifically be permitted to enter into agreements with Vendors, Subscribers and News Services for the dissemination of quotation or transaction information on Eligible Securities to foreign (non-U.S.) marketplaces or in foreign countries.

The Processor shall, in such instance, disseminate consolidated quotation or transaction information on Eligible Securities from all Participants.

Nothing herein shall be construed so as to prohibit or restrict in any way the right of any Participant to distribute quotation, transaction or other information with respect to Eligible Securities quoted on or traded in its marketplace to a marketplace outside the United States solely for the purpose of supporting an intermarket linkage, or to distribute information within its own marketplace concerning Eligible Securities in accordance with its own format. If a Participant requests, the Processor shall make information about Eligible Securities in the Participant's marketplace available to a foreign marketplace on behalf of the requesting Participant, in which event the cost shall be borne by that Participant.

1. Best Bid and Offer

The Processor shall disseminate on the UTP Quote Data Feed the best bid and offer information supplied by each Participant, including the NASD, and shall also calculate and disseminate on the UTP Quote Data Feed a national best bid and asked quotation with size based upon Quotation Information for Eligible Securities received from Participants. The Processor shall not calculate the best bid and offer for any individual Participant, including the NASD.

The Participant responsible for each side of the best bid and asked quotation making up the national best bid and offer shall be identified by an appropriate symbol. If the quotations of more than one Participant shall be the same best price, the largest displayed size among those shall be deemed to be the best. If the quotations of more than one Participant are the same best price and best displayed size, the earliest among those measured by the time reported shall be deemed to be the best. A reduction of only bid size and/or ask size will not change the time priority of a Participant's quote for the purposes of determining time reported, whereas an increase of the bid size and/or ask size will result in a new time reported. The consolidated size shall be the size of the Participant that is at the best.

If the best bid/best offer results in a locked or crossed quotation, the Processor shall forward that locked or crossed quote on the appropriate output lines (*i.e.,* a crossed quote of bid 12, ask 11.87 shall be disseminated). The Processor shall normally cease the calculation of the best bid/best offer after 6:30 p.m., Eastern Time.

2. Eligible Securities

a. Number of Eligible Securities—If the Commission by order expands the number of Eligible Securities beyond 1,000, the number of Eligible Securities that Participants may trade shall be phased in (added) according to the schedule set out below:

(i) At the end of the first calendar quarter following the Commission's order expanding the number of Eligible Securities beyond 1,000 but in no case before September 30, 2001, Participants may commence trading 500 additional securities;

(ii) At the end of each of the four calendar quarters following the date established under provision VI.C(2)(a)(i) of the Plan, Participants may commence trading an additional 500 securities, and at the end of the fifth calender quarter following the date established under provision VI.C(a)(i) of the Plan, Participants shall be permitted to trade all Eligible Securities.

(iii) In no case shall the number of Eligible Securities exceed the number of securities that the Commission deems are eligible for trading pursuant to this Plan.

(iv) After each of the aforementioned phase in periods (*i.e.,* calendar quarters), the Processor shall evaluate its performance to determine whether it is prudent, in light of system capacity and any other operational factors, to continue to add additional securities pursuant to the phase in schedule. If the Processor determines, in light of system capacity and any other operational factors, that it is not prudent to continue to expand the number of Eligible Securities, the Processor upon notice to the Participants immediately may suspend the phase-in schedule and delay the expansion of the number of Eligible Securities that may be traded under the Plan. The Processor shall commence adding securities pursuant to a revised phase-in schedule, when the Processor determines it is prudent to do so, in light of system capacity and any other operational factors.

(v) This provision shall not apply to The Nasdaq Stock Market, Inc., or Nasdaq market participants acting in such capacity, nor shall it apply to any Participant that does not engage in auto-quoting, as described in paragraph VI.C(a)(b) below.

b. Limitation on Auto-Quoting—Except as provided in subparagraph VI.C(2)(c) of this Plan, Participants shall be prohibited from the practice of ''Auto-quoting'' means the practice of tracking, by automated means, the changes to the best bid or best ask quotation and responding by generating another quote change to keep that Participant away from the best bid or ask quotation, but for purposes of this Plan, shall not include:

(i) An update that is in response to an execution in the security by that Participant;

(ii) An update that requires a physical entry;

(iii) An update that is to reflect the receipt, execution, or cancellation of a customer limit order; or

(iv) The practice of automatically generating quote changes at a rate of less than 35 percent of all price changes to the national best bid or ask quotation. The Processor shall calculate this rate using quoting activity during the preceding calendar month.

c. Applicability of Auto-Quoting Limitation—The Limitation on Auto-Quoting contained in subparagraph VI.C(2)(b) of this Plan shall only apply if the Processor deems

it necessary to maintain adequate capacity for the normal and efficient operation of the Processor and the Processor provides at least 30 calendar days' notice to the Participants and the basis thereof of such determination. The Processor shall lift the limitation on auto-quoting when the Processor determines it is prudent to do so, in light of system capacity and any other operational factors. Additionally, the Limitation on Auto-Quoting set forth in subparagraph VI.C(2)(b) of this Plan will not apply to a Participant whose aggregated quoting activity in eligible Nasdaq securities does not exceed 1% of the total quotation traffic across all Nasdaq securities by all Nasdaq market participants and Exchange Participants. The Processor shall calculate this rate using quoting activity during the preceding calendar month.

d. Obligations of Participants Regarding Capacity—Each Participant shall exercise due diligence to promote quotation generation practices that mitigate quotation traffic so as to ensure prudential excess capacity within the Processor. The Operating Committee shall periodically review the performance of Participants and take such action as necessary to maintain prudential excess capacity.

e. Procedures for Ensuring Acceptable Quote Generation Practices—The following procedures shall apply if, in accordance with Section VI.C.2(c) of the Plan, the Processor determines that a capacity concern exists.

(i) On a monthly basis, each Participant shall provide the Processor with a good faith estimate of the Participant's previous month's daily average number of aggregate quote updates to permit the Processor to determine compliance with the auto-quoting limitation referenced in Section VI.C.2.(b) of the Plan.

(ii) If the Processor determines, from the Participant's data or otherwise, that the Participant has not complied with the limitations of Section VI.C.2.(b), the Processor shall give the Participant written notice of such condition. The Participant shall have 30 calendar days after receipt of the written notice to remedy the condition.

(iii) If, after the aforementioned 30-day period has expired, the condition has not been remedied to the reasonable satisfaction of the Processor, then the Processor shall submit to the Operating Committee a written request for relief together with supporting documentation evidencing the alleged condition (*i.e.,* failure to comply with the limitations of Section VI.C.2.(b)) and quantifying the impact of the violation on overall capacity of the Processor. The Processor's request for relief shall be limited to such remedial action (including but not limited to the termination of service to the subject Participant) as is necessary to modify the subject Participant's quote generation practices on a prospective basis, for such period as is necessary to resolve the condition that gave rise to the Processor's request for relief. The Participant shall have 15 calendar days to respond in writing to the Processor's request for relief.

(iv) The Operating Committee, following written notice to the Participant and the Processor, shall conduct a hearing within five (5) business days after expiration of the 15-day response period to determine whether to grant or deny the Processor's claim for remedial action. At the hearing, the Operating Committee may consider, among other information, the request of the Processor, the response (if any) of the Participant and any other evidence (written or oral) that is presented at the hearing. At the conclusion of the hearing, the Operating Committee shall grant or deny the Processor's request. An affirmative vote of two-thirds of the Operating Committee members entitled to vote (excluding the subject Participant) shall be required for any decision of the Operating Committee. The decision of the Operating Committee shall be final and therefore reviewable by the Commission; provided, however, that any decision of the Operating Committee shall not become effective until five business days after the date of the decision.

f. Limitation on Applicability of Rule—the phase-in schedule contained in VI.C(2)(a) and the Limitation on Auto-Quoting contained in VI.C(2)(c) shall not apply:

(i) To any Participant upon the designation and the operation of a new Processor; and

(ii) To a Participant for the number of securities that the Participant quoted as of May 1, 2001; provided, however, the exemption contained herein shall expire a year from the end-date of the phase-in schedule contained in VI.C(2)(a).

3. Quotation Data Streams

The Processor shall disseminate on the UTP Quote Data Feed a data stream of all Quotation Information regarding Eligible Securities received from Participants. Each quotation shall be designated with a symbol identifying the Participant from which the quotation emanates. Quotation Information from individual NASD Participants will not be disseminated on the UTP Quote Data Feed. The Processor shall separately distribute on the OTC Montage Data Feed the Quotation Information regarding Eligible Securities from all NASD Participants from which quotations emanate. *The Processor shall separately distribute NQDS for so long as Nasdaq is not registered as a national securities exchange and for so long as Nasdaq is the Processor. For so long as Nasdaq is not registered as a national securities exchange and after Nasdaq is no longer the Processor for other SIP data feeds, either Nasdaq or a third party will act as the Processor to collect, consolidate, and disseminate the quotation information contained in NQDS.*

4. Transaction Reports

The Processor shall disseminate on the UTP Trade Data Feed a data stream of all Transaction Reports in Eligible Securities received from Participants. Each transaction report shall be designated with a symbol identifying the Participant in whose Market the transaction took place.

d. Closing Reports

At the conclusion of each trading day, the Processor shall disseminate a ''closing price'' for each eligible Security. Such ''closing price'' shall be the price of the last Transaction Report in such security received prior to dissemination. The Processor shall also tabulate and disseminate at the conclusion of each trading day the aggregate volume reflected by all Transaction Reports in Eligible Securities reported by the Participants.

E. Statistics

The Processor shall maintain quarterly, semi-annual and annual transaction and volume statistical counts. The Processor shall, at cost to the user Participant(s), make such statistics available in a form agreed upon by the Operating Committee, such as a secure website.

VII. Administrative Functions of the Processor

Subject to the general direction of the Operating Committee, the Processor shall be responsible for carrying out all administrative functions necessary to the operation and maintenance of the consolidated information collection and dissemination system provided for in this Plan, including, but not limited to, record keeping, billing, contract administration, and the preparation of financial reports.

VIII. Transmission of Information to Processor by Participants

A. Quotation Information

Each Participant shall, during the time it is open for trading be responsible promptly to collect and transmit to the Processor accurate Quotation information in Eligible Securities through any means prescribed herein.

Quotation Information shall include:

1. Identification of the Eligible Security, using the Nasdaq Symbol;
2. The priced bid and offer, together with size;
3. The Nasdaq market participant or Participant from which the quotation emanates;
4. Identification of quotations that are not firm; and
5. Through appropriate codes and messages, withdrawals and similar matters.

B. Transaction Reports

Each Participant shall, during the time it is open for trading, be responsible promptly to collect and transmit to the Processor Transaction Reports in Eligible Securities executed in its Market by means prescribed herein. With respect to orders sent by one Participant Market to another Participant Market for execution, each Participant shall adopt procedures governing the reporting of transactions in Eligible Securities specifying that the transaction will be reported by the Participant whose member sold the security. This provision shall apply only to transactions between Plan Participants.

Transaction Reports shall include:

1. Identification of the Eligible Security, using the Nasdaq Symbol;
2. The number of shares in the transaction;
3. The price at which the shares were purchased or sold;
4. The buy/sell/cross indicator;
5. The Market of execution; and
6. Through appropriate codes and messages, late or out-of-sequence trades, corrections and similar matters.

All such Transaction Reports shall be transmitted to the Processor within 90

seconds after the time of execution of the transaction. Transaction Reports transmitted beyond the 90-second period shall be designated as ''late'' by the appropriate code or message.

The following types of transactions are not required to be reported to the Processor pursuant to the Plan:

1. Transactions that are part of a primary distribution by an issuer or of a registered secondary distribution or of an unregistered secondary distribution;

2. Transactions made in reliance on Section 4(2) of the Securities Act of 1933;

3. Transactions in which the buyer and the seller have agreed to trade at a price unrelated to the Current Market for the security, *e.g.*, to enable the seller to make a gift;

4. Odd-lot transactions;

5. The acquisition of securities by a broker-dealer as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange;

6. Purchases of securities pursuant to a tender offer; and

7. Purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a preestablished consideration unrelated to the Current Market.

C. Symbols for Market Identification for Quotation Information and Transaction Reports

The following symbols shall be used to denote the [Participant] marketplaces:

Code	Participant
A	American Stock Exchange
B	Boston Stock Exchange
C	Cincinnati Stock Exchange
M	Chicago Stock Exchange
[Q]*D*	NASD
Q	*Nasdaq*
P	Pacific Exchange
X	Philadelphia Stock Exchange

D. Whenever a Participant determines that a level of trading activity or other unusual market conditions prevent it from collecting and transmitting Quotation Information or Transaction Reports to the Processor, or where a trading halt or suspension in an Eligible Security is in effect in its Market, the Participant shall promptly notify the Processor of such condition or event and shall resume collecting and transmitting Quotation Information and Transaction Reports to it as soon as the condition or event is terminated. In the event of a system malfunction resulting in the inability of a Participant or its members to transmit Quotation Information or Transaction Reports to the Processor, the Participant shall promptly notify the Processor of such event or condition. Upon receiving such notification, the Processor shall take appropriate action, including either closing the quotation or purging the system of the affected quotations.

IX. Market Access

A. Each Participant shall permit each Nasdaq market participant, acting in its capacity as such, direct telephone access to the specialist, trading post, and supervisory center in each Eligible Security in which such Nasdaq market participant is registered as a market maker or electronic communications network/alternative trading system with Nasdaq. Such access shall include appropriate procedures or requirements by each Participant or employee to assure the timely response to communications received through telephonic access. No Participant shall permit the imposition of any access or execution fee, or any other fee or charge, with respect to transactions in Eligible Securities effected with Nasdaq market participants which are communicated to the floor by telephone pursuant to the provisions of this Plan. A Participant shall be free to charge for other types of access to its floor or facilities.

B. The NASD shall assure that each Participant, and its members shall have direct telephone access to the trading desk of each Nasdaq market participant in each Eligible Security in which the Participant displays quotations, and to the Nasdaq Supervisory Center. Such access shall include appropriate procedures or requirements to assure the timely response of each Nasdaq market participant to communications received through telephone access. Neither the NASD nor any Nasdaq market participant shall impose any access or execution fee, or any other fee or charge, with respect to transactions in Eligible Security effected with a member of a Participant which are communicated by telephone pursuant to the provisions of this Plan.

X. Regulatory Halts

A. Whenever, in the exercise of its regulatory functions, the Primary Market for an Eligible Security determines that a Regulatory Halt is appropriate, all other Participants shall also halt or suspend trading in that security until notification that the halt or suspension is no longer in effect. The Primary Market shall immediately notify the Processor of such Regulatory Halt as well as notice of the lifting of a Regulatory Halt. The Processor, in turn, shall disseminate to Participants notice of the Regulatory Halt (as well as notice of the lifting of a regulatory halt) through the UTP Quote Data Feed. This notice shall serve as official notice of a regulatory halt for purposes of the Plan only, and shall not substitute or otherwise supplant notice that a Participant may recognize or require under its own rules. Nothing in this provision shall be read so as to supplant or be inconsistent with a Participant's own rules on trade halts, which rules apply to the Participant's own members. The Processor will reject any quotation information and monitor for transaction reports received from any Participant on an Eligible Security that has a Regulatory Halt in effect.

B. Whenever the Primary Market determines that an adequate publication or dissemination of information has occurred or the regulatory problem has been addressed so as to permit the termination of the Regulatory Halt then in effect, the Primary Market shall promptly notify the Processor and each of the other Participants that conducts trading in such security. Except in extraordinary circumstances, adequate publication or dissemination shall be presumed by the Primary Market to have occurred upon the expiration of one hour after initial publication in a national news dissemination service of the information that gave rise to the Regulatory Halt.

C. Except in the case of a Regulatory Halt, the Processor shall not cease the dissemination of quotation or transaction information regarding any Eligible Security. In particular, it shall not cease dissemination of such information because of a delayed opening, imbalance or orders or other market-related problems involving such security. During a regulatory halt, the Processor shall collect and disseminate Transaction Information but shall cease collection and dissemination of all Quotation Information.

D. For purposes of this Section X, ''Primary Market'' for an Eligible Security means Nasdaq; provided, however, that if for any 12-month period the number of reported transactions and the reported share volume in an Eligible Security in any other Participant's Market exceeds 50% of the aggregate reported transactions and reported share volume of all Participants in such security, then that Participant's Market shall be the Primary Market for such Eligible Security.

XI. Hours of Operation

A. Quotation Information may be entered by Participants as to all Eligible Securities in which they make a market between 9:30 a.m. and 4 p.m. Eastern Time (''ET'') on all days the Processor is in operation. Transaction Reports shall be entered between 9:30 a.m. and 4:01:30 p.m. ET by Participants as to all Eligible Securities in which they execute transactions between 9:30 a.m. and 4 p.m. ET on all days the Processor is in operation.

B. Participants that execute transactions in Eligible Securities outside the hours of 9:30 a.m. ET and 4 p.m., ET, shall be reported as follows:

(i) Transactions in Eligible Securities executed between 8 a.m. and 9:29:59 a.m.. ET and between 4:00:01 and 6:30 p.m. ET, shall be designated as ''.T'' trades to denote their execution outside normal market hours;

(ii) Transactions in Eligible Securities executed after 6:30 p.m. and before 12 a.m. (midnight) shall be reported to the Processor between the hours of 8 a.m. and 6:30 p.m. ET on the next business day (T+1), and shall be designated ''as/of'' trades to denote their execution on a prior day, and be accompanied by the time of execution;

(iii) Transactions in Eligible Securities executed between 12 a.m. (midnight) and 8 a.m. ET shall be transmitted to the Processor between 8 a.m. and 9:30 a.m. ET, on trade date, shall be designated as ''.T'' trades to denote their execution outside normal market hours, and shall be accompanied by the time of execution;

(iv) Transactions reported pursuant to this provision of the Plan shall be included in the calculation of total trade volume for purposes of determining net distributable operating revenue, but shall not be included in the calculation of the daily high, low, on last sale.

C. Late trades shall be reported in accordance with the rules of the Participant

in whose Market the transaction occurred and can be reported between the hours of 8 a.m. and 6:30 p.m.

D. The Processor shall collect, process and disseminate Quotation Information in Eligible Securities at other times between 8 a.m. and 9:30 a.m. ET, and after 4 p.m. ET, when any Participant or Nasdaq market participant is open for trading, until 6:30 p.m. ET (the ''Additional Period''); provided, however, that the best bid and offer quotation will not be disseminated before 9:30 a.m. or after 6:30 p.m. ET. Participants that enter Quotation Information or Transaction Reports to the Processor during the Additional Period shall do so for all Eligible Securities in which they enter quotations.

XII. Undertaking by All Participants

The filing with and approval by the Commission of this Plan shall obligate each Participant to enforce compliance by its members with the provisions thereof. In all other respects not inconsistent herewith, the rules of each Participant shall apply to the actions of its members in effecting, reporting, honoring and settling transactions executed through its facilities, and the entry, maintenance and firmness of quotations to ensure that such occurs in a manner consistent with just and equitable principles of trade.

XIII. Financial Matters

A. Development Costs

Any Participant becoming a signatory to this Plan after June 26, 1990, shall, as a condition to becoming a Participant, pay to the other Plan Participants a proportionate share of the aggregate development costs previously paid by Plan Participants to the Processor, which aggregate development costs totaled $439,530, with the result that each Participant's share of all development costs is the same.

Each Participant shall bear the cost of implementation of any technical enhancements to the Processor system made at its request and solely for its use, subject to reapportionment should any other Participant subsequently make use of the enhancement, or the development thereof.

B. Cost Allocation and Revenue Sharing

The provision governing cost allocation and revenue sharing among the Participants are set forth in Exhibit 1 to the Plan.

C. Maintenance of Financial Records

The Processor shall maintain records of revenues generated and development and operating expenditures incurred in connection with the Plan. In addition, the Processor shall provide the Participants with: (a) A statement of financial and operational condition on a quarterly basis; and (b) an audited statement of financial and operational condition on an annual basis.

XIV. Indemnification

Each Participant agrees, severally and not jointly, to indemnify and hold harmless each other Participant, Nasdaq, and each of its directors, officers, employees and agents (including the Operating Committee and its employees and agents) from and against any and all loss, liability, claim, damage and expense whatsoever incurred or threatened against such persons as a result of any Transaction Reports, Quotation Information or other information reported to the Processor by such Participant and disseminated by the Processor to Vendors. This indemnity agreement shall be in addition to any liability that the indemnifying Participant may otherwise have.

Promptly after receipt by an indemnified Participant of notice of the commencement of any action, such indemnified Participant will, if a claim in respect thereof is to be made against an indemnifying Participant, notify the indemnifying Participant in writing of the commencement thereof; but the omission to so notify the indemnifying Participant will not relieve the indemnifying Participant from any liability which it may have to any indemnified Participant. In case any such action is brought against any indemnified Participant and it promptly notifies an indemnifying Participant of the commencement thereof, the indemnifying Participant will be entitled to participate in, and, to the extent that it may wish, jointly with any other indemnifying Participant similarly notified, to assume and control the defense thereof with counsel chosen by it. After notice from the indemnifying Participant of its election to assume the defense thereof, the indemnifying Participant will not be liable to such indemnified Participant for any legal or other expenses subsequently incurred by such indemnified Participant in connection with the defense thereof but the indemnified Participant may, at its own expense, participant in such defense by counsel chosen by it without, however, impairing the indemnifying Participant's control of the defense. The indemnifying Participant may negotiate a compromise or settlement of any such action, provided that such compromise or settlement does not require a contribution by the indemnified Participant.

XV. Withdrawal

Any Participant may withdraw from the Plan at any time on not less than 30 days prior written notice to each of the other Participants. Any Participant withdrawing from the Plan shall remain liable for, and shall pay upon demand, any fees for equipment or services being provided to such Participant pursuant to the contract executed by it or an agreement or schedule of fees covering such then in effect.

A withdrawing Participant shall also remain liable for its proportionate share, without any right of recovery, of administrative and operating expenses, including start-up costs and other sums for which it may be responsible pursuant to Section XIII hereof. Except as aforesaid, a withdrawing Participant shall have no further obligation under the Plan or to any of the other Participants with respect to the period following the effectiveness of its withdrawal.

XVI. Modifications to Plan

The Plan may be modified from time to time when authorized by the agreement of all of the Participants, subject to the approval of the SEC.

XVII. Applicability of Securities Exchange Act of 1934

The rights and obligations of the Participants and of Vendors, News Services, Subscribers and other persons contracting with Participants in respect of the matters covered by the Plan shall at all times be subject to any applicable provisions of the Act, as amended, and any rules and regulations promulgated thereunder.

XVIII. Operational Issues

A. Each Exchange Participant shall be responsible for collecting and validating quotes and last sale reports within their own system prior to transmitting this data to the Processor.

B. Each Exchange Participant may utilize a dedicated Participant line into the Processor to transmit trade and quote information in Eligible Securities to the Processor. The Processor shall accept from Exchange Participants input for only those issues that are deemed Eligible Securities.

C. The Processor shall consolidate trade and quote information from each Participant and disseminate this information on the Nasdaq existing vendor lines.

D. The Processor shall perform gross validation processing for quotes and last sale messages in addition to the collection and dissemination functions, as follows:

1. Basic Message Validation:

(a) The Processor may validate format for each type of message, and reject non-conforming messages.

(b) Input must be for an Eligible Security.

2. Logging Function—The Processor shall return all Participant input messages that do not pass the validation checks (described above) to the inputting Participant, on the entering Participant line, with an appropriate reject notation. For all accepted Participant input messages (*i.e.*, those that pass the validation check), the information shall be retained for immediate processing in the Processor system.

XIX. Headings

The section and other headings contained in this Plan are for reference purposes only and shall not be deemed to be a part of this Plan or to affect the meaning or interpretation of any provisions of this Plan.

XX. Counterparts

This Plan may be executed by the Participants in any number of counterparts, no one of which need contain the signature of all Participants. As many such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

XXI. Depth of Book Display

The Operating Committee has determined that the entity that succeeds Nasdaq as the Processor should have the ability to collect, consolidate, and disseminate quotations at multiple price levels beyond the best bid and best offer from any Participant that voluntarily chooses to submit such quotations while determining that no Participant shall be required to submit such

information. The Operating Committee has further determined that the costs of developing, collecting, processing, and disseminating such depth of book data shall be borne exclusively by those Participants that choose to submit this information to the Processor, by whatever allocations those Participants may choose among themselves. The Operating Committee has determined further that the primary purpose of the Processor is the collection, processing and dissemination of best bid, best offer and last sale information (''core data''), and as such, the Participants will adopt procedures to ensure that such functionality in no way hinders the collecting, processing and dissemination of this core data.

Therefore, implementing the depth of book display functionality will require a plan amendment that addresses all pertinent issues, including:

(1) Procedures for ensuring that the fully-loaded cost of the collection, processing, and dissemination of depth-of-book information will be tracked and invoiced directly to those Plan Participants that voluntarily choose to send that data, voluntarily, to the Processor allocating in whatever manner those Participants might agree; and

(2) Necessary safeguards the Processor will take to ensure that its processing of depth-of-book data will not impede or hamper, in any way, its core Processor functionality of collecting, consolidating, and disseminating National Best Bid and Offer data, exchange best bid and offer data, and consolidated last sale data.

Upon approval of a Plan amendment implementing depth of book display, this article of the Plan shall be automatically deleted.

In witness whereof, this Plan has been executed as of the ____ day of * * *, 2002, by each of the Signatories hereto.

American Stock Exchange, Inc.
By: _____

Boston Stock Exchange, Inc.
By: _____

Cincinnati Stock Exchange, Inc.
By: _____

Pacific Exchange, Inc.
By: _____

Chicago Stock Exchange, Inc.
By: _____

National Association of Securities Dealers, Inc.
By: _____

Philadelphia Stock Exchange
By: _____

Exhibit 1

1. Each Participant eligible to receive revenue under the Plan will receive an annual payment for each calendar year to be determined by multiplying (i) that Participant's percentage of total volume in Nasdaq securities reported to the Processor and disseminated to Vendors for that calendar year by (ii) the total distributable net operating income (as defined below) for that calendar year, provided, however, that for the implementation year (as defined in Paragraph 4 below), a Participant's payment shall be multiplied by the number of months during the implementation year the interface was in operation divided by twelve. In the event that total distributable net operating income is negative, each Participant eligible to receive revenue under the Plan will receive an annual bill for each calendar year to be determined according to the same formula (described in this paragraph) for determining annual payments to eligible Participants.

2. A Participant's percentage of total volume in Nasdaq securities will be calculated by taking the average of (i) the Participant's percentage of total trades in Nasdaq securities reported to the Processor and disseminated to Vendors for the year and (ii) the Participant's percentage of total share volume in Nasdaq securities reported to the Processor and disseminated to Vendors for the year (trade/volume average). For any given year, a Participant's percentage of total trades shall be calculated by dividing the total number of trades that that Participant reports to the Processor as the selling party for that year by the total number of trades in Nasdaq securities reported to the Processor and disseminated to Vendors for the year. A Participant's total share volume shall be calculated by multiplying the total number of trades in Nasdaq securities in that year that that Participant reports to the Processor as the selling party multiplied by the number of shares for each such trade. Unless otherwise stated in this agreement, a year shall run from January 1 to December 31.

3. For purposes of this Exhibit 1, net distributable operating income for any particular calendar year shall be calculated by adding all revenues from [Level 1, Level 2 (non-market maker revenues only), Nasdaq Last Sale Information Service, and NQDS,]*the UTP Quote Data Feed, the UTP Trade Data Feed, the OTC Montage Data Feed, and NQDS,* including revenues from the dissemination of information among Eligible Securities to foreign marketplaces (collectively, ''the Data Feeds''), and subtracting from such revenues the costs incurred by the Processor, set forth below, in collecting, consolidating, validating, *generating,* and disseminating the Data Feeds. These costs include, but are not limited to, the following:

a. The Processor costs directly attributable to creating [NQDS]*OTC Montage Data Feed and NQDS,* including:

1. Cost of collecting Participant quotes into the Processor's quote engine;

2. Cost of processing quotes and creating [NQDS]*OTC Montage Data Feed and NQDS* messages within the Processor's quote engine;

3. Cost of the Processor's communication management subsystem that distributes [NQDS]*OTC Montage Data Feed and NQDS* to the market data vendor network for further distribution.

b. The costs directly attributable to creating the [Level 1]*UTP Quote* Data Feed, including:

1. Cost of calculating the national best bid and offer price within the Processor's quote engine;

2. Cost of creating the [Level 1]*UTP Quote* Data Feed message within the Processor's quote engine;

3. Cost of the Processor's communication management subsystem that distributes the [Level 1]*UTP Quote* Data Feed to the market data vendors' networks for further distribution.

c. The costs directly attributable to creating the [Nasdaq Last Sale Information Service] *UTP Trade* Data Feed, including:

1. Cost of determining the appropriate last sale price and volume amount within the Processor's trade engine;

2. Cost of utilizing the Processor's trade engine to distribute the [Nasdaq Last Sale Information Service] *UTP Trade Data Feed* for distribution to the market data vendors.

d. The additional costs that are shared across all Data Feeds, including:

1. Telecommunication Operations costs of supporting the Participant lines into the Processor's facilities;

2. Telecommunications Operation costs of supporting the external market data vendor network;

3. Data Products account management and auditing function with the market data vendors;

4. Market Operations costs to support symbol maintenance, and other data integrity issues;

5. Overhead costs, including a management support of the Processor, Human Resources, Finance, Legal, and Administrative Services.

e. Processor costs excluded from the calculation of net distributable operating income include trade execution costs for transactions executed using a Nasdaq service and trade report collection costs reported through a Nasdaq service, as such services are market functions for which Participants electing to use such services pay market rate.

f. For the purposes of this provision, the following definitions shall apply:

1. ''Quote engine'' shall mean the Nasdaq's UNISYS system that is operated by Nasdaq to collect quotation information for Eligible Securities;

2. ''Trade engine'' shall mean the Nasdaq Tandem system that is operated by Nasdaq for the purpose of collecting last sale information in Eligible Securities.

4. At the time a Participant implements a computer-to-computer-interface or other Processor-approved electronic interface with the Processor, the Participant will become eligible to receive revenue for the year in which the interface is implemented (implementation year).

5. From the date a Participant is eligible to receive revenue (implementation date) until December 31 of the implementation year, Nasdaq shall pay the Participant a pro rata amount of its payment or bill the Participant for a pro rata amount of its losses for the implementation year (as calculated in Paragraph 1 above). This calculation and resultant payment (or bill) will be made (or due) within ninety (90) days after the twelfth month following the implementation date.

6. For the calendar year subsequent to the implementation year, and continuing thereafter, the calculation of the Participant's annual payment or loss will be performed and the payment made or bill delivered by March 31 of the following year. Estimated quarterly payments or billings shall be made to each eligible Participants within 45 days following the end of each calendar quarter in which the Participant is eligible to receive

revenue, provided that the total of such estimated payments or billings shall be reconciled at the end of each calendar year and, if necessary, adjusted by March 32st of the following year. Interest shall be included in quarterly payments and in adjusted payments made on March 31st of the following year. Such interest shall accrue monthly during the period in which revenue was earned and not yet paid and will be based on the 90-day Treasury bill rate in effect at the end of the quarter in which the payment is made. Interest shall not accrue during the period of up to 45 days between the end of each calendar quarter and the date on which an estimated quarterly payment or billing is made.

In conjunction with calculating estimated quarterly and reconciled annual payments under this Exhibit 1, the Processor shall submit to the Participants an itemized statement setting forth the basis upon which net operating income was calculated, including an itemized statement of the Processor costs set forth in Paragraph 3 of this Exhibit. Such Processor costs shall be reconciled annually based solely on the Processor's audited annual financial information. By majority vote of the Operating Committee, the Processor shall engage an independent auditor to audit the Processor's costs or other calculation(s), the cost of which audit shall be shared equally by all Participants. The Processor agrees to cooperate fully in providing the information necessary to complete such audit.

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BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49130; File No. SR–CHX–2003–27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Incorporated Relating to Execution of Limit Orders Following Exempted ITS Trade-Through

January 27, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 7, 2003, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On January 20, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain provisions of CHX Article XX, Rule 37, which governs, among other things, execution of limit orders, in listed securities, in a CHX specialist's book following a trade-through in the primary market. Specifically, the CHX seeks to render voluntary a CHX specialist's obligation to fill limit orders in the specialist's book when the primary market is trading at the limit price, if the issue traded constitutes an Exempt ETF (as defined below). The text of the proposed rule change is available at the Commission and at the CHX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 28, 2002, the Commission issued an order granting a *de minimis* exemption (the ''Exemption'') for transactions in certain exchange-traded funds (the ''Exempt ETFs'') from the trade-through provisions of the Intermarket Trading System (''ITS'') Plan.[4] On May 30, 2003, the Commission issued an order extending effectiveness of the Exemption, through March 4, 2004.[5] In its orders relating to the Exemption, the Commission clearly outlined its belief that the nature of the ETF market is so dynamic and rapidly-changing that the trade-through provisions of the ITS Plan are inadequate and unduly restrictive.[6]

Article XX, Rule 37(a)(3) of the CHX Rules, which governs execution of limit orders in a CHX specialist's book, provides for execution of such orders at the limit price, *i.e.*, it requires the CHX specialist to provide ''limit order protection,'' when certain conditions occur in the primary market. Among other things, these provisions generally obligate a CHX specialist to fill limit orders in his book if the primary market is trading at or through the limit price.

Following issuance of its Exemption order, the Commission approved a rule change proposed by the CHX, removing the requirement that CHX specialists guarantee limit order protection in the case of an Exempt Trade-Through in the primary market.[7] CHX specialists are permitted to provide this protection on a voluntary basis.

The Exchange believes that it is appropriate to extend the effect of this rule change by removing the remaining limit order protection requirements for orders in any of the Exempt ETFs. Specifically, the CHX believes that in instances where the primary market in an Exempt ETF is trading *at* the limit price, the CHX specialist should not be required to execute resting limit orders in his book under CHX Article XX, Rule 37(a)(3)(a) and 37(a)(3)(c).

Accordingly, the proposed rule change would permit, but would not require, a CHX specialist to fill limit orders in his book when the primary market in an Exempt ETF is trading at the limit price.[8] The CHX asserts that rationale for this proposal is similar to that articulated by the Commission in the Exemption order—it is difficult, if

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces and supercedes the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002). At present, the exemption extends to transactions in three designated Exempt ETFs—the Nasdaq-100 Index (''QQQ''), the Dow Jones Industrial Average (''DIAMONDs'') and the Standard & Poor's 500 Index (''SPDRs'')—when the transactions are ''executed at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS'' (each, an ''Exempted Trade-Through''). The exemption was effective as of September 4, 2002. The Exchange notes that the Commission's exemption extended to the subject *transactions* rather than the three subject *issues.* For purposes of this submission, however, the Exchange will refer to such issues at the ''Exempt ETFs.''

[5] *See* Securities Exchange Act Release No. 47950 (May 30, 2003), 68 FR 33748 (June 5, 2003).

[6] *See* supra note 3, 67 FR at 56607–56608.

[7] *See* Securities Exchange Act Release No. 46760 (November 1, 2002), 67 FR 68219 (November 8, 2002). The CHX rule language approved by the Commission is currently in effect until March 4, 2004, the expiration date of the Exemption order. *See* Securities Exchange Act Release No. 48202 (July 21, 2003), 68 FR 44370 (July 28, 2003).

[8] The CHX believes that the proposed rule change, which broadens the scope of Interpretation and Policy .10 to CHX Article XX, Rule 37, contemplates the proposal outlined above. To the extent that the CHX Board of Governors designates subject issues other than or in addition to the Exempt ETFs, the Exchange will file those changes with the Commission as an interpretation of an existing rule pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(1).

not impossible, for a CHX specialist to obtain liquidity on behalf of his customer via the ITS system in the case of Exempt ETFs, given the dynamic and rapidly changing nature of the Exempt ETF market.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[9] The CHX believes the proposal is consistent with Section 6(b)(5) of the Act [10] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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–CHX–2003–27. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–2003–27 and be submitted by February 24, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

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BILLING CODE 8010–01–P

[9] 15 U.S.C. 78(f)(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49129; File No. SR–NASD–2003–176]

Self-Regulatory Organizations; Notice of Designation of Longer Period for Commission Action and Extension of Comment Period on a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Chief Executive Officer and Chief Compliance Officer Certification

January 27, 2004.

On November 28, 2003, the National Association of Securities Dealers, Inc. (''NASD'') 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 add NASD Rule 3013. Notice of the proposed rule change was published for public comment in the **Federal Register** on December 31, 2003.[3] The notice provided that comments on the proposed rule change should be submitted to the Commission by January 21, 2004.

Section 19(b)(2) of the Act [4] provides that within thirty-five days of the publication of notice of the filing of a proposed rule change, or within such longer period as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding the Commission shall either approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved. That thirty-five day period will end on February 4, 2004, with respect to the proposed rule change. The Commission has received comments on the proposed rule change, which it is still reviewing. The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the comments.

Accordingly, the Commission hereby designates March 30, 2004 as the date by which the Commission shall either approve the proposed rule change or institute proceedings to determine whether to disapprove it. The Commission is also extending the period for public comment through February 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–2092 Filed 2–2–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48981 (December 23, 2003), 68 FR 75704. The Release was incorrectly identified in the **Federal Register** as 34–48961. The correct number is 34–48981.

[4] 15 U.S.C. 78s(b)(2).

[5] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49131; File No. SR–NASD–2004–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend Operation of NASD's Alternative Display Facility on a Pilot Basis

January 27, 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 January 27, 2004, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD filed the proposal pursuant to Section 19(b)(3) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to extend for nine months the operation of NASD's Alternative Display Facility (''ADF'') on a pilot basis. The current ADF pilot program, which the Commission approved on July 24, 2002, will expire on January 26, 2004. The pilot permits members to quote and trade only Nasdaq-listed securities on or through the ADF.

New text is italicized. Deleted text is in brackets.

* * * * *

4000A. NASD Alternative Display Facility

4100A. General

NASD Alternative Display Facility (''ADF'') is the facility to be operated by NASD on a pilot basis for members that choose to quote or effect trades in Nasdaq securities (''ADF-eligible securities'') otherwise than on Nasdaq or on an exchange. The ADF will collect and disseminate quotations, compare trades, and collect and disseminate trade reports. Those NASD members that utilize ADF systems for quotation or trading activities must comply with the Rule 4000A, Rule 5400 and Rule 6000A Series, as well as all other applicable NASD Rules. The ADF pilot will expire on [January 26, 2004] *October 26, 2004.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 24, 2002, the Commission approved SR–NASD–2002–97,[5] which authorized NASD to operate the ADF on a pilot basis for nine months, pending the anticipated approval of SR–NASD–2001–90, which proposed to operate the ADF on a permanent basis. The ADF pilot was extended until January 26, 2004 in SR–NASD–2003–67.[6] As described in detail in SR–NASD–2001–90, the ADF is a quotation collection, trade comparison, and trade reporting facility developed by NASD in accordance with the Commission's SuperMontage Approval Order[7] and in conjunction with Nasdaq's anticipated registration as a national securities exchange.[8] In addition, since the Commission gave its initial approval to the ADF pilot, NASD has filed with the Commission several other proposed rule changes to amend the ADF's rules, some of which have become effective and been incorporated into the operation and administration of the ADF pilot.[9]

As proposed in SR–NASD–2001–90, the ADF would provide market participants the ability to quote and trade Nasdaq and exchange-listed securities. The current ADF pilot program, however, permits operation of the ADF with respect to Nasdaq securities only. This is because several regulatory issues relating to the trading of exchange-listed securities on the ADF have not been resolved.

According to NASD, the ADF has been operating successfully during the pilot period. NASD believes that the Commision, in approving the launch of SuperMontage, stated that the ADF met the conditions set forth in its SuperMontage Approval Order to provide an alternative quotation collection, trade comparison and trade reporting facility. The ADF has since continued to honor those conditions. NASD also notes that the issues related to trading exchange-listed securities—and by extension, approval of the operation of ADF on a permanent basis—remain unresolved. Accordingly, NASD believes it is appropriate to extend the pilot period for ADF trading in Nasdaq securities—until October 26,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002) (Order approving SR–NASD–2002–97 on a pilot basis).

[6] *See* Securities Exchange Act Release No. 47633 (April 10, 2003), 68 FR 19043 (April 17, 2003) (Notice of Filing and Immediate Effectiveness of SR–NASD–2003–67).

[7] *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (File No. SR–NASD–99–53).

[8] *See* Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001) (File No. 10–131).

[9] On January 30, 2003, NASD filed a proposed rule change with the Commission to revise the transaction and quotation-related fees applicable to ADF activity during the pilot program. This proposed rule change became effective upon filing, with an implementation date of February 17, 2003. *See* Securities Exchange Act Release No. 47331 (February 10, 2003), 68 FR 7635 (February 14, 2003) (Notice of Filing and Immediate Effectiveness of SR–NASD–2003–09). On January 6, 2004, the Commission approved on an accelerated basis a proposal to amend NASD's ADF pilot rules to give jurisdiction to a three-member subcommittee of NASD's Market Regulation Committee (''MRC'') to review system outage determinations under NASD Rule 4300A(f) and excused withdrawal denials under NASD Rule 4619A. This proposed rule change became effective contemporaneous with the Commission's approval. *See* Securities Exchange Act Release No. 49029 (January 6, 2004), 69 FR. 2167 (January 14, 2004) (Order granting accelerated approval to SR–NASD–2003–145). On December 4, 2003, NASD filed for immediate effectiveness a proposed rule change to amend NASD Rule 4613A(c) to clarify that NASD may suspend quotations in ADF displayed by any market participant, including an ECN, that are no longer reasonably related to the prevailing market. *See* Securities Exchange Act Release No. 49075 (January 14, 2004) (Notice of Filing and Immediate Effectiveness of SR–NASD–2003–181). Additionally, NASD has two other rule changes that propose to amend ADF rules pending with the Commission. One proposed rule change would repeal NASD Rule 4613A(e)(1), which requires members that display priced quotations for a Nasdaq security in two or more market centers to display the same priced quotations for that security in each market center. *See* SR–NASD–2003–175. The second rule change proposes to amend NASD Rule 4300A to require an ADF Market Participant to provide advance written notice to NASD's ADF Market Operations before denying electronic access to its ADF quote to any NASD member in the limited circumstances where a broker-dealer fails to pay contractually obligated costs for access to the Market Participant's quotations. *See* SR–NASD–2004–002.

2004 or until approval of SR–NASD–2001–90.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act [10] which requires that the NASD have rules that prevent fraudulent and manipulative acts, promote just and equitable principles of trade, foster cooperation and coordination among persons engaged in regulating, clearing, settling, processing information and facilitating transactions in securities, 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. NASD further believes the proposed rule change is consistent with Section 15A(b)(6)[11] because it does not permit unfair discrimination between customers, issuers, brokers, or dealers, fix minimum profits, impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by members, or regulate matters not related to the purposes of the Act or the administration of NASD.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received. Written comments, however, were solicited on proposed rule changes SR–NASD–2001–90 and SR–NASD–2002–28, the underlying rule filings to SR–NASD–2002–97 and SR–NASD–2003–67, and SR–2003–09, respectively. NASD responded to the comments received in response to SR–NASD–2001–90 in its Amendment No. 2 to that filing submitted to the Commission on May 24, 2002. NASD responded to the comments received in response to SR–NASD–2002–28 in its Amendment No. 1 to that filing submitted to the Commission on May 14, 2002.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and subparagraph (f)(6) of Rule 19b–4[13] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

NASD has requested that the Commission waive the 30-day operative delay to prevent the current ADF pilot program from lapsing. Under Rule 19–4(f)(6) of the Act, a proposed rule change does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will ensure the uninterrupted operation of the ADF pilot until October 26, 2004. For this reason, the Commission waives the 30-day operative delay and designates the proposal to be immediately effective and operative upon filing with the Commission.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2004–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR–NASD–2004–12 and should be submitted by February 24, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–2145 Filed 2–2–04; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78*o*–3.

[11] 15 U.S.C. 78*o*–3.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49122; File No. SR–NSCC–2003–23]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees

January 23, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 2, 2004, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to (i) adjust the fees NSCC charges for trade recording, (ii) establish fees for the Cost Basis Reporting Service, and (iii) eliminate Archival Microfiche fees.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to (i) adjust the fees NSCC charges for trade recording, (ii) establish fees for the Cost Basis Reporting Service, and (iii) eliminate Archival Microfiche fees.

Pursuant to the proposed rule change, the fee for trade recording for each side of each stock, warrant, or other right entered for settlement has been reduced from $0.003 to $0.0025 per 100 shares with a minimum fee of $0.0075 and a maximum fee of $0.15 (reduced from $0.009 and $0.18, respectively). In addition, the fee for use of the Cost Basis Reporting Service, which had been operating on a pilot basis during which no fee was charged, will be $0.09 per asset. The Archival Microfiche fees have been eliminated because this format is no longer provided due to more preferred alternative means for providing archival reports. Members were notified of the proposed elimination and the alternative means of receiving archival reports in an Important Notice (A #5671, P&S #524) dated August 29, 2003. These proposed fee revisions are consistent with NSCC's overall pricing philosophy to align service fees and underlying cost.

The proposed rule change is consistent with Section 17A(b)(3)(D) of the Act[3] and the rules and regulations thereunder because it allows for the equitable allocation of reasonable dues, fees, and other charges among NSCC's members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2)[5] thereunder because the proposed rule establishes or changes a due, fee, or other charge. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NSCC–2003–23. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *www.NSCC.com/legal/.* All submissions should refer to File No. SR–NSCC–2003–23 and should be submitted by February 24, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–2091 Filed 2–2–04; 8:45 am]

BILLING CODE 8010–01–U

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] 15 U.S.C. 78q–1(b)(3)(D).

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49123; File No. SR–NSCC–2003–11]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the Criteria Used To Place Members on Surveillance Status and To Eliminate Member and Applicant Financial Responsibility and Operational Capability Questionnaires

January 23, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 27, 2003, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on June 17, 2003, and September 15, 2003, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSCC is seeking to amend the criteria it uses to place members on surveillance status and to eliminate member and applicant financial responsibility and operational capability questionnaires.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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

[1] 15 U.S.C. 78s(b)(1).

may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the current NSCC rules, management has the ability to place on surveillance status a member that is experiencing conditions which may have an adverse financial or operational impact on NSCC. Once placed on surveillance status, NSCC closely monitors the member's condition. The current criteria for placing members on surveillance status are broadly written and capture many NSCC members that pose minimal financial or operational risk to NSCC. This creates administrative burdens for NSCC staff who must more closely monitor these members who pose minimal risk.

To remedy this problem, NSCC has developed new criteria for placing members on surveillance. Specifically, all full service firms for which NSCC guarantees their trades will be assigned a rating that is generated by entering financial data of the member into a matrix (''Matrix'') developed by Credit Risk staff.[3] Those members with a ''weak'' rating, which are deemed to pose a relatively higher degree of risk to NSCC, will be placed on an internal ''Watch List'' and will be monitored more closely by Credit Risk staff.[4] Members placed on the Watch List may be required to submit additional financial reports and data and/or make additional Clearing Fund deposits.

Currently, Addendums B, I, Q, and R (Standards of Financial Responsibility and Operational Capability for Settling, Fund, Insurance Carrier, and Third Party Administrator members and applicants, respectively) include questionnaires that members and applicants are required to complete and return to NSCC. NSCC Rule 15, Section 2 also provides that NSCC has the authority to examine the financial responsibility and operational capability of members and applicants. In conducting such examinations, NSCC may require a member or applicant to furnish such information as deemed sufficient by NSCC to demonstrate its financial responsibility and operational capability.

NSCC has determined to rely on its ability under Rule 15, Section 2 to obtain pertinent information for members and applicants rather than require responses to specific questionnaires. NSCC will solicit such information in such form and within such timeframes as it may require from time to time.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder applicable to NSCC because it will facilitate the safeguarding of securities and funds which are in its custody or control or for which it is responsible and in general will protect investors and the public interest by improving NSCC's member surveillance process.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NSCC–2003–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *www.nscc.com/legal/*.

All submissions should refer to File No. SR–NSCC–2003–11 and should be submitted by February 24, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–2143 Filed 2–2–04; 8:45 am]

BILLING CODE 8010–01–P

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] NSCC's approach to the analysis of members will be based on a thorough quantitative analysis. A broker-dealer member's rating on the Matrix will be based on factors including size (*i.e.* total excess net capital), capital, leverage, liquidity, and profitability. Banks will be reviewed based on size, capital, asset quality, earnings, and liquidity.

[4] Members will also be evaluated based on their compliance with certain ''parameter breaks'' which will be determined based on applicable monthly and/or quarterly exception reports generated by Credit Risk staff. A member may be placed on the Watch List for failure to fall within, for example, prescribed excess net capital, excess liquid capital, aggregate indebtedness, leverage ratio, or financial membership requirement parameters.

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4602]

Request for Proposals: Program for Research and Training on Eastern Europe and the Independent States of the Former Soviet Union (Title VIII)

SUMMARY: The Department of State invites organizations with substantial experience in conducting research and training to serve as intermediaries administering nationwide competitive

programs for individuals and institutions concerning research and training on the countries of Southeast Europe and Eurasia. U.S.-based public and private non-profit organizations and educational institutions may submit proposals that sustain and support American expertise on the countries of Eurasia and Southeast Europe. The grants will be awarded through an open competition among applicant organizations. The purpose of this request for proposals is to inform potential applicant organizations of programmatic, procedural and funding information for submission of proposals for awards in fiscal year 2004, under a program administered by the Department of State.

Important Note: This Request for Proposals contains new instructions in the ''Shipment and Deadline for Proposals,'' ''Eligible Countries,'' and ''New OMB Requirement'' sections. Please pay special attention to procedural changes as outlined.

Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Title VIII Program Office or submitting a proposal. Once the proposal submission deadline has passed, Title VIII Program staff may not discuss this competition with applicants until after the proposal review process has been completed.

This notice contains three parts. Part I addresses Shipment and Deadline for Proposals. Part II consists of a Statement of Purpose and Program Priorities. Part III provides Funding Information for the program.

Authority: Grantmaking authority for the Program for Research and Training on Eastern Europe and the Independent States of the Former Soviet Union (Title VIII) is contained in the Soviet-Eastern European Research and Training Act of 1983 (22 U.S.C. 4501–4508, as amended) and is funded through the FREEDOM Support Act (FSA) and Support for East European Democracy (SEED) Act. The purpose of the program is to build and sustain U.S. expertise on the study of Eastern Europe and Eurasia. The Department of State brings this expertise to the service of the U.S. Government.

Part I

Shipping and Deadline for Proposals: In light of heightened security measures, proposals may not be sent by regular U.S. Mail, and must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or USPS Express Mail, etc.) or hand-delivered.

Proposals sent by USPS Express Mail or overnight delivery service must have a postmark or invoice dated by Friday, April 2, 2004, and must be received within seven (7) days after the deadline. Hand-delivered proposals must be submitted no later than 4 p.m. on April 2, 2004. Faxed documents will not be accepted at any time. Late applications will not be considered. It is the applicant's responsibility to ensure that proposals are delivered on time.

Address proposals to: Susie Baker, Title VIII Program Officer, U.S. Department of State, INR/RES, Room 2251, 2201 C Street, NW., Washington, DC 20520–6510.

Applications Delivered by Hand: Hand-delivered proposals will be accepted between 9 a.m. and 4 p.m. est daily, except Saturdays, Sundays and Federal holidays. Proposals must be brought to the State Department's 21st Street entrance, just north of the intersection with C Street, NW. From the 21st Street lobby telephone, contact Maria Seda-Gaztambide at (202) 736–4572 or Susie Baker at (202) 647–0243 for pick up.

Part II

Program Information: In the Soviet-Eastern European Research and Training Act of 1983 (Title VIII), the Congress declared that independently verified factual knowledge about the countries of that area is ''of utmost importance for the national security of the United States, for the furtherance of our national interests in the conduct of foreign relations, and for the prudent management of our domestic affairs.'' Congress also declared that the development and maintenance of such knowledge and expertise ''depends upon the national capability for advanced research by highly trained and experienced specialists, available for service in and out of Government.'' The Title VIII Program provides financial support for advanced research, graduate and language training and other related functions on the countries of the region. By strengthening and sustaining in the United States a cadre of experts on Eastern Europe and Eurasia, the program contributes to the overall objectives of the FREEDOM Support and SEED Acts.

The full purpose of the Act and the eligibility requirements are set forth in Pub. L. 98–164, 97 Stat. 1047–50, as amended. Research on the following countries is eligible for funding under this request for proposals, Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Romania, Russia, Serbia (including Kosovo and Montenegro), Tajikistan, Turkmenistan, Ukraine and Uzbekistan.

The Act established an Advisory Committee to recommend grant policies and recipients. The Deputy Secretary of State, after consultation with the Advisory Committee, approves policies and makes the final determination on awards.

Applications for funding under the Title VIII Program are invited from U.S. organizations with institutional capacity and experience in conducting competitive programs, national in scope, on Southeast Europe and Eurasia and related fields. Programs of this nature are those that make awards based upon an open, merit-based competition, incorporating peer group review mechanisms. Individual recipients of these funds—those to whom the applicant organizations or institutions propose to make awards—must be at the graduate or post-doctoral level, and must have demonstrated a likely career commitment to the study of Eastern Europe and/or Eurasia.

Proposals should outline programs that would contribute to the development of a stable, long-term, national program of unclassified, advanced research and training on the countries of Southeast Europe and/or Eurasia.

Applications proposing innovative, yet realistic, approaches to research and training programs, techniques and methods, and more productive interaction among U.S. Government agencies, universities and non-government organizations (NGOs) are strongly encouraged.

Applicants should consider the following guidelines when developing proposals for funding under the Title VIII Program. Programs should be national in scope, and may:

(1) Award contracts or grants to U.S. institutions of higher education or not-for-profit corporations in support of post-doctoral or equivalent-level research projects, to be cost-shared with partner institutions;

(2) Offer graduate, post-doctoral and teaching fellowships for advanced training on the countries of Southeast Europe and Eurasia, and in related studies, including training in the languages of the region, to be cost-shared with partner institutions;

(3) Provide fellowships and other support for American specialists enabling them to conduct advanced research on the countries of Southeast Europe and Eurasia, and in related studies;

(4) Facilitate research collaboration among U.S. scholars and Government and private specialists on Southeast Europe and Eurasia studies;

(5) Provide advanced training and research on a reciprocal basis in the countries of Southeast Europe and Eurasia by facilitating access for American specialists to research facilities and resources in those countries;

(6) Facilitate the dissemination of research findings, methods and data among U.S. Government agencies and the public; and

(7) Strengthen the national capability for advanced research or training on the countries of Southeast Europe and Eurasia and/or bring Title VIII scholarship to the service of the U.S. Government in ways not specified above.

Note: The Advisory Committee will not consider applications from individuals to further their own training or research, or from institutions or organizations whose proposals are not for national competitive award programs.

In addition to the above guidelines, support for specific activities will be guided by the following policies and priorities:

• *Support for Transitions and U.S. Assistance Goals:* The Advisory Committee strongly encourages support for research activities that, while building expertise among U.S. specialists on the region, also: (1) Promote fundamental goals of U.S. assistance programs such as helping establish market economies and promoting democratic governance and civil societies, and (2) provide knowledge to both U.S. and foreign audiences related to current U.S. policy interests in the region, broadly defined. This includes, but is not limited to, such topics as resolution of ethnic, religious, and other conflict; terrorism; transition economics; access to information; women's issues; human rights; and citizen participation in politics and civil society. For overseas research, applicants are asked to propose creative means through which individual grant recipients' work may complement assistance activities in the region. Applicants are strongly encouraged to propose programs where grants for overseas work must include a service component such as lecturing at a university or participating in workshops with host government and parliamentary officials, nongovernmental organizations, and other relevant audiences on issues related to economic and political transitions.

• *Scope:* As mentioned above, the Title VIII Program provides knowledge to both U.S. and foreign audiences related to current U.S. policy interests in the region, broadly defined. Historical or cultural research that promotes understanding of current events in the region is acceptable if an explicit connection can be made to contemporary political and/or economic transitions. Research on such topics as musicology and mathematics are not appropriate for funding under this program.

• *Regional Focus*: The Advisory Committee gives priority to innovative programs that focus on gaps in knowledge on Central Asia, the Caucasus, and the Balkans, especially the former Yugoslavia. Since September 2001, the ''greater Central Asia'' region has become critical in the global war on terrorism. Also eligible are proposals that incorporate a focus on a ''greater Central Asia,'' and include specifically the countries of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and/or Uzbekistan, relative to their cross-border historical, ethnic, linguistic, political, economic and cultural ties with such countries as Iraq, Iran, Afghanistan, Pakistan and Turkey.

• *Balanced National Program*: In making its recommendations, the Advisory Committee will seek to encourage a coherent, long-term and stable effort directed toward developing and maintaining a national capability on the countries of Southeast Europe and Eurasia. Program proposals can be for the conduct of any of the functions enumerated, but in making its recommendations, the Committee will concern itself particularly with the development of a balanced national effort that will ensure attention to all eligible countries.

• *Promoting Federal Service for Title VIII Grant Recipients*: Although the Title VIII Program does not require a federal service commitment for individuals receiving funding, the Advisory Committee urges grantees to encourage individuals receiving Title VIII funding to pursue U.S. Government career opportunities, internships, or short-term sabbaticals after completing their awards. Grant recipient organizations are encouraged to: (1) Identify individuals for funding who have an interest in pursuing careers in the U.S. Government, and (2) provide opportunities for individuals in disciplines with Eurasian and/or Southeast Europe studies concentrations to serve on a temporary basis as a policy or other expert in U.S. Embassies, U.S. Government agencies and/or with NGOs in the region.

• *Publications*: Funds awarded in this competition should not be used to subsidize journals, newsletters and other periodical publications except in special circumstances. In such cases, funding requests should be directed to one or more of the organizations that may receive program funds for such purposes. Proposed publications would be competed nationally and evaluated by peer-review selection panels against research, fellowship or other proposals for achieving the purposes of the grant.

• *Conferences*: Proposals for conferences should be assessed according to their relative contribution to the advancement of knowledge and to the professional development of cadres in the fields. Therefore, requests for conference funding should be directed to one or more of the organizations that may receive program funds for such purposes. Proposed conferences would be competed nationally and evaluated against research, fellowship or other proposals for achieving the purposes of the grant.

• *Library Activities*: Funds may be used for certain library activities that clearly strengthen research and training on the countries of Southeast Europe and Eurasia and benefit the fields as a whole. Such programs must make awards based upon open, national competition, incorporating peer group review mechanisms. Funds may not be used for activities such as modernization, acquisition, or preservation. Modest, cost-effective proposals to facilitate research, by eliminating serious cataloging backlogs or otherwise improving access to research materials, will be considered.

• *Language Support:* The Advisory Committee encourages a focus on the non-Russian languages of Eurasia and the less-commonly-taught languages of Southeast Europe. For Russian-language instruction/study, support may be provided only at the advanced level. Institutions seeking funding in order to offer language instruction are encouraged to apply to one or more of the national programs with appropriate peer review and selection mechanisms.

• *Support for Non-Americans:* The purpose of the program is to build and sustain U.S. expertise on the countries of Southeast Europe and Eurasia. Therefore, the Advisory Committee has determined that highest priority for support always should go to American specialists (*i.e.*, U.S. citizens or permanent residents). Support for such activities as long-term research fellowships (*i.e.*, nine months or longer), should be restricted solely to American scholars. Support for short-term activities also should be restricted to Americans, except in special instances where the participation of a non-American scholar has clear and demonstrable benefits to the U.S.

scholarly community and/or the U.S. Government. In such special instances, the applicant will be required to justify the expenditure. Despite this restriction on support for non-Americans, collaborative projects are encouraged—where the non-American component is funded from other sources—and priority is given to institutions whose programs contain such an international component.

• *Cost-sharing:* Legislation requires that in certain cases grantee organizations must include cost-sharing provisions in their arrangements with individual and institutional recipients. Cost sharing is strongly encouraged in all programs. Cost-sharing is particularly encouraged for grants to American institutions of higher education and not-for-profit corporations in support of: (1) Post-doctoral or equivalent-level research projects; and (2) graduate, post-doctoral and teaching fellowships for advanced training or language studies. Research solely on, and/or travel to, the countries of ''greater Central Asia'' or Central and East Europe outside of Southeast Europe as outlined in this request for proposals, is not eligible for FSA or SEED funding. Proposals may include a plan to support research projects on, and travel to, countries eligible and ineligible for FSA or SEED funding, to address cross-border issues, regional or comparative studies, *etc.*, in which case travel to ineligible countries would be cost-shared with funding from other sources. Travel to certain countries may be subject to restrictions due to unforeseeable world events, a requirement for U.S. embassy approval or general security concerns. All proposed cost-sharing should be included in the budget request in a separate column, and explained in the budget notes.

• *Program Data Requirements:* Organizations awarded grants will be required to provide data on program participants and activities in an electronically accessible format for the Title VIII Alumni Database. Requested information would include the following: Name; Institution; Address; Contact Information; Field(s) of Expertise; Location of Research, Fellowship, or other Activity; Research Products/Titles; Service to the U.S. Government (if applicable); Contribution to U.S. Assistance Goals (if applicable); *etc.*

Applications

New OMB Requirement: An OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements on or after October 1, 2003. The complete OMB policy directive can be referenced at: *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf.*

Organizations can receive a DUNS number at no cost by calling the toll-free DUNS Number request line at (866) 705–5711 or by applying online at *http://www.dnb.com/us/duns_update/.*

To comply with this directive, please include your organization's DUNS number in the proposal's ''Executive Summary.''

Application Format: Applicants must submit 20 copies of the proposal (a clearly marked original and 19 copies) in Times New Roman, 12 point font in the following format: (1) Cover Letter with signature, name and title of authorized representative *and* primary point of contact for questions (if different); (2) Executive Summary (one-page, single-spaced, with DUNS number); (3) Narrative (not to exceed 20 double-spaced pages); (4) Budget Presentation with Budget Notes explaining each line item; (5) Resumes (one-page, for key professional staff); (6) Letters of Support and/or Partnership; and (7) Required Certifications. NB: Applicants also should submit the ''Executive Summary,'' ''Proposal Narrative'' and ''Budget with Budget Notes'' on a PC-formatted disk. Applicants may append other information they consider essential, although bulky submissions are discouraged and run the risk of not being reviewed fully.

Budget: Because funds will be appropriated separately for Southeast Europe and Eurasia programs, proposals and budgets must indicate how the requested funds will be distributed by region, country (to the extent possible) and activity. Successful grant recipients will be required to report expenditures by region, country and activity.

Applicants should familiarize themselves with Department of State grant regulations contained in 22 CFR 145, ''Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations''; 22 CFR 137, ''Department of State Government-wide Debarment and Suspension (Non-Procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)''; OMB Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations''; and OMB Circular A–133, ''Audits of Institutions of Higher Learning and Other Non-Profit Institutions.'' Applicants must provide the following information:

(1) Indicate whether the organization falls under OMB Circular No. A–21, ''Cost Principles for Educational Institutions,'' or OMB Circular No. A–122, ''Cost Principles for Nonprofit Organizations'';

(2) Submit a detailed, three-column budget, with one column each for applicant costs, cost-sharing and total costs. The budget must include direct program costs, administrative and indirect costs, and total amount requested, clearly identified by program element and by region (Eurasia or Southeast Europe). Indirect costs must be listed separately for Eurasia and Southeast Europe. The ''Total Amount Requested'' should be the sum of the amount requested for Eurasia activities plus the amount requested for Southeast Europe activities. ''Administrative Costs'' should be reflected also as a percentage of the total requested funding. NB: Indirect costs are limited to 10 percent of total direct program costs.

(3) For applicants requesting funds to supplement a program having other sources of funding, submit a current budget for the total program and an estimated future budget for it, showing how specific lines in the budget would be affected by the allocation of requested grant funds. Other funding sources and amounts should be identified.

(4) Explain the cost-sharing plan in the proposal's budget notes, with appropriate details and cross-references to the requested budget.

(5) Append the most recent audit report (the most recent U.S. Government audit report, if available) and the name, address, and point of contact of the audit agency.

(6) Include a prioritized list of proposed programs if funding is being requested for more than one program or activity.

All payments will be made to grant recipients through the U.S. Government's Payment Management System (PMS).

Proposal Narrative: The Applicant must describe fully the proposed programs, in no more than 20 double-spaced pages, including the benefits of these programs for the Southeast European and Eurasian fields, estimates of the types and amounts of anticipated awards, peer review and selection procedures and anticipated selection

committee participants, and detailed information about recruitment plans and advertising of program opportunities to eligible individuals and/or institutions. The narrative also should address the applicant's plan to encourage policy relevant research, methods for dissemination of research products, and plans for bringing Title VIII to the service of the U.S. Government, where applicable.

Applicants who have received previous grants from the Title VIII Program should provide detailed information on the individual and institutional awards made, including, where applicable, names/affiliations of recipients, and amounts and types of awards. Applicants should specify both past and anticipated applicant to award ratios. A summary of the applicant's past grants under the Title VIII Program also should be included.

Proposals from national organizations involving language instruction programs should provide, for those programs supported in the past year, indications of progress achieved by Title VIII-funded students, information on the criteria for evaluation, including levels of instruction, degrees of intensiveness, facilities, methods for measuring language proficiency (including pre- and post-testing), instructors' qualifications, and budget information showing estimated costs per student.

Certifications: Applicants must include (1) a description of affirmative action policies and practices and (2) certifications of compliance with the provisions of: (a) the *Drug-Free Workplace Act* (Pub. L. 100–690), in accordance with Appendix C of 22 CFR 137, Subpart F; and (b) Section 319 of the Department of the Interior and Related Agencies Appropriations Act (Pub. L. 101–121), in accordance with Appendix A of 22 CFR 138, *New Restrictions on Lobbying Activities.*

Review Process: All eligible proposals will be reviewed by the program office, a grant review panel and the Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union. Proposals also may be reviewed by the Office of the Legal Advisor or by other Department elements. Final funding decisions are at the discretion of the Department of State's Deputy Secretary. Final technical authority for grants resides with the Department of State's Grants Officers.

Review Criteria: Technically eligible proposals will be competitively reviewed according to the following criteria:

(1) Quality of the Program Idea: Proposals should be responsive to the guidelines provided in this request for proposals, and should exhibit originality, substance, precision, and relevance to the State Department's mission, the legislation supporting the Title VIII Program, and the FREEDOM Support and SEED Acts.

(2) Program Planning: Program objectives should be stated clearly. Objectives should respond to priorities and address gaps in knowledge for particular fields and/or regions. A timeline outlining expected achievement of milestones should be included. Responsibilities of partner organizations, if any, should be described clearly.

(3) Institutional Capacity: Proposed personnel and selection committees should be adequate and appropriate to achieve the program's goals. The proposal should reflect the applicant's expertise and knowledge in conducting national competitive award programs of the type the applicant proposes on the countries of Southeast Europe and/or Eurasia. Past performance of prior recipients and the demonstrated potential of new applicants will be considered.

(4) Cost-Effectiveness and Cost-Sharing: Overhead and administrative costs in the proposal budget should be kept to a minimum. All other items should be necessary and appropriate. Proposals should maximize cost-sharing, including in-kind assistance, through contributions from the applicant, partner organizations, as well as other private sector support. Cost-sharing should be included as a separate column in the budget request. Proposal budgets that do not provide cost-sharing will be deemed less competitive in this category.

(5) Evaluation, Monitoring, Database, Reporting: Proposals should include a plan to evaluate and monitor program successes and challenges. Methods for linking outcomes to program objectives are recommended. The proposal should address the applicant's willingness and ability to contribute to the alumni database. Successful applicants will be required to submit quarterly financial and program reports.

Part III

Available Funds: Funding for this program is subject to final Congressional action and the appropriation of FY 2004 funds. Funding may be available at a level of approximately $5.0 million. In Fiscal Year 2003, the program was funded at $5.0 million from the FREEDOM Support and SEED Acts, which funded grants to eight national organizations. The number of awards may vary each year, depending on the level of funding and the quality of the applications submitted.

The Department legally cannot commit funds that may be appropriated in subsequent fiscal years. Thus multi-year projects cannot receive assured funding unless such funding is supplied out of a single year's appropriation. Grant agreements may permit the expenditure from a particular year's grant to be made up to three years after the grant's effective date.

The terms and conditions published in this Request for Proposals are binding and may not be modified by any Department representative. Issuance of the Request for Proposals does not constitute an award commitment on the part of the U.S. Government. The Department reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds.

FOR FURTHER INFORMATION CONTACT: For further information or to arrange a consultation, contact Susie Baker, Title VIII Program Officer, E-mail: *ACsbaker@us-state.osis.gov*; Tel: (202) 647–0243, Fax: (202) 736–4851.

Dated: January 26, 2004.

Kenneth E. Roberts,

Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, Department of State.

[FR Doc. 04–2153 Filed 2–2–04; 8:45 am]

BILLING CODE 4710–32–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Commission

Presidential Determination on Provision of Aviation Insurance Coverage for Commercial Air Carrier Service in Domestic and International Operations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: Notice is hereby given that the President has authorized the Federal Aviation Administration to replace the current practice of renewing U.S. Department of Transportation (DOT) and Federal Aviation Administration (FAA) war risk aviation insurance policies at 60-day intervals and substitute a longer extension of policies, until August 31, 2004.

FOR FURTHER INFORMATION CONTACT: John Rodgers, Director, APO–1, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone 202–267–3274.

SUPPLEMENTARY INFORMATION: Since September of 2001, DOT/FAA have provided aviation war risk insurance and renewed the coverage in 60-day increments. By statute, DOT/FAA must continue to provide this insurance coverage until August 31, 2004. From a purely administrative perspective, the exchange of renewal documentation every 60 days with approximately 75 insured airlines and a large number of finance and leasing companies increases the chance for errors and omissions. Extending the duration until August 31, 2004 will eliminate excessive paper work and time pressure for all concerned.

Affected Public: Air Carriers who currently have Third Party War-Risk Insurance with the Federal Aviation Administration.

The text of the Memorandum from the President to the Secretary of Transportation is set forth below.

Issued in Washington, DC on January 16, 2004.

John Rodgers,

Director, Office of Aviation Policy and Plans.

Memorandum for the Secretary of Transportation

Subject: Provision of Aviation Insurance Coverage for Commercial Air Carrier Service in Domestic and International Operations

Title 3—Presidential Determination No. 2004–13 of December 11, 2003

By the authority vested in me by 49 U.S.C. 44302, *et seq.,* I hereby:

1. Determine that continuation of U.S.-flag commercial air service is necessary in the interest of air commerce, national security, and the foreign policy of the United States;

2. Approve provision by the Secretary of Transportation of Insurance or reinsurance to U.S.-flag air carriers against loss or damage arising out of any risk from the operation of an aircraft in the manner and to the extent provided in Chapter 443 of 49 U.S.C.:

(a) Until August 31, 2004;

(b) After August 31, 2004, but no later than December 31, 2004, when he determines that such insurance or reinsurance cannot be obtained on reasonable terms and conditions from any company authorized to conduct an insurance business in a State of the United States; and

3. Delegate to the Secretary of Transportation the authority, vested in me by 49 U.S.C. 44306(c), to extend this determination for additional periods beyond August 31, 2004, but no later than December 31, 2004, when he finds that the continued operation of aircraft to be insured or reinsured is necessary in the interest of air commerce or the national security, or to carry out the foreign policy of the United States Government.

You are directed to bring this determination immediately to the attention of all air carriers within the meaning of 49 U.S.C. 40102(2), and to arrange for its publication in the **Federal Register**.

George W. Bush

[FR Doc. 04–2203 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Snohomish County for Paine Field/Snohomish County Airport under the provisions of 49 U.S.C. 47501 *et. seq* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is January 8, 2004.

FOR FURTHER INFORMATION CONTACT: Dennis Ossenkop, Federal Aviation Administration, Airports Division, 1601 Lind Ave. SW., Renton, WA, 98055–4056, telephone 425–227–2611. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Paine Field/Snohomish County Airport are in compliance with applicable requirements of part 150, effective January 8, 2004. Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by Snohomish County for Paine Field/Snohomish County Airport. The documentation that constitutes the ''noise exposure maps'' as defined in section 150.7 of part 150 includes the following from the September 2003, *Paine Field FAR Part 150 Noise Exposure Maps Update:*

- Figure 7 at page 19, Existing Noise Exposure Map, 2002/2003;
- Figure 8 at page 20 Future Noise Exposure Map, 2008;
- Figure 6 at page 12 Flight Tracks;
- Figure 5 at page 11 Noise Monitoring Sites;
- Table 1 at page 9 Summary of Aviation Forecasts 2002–2008'
- Tables 2 through 5 at pages 14–18 present flight track utilizations by runway and aircraft type;
- Figure 7 at page 18, Existing 2002 Noise Exposure Map, presents estimates of the number of persons residing with the DNL 55, 60, and 65 noise contours;
- Figure 8 at page 20, Future 2008 Noise Exposure Map, presents estimates of the number of persons residing with the DNL 55, 60, and 65 noise contours;
- Pages 20 through 24 and the Appendix present consultation details.
- The year of submission (2003) airport operations data is equivalent to the submitted existing condition Noise Exposure Map (2002) operations data and the five-year forecast Noise Exposure Map is reasonable.
- There are no properties on or eligible for inclusion in the National Register of Historic Places within the DNL 65 contour.

The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on January 8, 2004.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be

noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Airports Division, Suite 315, 1601 Lind Avenue, SW., Renton, Washington;

Federal Aviation Administration, Seattle Airports District Office, 1601 Lind Ave. SW., Suite 250, Renton, Washington;

Snohomish County Airport, Office of the Airport Director, 3220 100th Street, SW., Everett, WA.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Renton, Washington, January 8, 2004.

Lowell H. Johnson,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 04–2202 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice for Reid-Hillview Airport, San Jose, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by County of Santa Clara, California for Reid-Hillview Airport under the provisions of 49 U.S.C. 47501 *et. seq* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is January 13, 2004.

FOR FURTHER INFORMATION CONTACT: Elisha Novak, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010–1303, Telephone: 650/876–2928.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Reid-Hillview Airport are in compliance with applicable requirements of Part 150, effective January 13, 2004. Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by County of Santa Clara, California. The documentation that constitutes the ''Noise Exposure Maps'' as defined in section 150.7 of part 150 includes: Figure 6.1 ''Existing Conditions (2002) Noise Exposure Map,'' and Figure 6.2 ''Five-Year Forecast (2007) Noise Exposure Map.'' The Noise Exposure Maps contain current and forecast information including the depiction of the airport and its boundaries, the runway configurations, land uses such as residential, open space, commercial/office, community facilities, libraries, churches, open space, infrastructure, vacant and warehouse and those areas within the Community Noise Equivalent Level (CNEL) 60, 65, 70 and 75 noise contours. Estimates for the number of people within these contours for the year 2002 are shown in Table 7.3. Estimates of the future residential population within the 2007 noise contours are shown in Table 7.6. Figure 3.1 displays the location of noise monitoring sites. Flight tracks for the existing and the five-year forecast Noise Exposure Maps are found in Figures 5.2, 5.3, 5.4 and 5.5. The type and frequency of aircraft operations (including nighttime operations) are found in Tables 5.1 and 5.2. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on January 13, 2004.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the

statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Community and Environmental Needs Division, APP-600, 800 Independence Avenue, SW., Washington, DC 20591;

Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, California 90261;

Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010–1303;

W. Carl Honaker, Acting Director of County Airports, County of Santa Clara, Roads & Airports Department, Airport Division, 2500 Cunningham Avenue, San Jose, California 94148.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California, on January 13, 2004.

Ellsworth L. Chan,

Acting Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 04–2205 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Commission

Receipt of an Amendment to Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed amendment to the noise compatibility program that has been submitted on January 12, 2004 for Toledo Express Airport under the provisions of 49 U.S.C. 47501 *et seq.* (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 CFR part 150 by Toledo-Lucas County Port Authority. This amendment to the program was submitted subsequent to the approval by FAA of the noise compatibility program on July 22, 2003 and a determination that the associated noise exposure maps submitted under 14 CFR part 150 for Toledo Express Airport were in compliance with applicable requirements, effective January 24, 2003, published in the **Federal Register** February 14, 2003. The proposed noise compatibility program amendment will be approved or disapproved on or before July 11, 2004.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program amendment is January 14, 2004. The public comment period ends March 13, 2004.

FOR FURTHER INFORMATION CONTACT: Katherine S. Jones, Community Planner, DET ADO 606, Detroit Airports District Office, 11677 South Wayne Road, Ste. 107, Romulus, MI 48174. Comments on the proposed noise compatibility program amendment should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program amendment for Toledo Express Airport, which will be approved or disapproved on or before July 11, 2004. This notice also announces the availability of this program amendment for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has formally received the noise compatibility program amendment for Toledo Express Airport, effective on January 12, 2004. The airport operator has requested that the FAA review this material and that the noise mitigation measure, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act. Preliminary review of the submitted material indicates that it conforms to FAR Part 150 requirements for the submittal of noise compatibility program amendment, but that further review will be necessary prior to approval or disapproval of the program amendment. The formal review period, limited by law to a maximum of 180 days, will be completed on or before July 11, 2004.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed amended measures may reduce the level of aviation safety or create an undue burden on interstate or foreign commerce, and whether they are reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program amendment with specific reference to these factors. All comments relating to these factors, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the existing approved noise compatibility program and the proposed noise compatibility program amendment are available for examination at the following locations:

Federal Aviation Administration, Detroit Airports District Office, 11677 South Wayne Road, Ste. 107, Romulus, Michigan 48174.

Toledo-Lucas County Port Authority, Toledo Express Airport, 11013 Airport Highway, Box 11, Swanton, Ohio 43558.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Romulus, Michigan, January 14, 2004.

Irene R. Porter,

Manager, Detroit Airports District Office.

[FR Doc. 04–2199 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Notification Regarding Function and Reliability Testing for Turbofan-Powered Airplanes of 6,000 Pounds or Less Maximum Certificated Weight

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent and request for comments.

SUMMARY: All new certification projects for turbofan-powered airplanes of 6,000 pounds or less maximum certificated weight will be reviewed for possible issuance of special conditions to require function and reliability testing. The special condition, if required, would effectively require compliance with the requirements of 14 CFR part 21, section 21.35, paragraphs (b)(2) and (f), and would be issued under the procedural rules found in 14 CFR part 11. Such a special condition will not be applied to

any ongoing, active certification project with an established certification basis.

DATES: Send comments by March 4, 2004.

ADDRESSES: Send all comments to Mr. Steve Thompson, Small Airplane Directorate (ACE–112), Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106. Comments may also be sent by electronic mail to *steven.thompson@faa.gov*. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Thompson, Small Airplane Directorate (ACE–112), Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4126, fax (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite your comments on this notice. Send any data or views about the subject of this notice, as desired. Identify comments with ''Small Jets Function and Reliability Comments, ATTN: Steve Thompson.'' The FAA will consider all comments received by the closing date listed above before issuing a final notice.

Background

Before Amendment 3–4, Section 3.19 of Civil Air Regulation (CAR) part 3 required service tests of all airplanes type certificated on or after May 15, 1947. The purpose of these tests was to ''ascertain whether there is reasonable assurance that the airplane, its components, and equipment are reliable and function properly.''

Amendment 3–4 to CAR part 3 became effective January 15, 1951, and deleted the service test requirement in Section 3.19 for airplanes of 6,000 pounds maximum weight or less. The introductory text published in Amendment 3–4 explained that most of the significant changes in the amendment stemmed from ''the desire for simplification of the rules in this part with respect to the smaller airplanes, specifically those of 6,000 pounds maximum weight or less, which would be expected to be used mainly as personal airplanes.'' The introductory material also stated the service test requirement was removed for airplanes of 6,000 pounds maximum weight or less because ''experience seems to indicate that this rule imposes a burden upon the manufacturers not commensurate with the safety gained.'' The requirement for function and reliability testing, and the exception for airplanes of 6,000 pounds or less maximum weight, is now found in 14 CFR part 21, section 21.35(b)(2).

The decision to except airplanes of 6,000 pounds maximum weight or less from function and reliability testing was based on the state of technology envisaged in 1951. At that time, airplanes of 6,000 pounds maximum weight or less were expected to be used mainly as personal airplanes. The safety gained by requiring function and reliability testing for these airplanes did not warrant the associated added burden on the manufacturers. However, advances in technology have made possible creating turbofan-powered airplanes weighing less than 6,000 pounds that have complexity and design features not envisaged in 1951. These airplanes may also incorporate turbine engines of a type not previously used in a type-certificated aircraft. Because of their capabilities, these airplanes are viable business and commercial transportation and are not expected to be used mainly as personal airplanes. Therefore, a special condition to require function and reliability testing for turbofan-powered airplanes weighing 6,000 pounds or less may be needed to establish safety equivalent to that established by the existing airworthiness standards.

Issued in Kansas City, Missouri, on January 13, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2195 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–16–C–00–ORD To Impose a Passenger Facility Charge (PFC) at Chicago O'Hare International Airport and To Use the Revenue at Chicago O'Hare International Airport, Chicago, Illinois.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Chicago O'Hare International Airport and use the revenue at Chicago O'Hare International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 4, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 320, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas R. Walker, Commissioner of the City of Chicago Department of Aviation at the following address: Chicago O'Hare International Airport, P.O. Box 66142, Chicago, IL 60666.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Chicago Department of Aviation under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas E. Salaman, Chicago Metropolitan Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 320, Des Plaines, IL 60018, telephone (847) 294–7436. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Chicago O'Hare International Airport and use the revenue at Chicago O'Hare International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 21, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Chicago Department of Aviation was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 21, 2004.

The following is a brief overview of the application.

PFC application number: 04–16–C–00–ORD.

Level of the proposed PFC: $4.50.

Revised proposed charge expiration date: October 1, 2019.

Total estimated PFC revenue: $37,000,000.

Brief description of proposed projects at the $4.50 level:

Impose and Use at ORD: 2004 Residential Insulation; 2004 School Insulation.

Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs: Air Taxi Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Chicago Department of Aviation.

Issued in Des Plaines, Illinois, on January 23, 2004.

Barbara Jordan,

Acting Manager, Planning/Progamming Branch, Airports Division, Great Lakes Region.

[FR Doc. 04–2196 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Monterey Peninsula Airport, Monterey, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Monterey Peninsula Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 4, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Daniel H. O'Brien, Manager, Technical Support Services, Monterey Peninsula Airport District, at the following address: 200 Fred Kane Drive, Suite 200, Monterey, CA 93940. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Monterey Peninsula Airport District under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Joseph R. Rodriguez, Supervisor, Environmental, Planning and Compliance Section, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2805. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Monterey Peninsula Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 30, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Monterey Peninsula Airport District was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 1, 2004.

The following is a brief overview of the impose and use application No. 04–10–C–00–MRY:

Level of proposed PFC: $4.50.

Proposed charge effective date: June 1, 2004.

Proposed charge expiration date: April 1, 2005.

Total estimated PFC revenue: $379,557.

Brief description of the proposed projects: Upgrade Airfield Lighting, Install Airfield Markings, Security Access Control Phase II, and Terminal Modernization Improvements.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Unscheduled Part 135 Air Taxi Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Monterey Peninsula Airport District.

Issued in Lawndale, California, on January 8, 2004.

Mark A. McClardy,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 04–2204 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–05–C–00–EAT To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Pangborn Memorial Airport, Submitted by the Ports of Chelan and Douglas Counties, Pangborn Memorial Airport, Wenatchee, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Pangborn Memorial Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before March 4, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Patricia A. Moore, Airport Manager, at the following address: One Pangborn Drive, East Wenatchee, WA 98802–9233.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Pangborn Memorial Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425) 227–2654, Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 04–05–C–00–EAT to impose and use PFC revenue at Pangborn Memorial Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 20, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Ports of Chelan and Douglas Counties, Pangborn Memorial Airport, Wenatchee, Washington, was substantially complete within the

requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 20, 2004.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: June 1, 2004.

Proposed charge expiration date: December 31, 2005.

Total requested for use approval: $120,671.

Brief description of proposed projects: Taxiway Overlay, Final Phase; Improve Terminal Building (Restrooms).

Class or classes of air carriers, which the public agency has requested, not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, VA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Pangborn Memorial Airport.

Issued in Renton, Washington, on January 20, 2004.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 04–2198 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANE–2002–33.15–R0]

Policy for 14 CFR Section 33.15, Materials

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability; policy statement.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of policy for 14 CFR 33.15, Materials.

DATES: The FAA issued policy statement number ANE–2002–33.15–R0 on January 21, 2004.

FOR FURTHER INFORMATION CONTACT: Tim Mouzakis, FAA, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803; e-mail: *timoleon.mouzakis@faa.gov*; telephone: (781) 238–7114; fax: (781) 238–7199. The policy statement is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl.* If you do not have access to the Internet, you may request a copy of the policy by contacting the individual listed in this section.

SUPPLEMENTARY INFORMATION: The FAA published a notice in the **Federal Register** on June 16, 2003 (68 FR 35770) to announce the availability of the proposed policy and invite interested parties to comment.

Background

The FAA, in cooperation with industry, has developed a multi-faceted strategy to improve the safety of high-energy rotors. This strategy includes improving the ultrasonic (UT) billet inspection of titanium (Ti) alloys used in fan disks and other critical rotating engine hardware. This policy establishes minimum safety standards for the UT billet inspection of Ti material used in the manufacturing of engine rotating components. This policy does not create any new requirements.

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

Issued in Burlington, Massachusetts, on January 21, 2004.

Francis A. Favara,

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

[FR Doc. 04–2200 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. PS–ANM100–2003–10019]

Evaluating a Seat Armrest Cavity for a Potential Fire Hazard

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy on evaluating a seat armrest cavity for a potential fire hazard.

DATES: Send your comments on or before March 4, 2004.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Michael T. Thompson, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, ANM–115, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–1157; fax (425) 227–1232; e-mail: *Michael.T.Thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

The FAA invites your comments on this proposed policy. We will accept your comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT.** Mark your comments, ''Comments to Policy Statement No. PS–ANM100–2003–10019.''

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy.

We will consider all communications received on or before the closing date for comments. We may change the proposed policy because of the comments received.

Background

Due to concern about trapped waste material being a potential fire hazard, the FAA has required seat armrest cavities to be either completely enclosed or have an open bottom. The FAA has conducted research and has determined that for typical armrest cavities, these conditions do not need to be met to prevent a fire hazard. Therefore, revised policy is being proposed.

Issued in Renton, Washington, on January 22, 2004.

K.C. Yanamura,

Acting Manager, Transplane Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2197 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–03–117–09]

Guidance for Demonstration of System, Hardware, and Software Development Assurance Levels on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of policy on guidance for demonstration of software, hardware, and software development assurance levels on transport category airplanes.

DATES: The policy was issued by the Transport Airplane Directorate on January 15, 2004.

FOR FURTHER INFORMATION CONTACT: Linh Le, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Safety Management Branch, ANM–117, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–1105; fax (425) 227–1100; e-mail: *linh.le@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion of Comments

A notice of proposed policy was published in the **Federal Register** on February 25, 2003 (68 FR 8794). Six commenters responded to the request for comments.

Background

The policy clarifies FAA certification policy on determination of system development assurance levels, hardware design assurance levels, and software levels for transport category airplanes.

The policy, as well as the disposition of public comments received, is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl*. If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Issued in Renton, Washington, on January 15, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–2201 Filed 2–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 22, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 4, 2004, to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0120.

Form Number: PD F 5366, PD F 5354 and PD F 5367.

Type of Review: Extension.

Title: FHA New Account Request, Transaction Request, and Transfer Request.

Description: Used to establish account, change information on account, and transfer ownership.

Respondents: Individuals or households, business or other for-profit.

Estimated Number of Respondents: 600.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 102 hours.

Clearance Officer: Vicki S. Thorpe, (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 04–2141 Filed 2–2–04; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 22, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 4, 2004.

Internal Revenue Service (IRS)

OMB Number: 1545–0007.

Form Number: IRS Form T.

Type of Review: Extension.

Title: Forest Activities Schedule.

Description: Form T is filed by individuals and corporations to report income and deductions from the timber business. The IRS uses Form T to determine if the correct amount of income and deduction are reported.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents/Recordkeepers: 37,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	32 hr., 45 min.
Learning about the law or the form.	42 min.
Preparing and sending the form to the IRS.	1 hr., 15 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 1,284,640 hours.

OMB Number: 1545–0742.

Regulation Project Number: EE–111–80 Final.

Type of Review: Extension.

Title: Public Inspection of Exempt Organizations Return.

Description: Section 6104(b) authorizes the Service to make available to the public the return required to be filed by exempt organizations. The information requested in Treasury Regulations section 301.6104(b)–1(b)(4) is necessary in order for the Service not to disclose confidential business information furnished by businesses which contribute to exempt black lung trusts.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 22.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 22 hours.

OMB Number: 1545–1458.

Regulation Project Number: REG–209835–86 Final.

Type of Review: Extension.

Title: Computation of Foreign Taxes Deemed Paid Under Section 902 Pursuant to a Pooling Mechanism for Undistributed Earnings and Foreign Taxes.

Description: These regulations provide rules for computing foreign taxes deemed paid under section 902. The regulations affect foreign corporations and their U.S. corporate shareholders.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1545–1590.

Regulation Project Number: REG–251698–96 Final.

Type of Review: Extension.

Title: Subchapter S Subsidiaries.

Description: The IRS will use the information provided by taxpayers to determine whether a corporation should be treated as an S corporation, a C corporation, or an entity that is disregarded for federal tax purposes. The collection of information covered in the regulation is necessary for a taxpayer to obtain, retain, or terminate S corporation treatment.

Respondents: Business or other for-profit, individuals or households, farms.

Estimated Number of Respondents/Recordkeepers: 10,660.

Estimated Burden Hours Per Respondent/Recordkeeper: 57 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 10,110 hours.

Clearance Officer: Robert M. Coar, (202) 622–3579, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–2142 Filed 2–2–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 1023 and 872–C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code and Form 872–C, Consent Fixing Period of Limitation Upon Assessment of Tax Under Section 4940 of the Internal Revenue Code.

DATES: Written comments should be received on or before April 5, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *carol.a.savage@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code (Form 1023), and Consent Fixing Period of Limitation Upon Assessment of Tax Under Section 4940 of the Internal Revenue Code (Form 872–C).

OMB Number: 1545–0056.

Form Numbers: 1023 and 872–C.

Abstract: Form 1023 is filed by applicants seeking Federal income tax exemption as organizations described in section 501(c)(3) of the Internal Revenue Code. IRS uses the information to determine if the applicant is exempt and whether the applicant is a private foundation. Form 872–C extends the statute of limitations for assessing tax under Code section 4940.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 29,409.

Estimated Time Per Respondent: 70 hours, 22 minutes.

Estimated Total Annual Burden Hours: 2,069,267.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 27, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–2079 Filed 2–2–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8282 and 8283

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8282, Donee Information Return (Sale, Exchange or Other Disposition of Donated Property) and Form 8283, Noncash Charitable Contributions.

DATES: Written comments should be received on or before April 5, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Donee Information Return (Sale, Exchange or Other Disposition of Donated Property) (Form 8282) and Noncash Charitable Contributions (Form 8283).

OMB Number: 1545–0908.

Form Numbers: 8282 and 8283.

Abstract: Internal Revenue Code section 170(a)(1) and regulation section 1.170A–13(c) require donors of property valued over $5,000 to file certain information with their tax return in order to receive the charitable contribution deduction. Form 8283 is used to report the required information. Code section 6050L requires donee organizations to file an information return with the IRS if they dispose of the property received within two years. Form 8282 is used for this purpose.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or household and business or other for-profit organizations and individuals.

Form 8282

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 4 hours, 23 minutes.

Estimated Total Annual Burden Hours: 4,380.

Form 8283

Estimated Number of Respondents: 1,500,000.

Estimated Time Per Respondent: 2 hours, 1 minute.

Estimated Total Annual Burden Hours: 3,015,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 28, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–2159 Filed 2–2–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8038, 8038–G, and 8038–GC

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038–G, Information Return for Tax-Exempt Governmental Obligation, and Form 8038–GC, Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales.

DATES: Written comments should be received on or before April 5, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Return for Tax-Exempt Private Activity Bond Issues (Form 8038), Information Return for Tax-Exempt Governmental Obligation (Form 8038–G), and Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales (Form 8038–GC).

OMB Number: 1545–0720.

Form Number: 8038, 8038–G, and 8038–GC.

Abstract: Issuers of state or local bonds must comply with certain information reporting requirements contained in Internal Revenue Code section 149 to qualify for tax exemption. The information must be reported by the issuers about bonds issued by them during each preceding calendar quarter. Forms 8038, 8038–G, and 8038–GC are used to provide the IRS with the information required by Code section 149 and to monitor the requirements of Code sections 141 through 150.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, Local or Tribal Governments and not-for-profit institutions.

Estimated Number of Respondents: 3,816.

Estimated Time Per Respondent: 217 hours, 57 minutes.

Estimated Total Annual Burden Hours: 831,714

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 28, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–2160 Filed 2–2–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5471 (and Related Schedules)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5471 (and related schedules), Information Return of U.S. Persons With Respect To Certain Foreign Corporations.

DATES: Written comments should be received on or before April 5, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *carol.a.savage@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Return of U.S. Persons With Respect To Certain Foreign Corporations.

OMB Number: 1545–0704.

Form Number: 5471 (and related schedules).

Abstract: Form 5471 and related schedules are used by U.S. persons that have an interest in a foreign corporation. The form is used to report income from the foreign corporation. The form and schedules are used to satisfy the reporting requirements of Internal Revenue Code sections 6035, 6038 and 6046 and the regulations thereunder pertaining to the involvement of U.S. persons with certain foreign corporations.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 43,000.

Estimated Time Per Respondent: 155 hours, 49 minutes.

Estimated Total Annual Burden Hours: 6,700,035.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 27, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–2161 Filed 2–2–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on February 23–24, 2004, at the Department of Veterans Affairs, 811 Vermont Avenue, NW., Room 819, Washington, DC. The meeting on February 23 will convene at 8:30 a.m. and adjourn at 5 p.m. The meeting on February 24 will convene at 8:30 a.m. and adjourn at 4 p.m. Both meetings will be open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Persian Gulf War.

On February 23, the Committee will hear a series of scientific presentations on infectious diseases in Gulf War veterans. The Committee will also hear presentations on immunological research and findings with respect to Gulf War veterans. On February 24, the Committee will hear presentations on research concerning the biological effects and health concerns of depleted uranium. The Committee will also receive an update on VA-sponsored Gulf War illness research. Time will be available for public comment on both days.

Members of the public may submit written statements for the Committee's review to Ms. Laura O'Shea, Designated Federal Officer, Department of Veterans Affairs (008A1), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public seeking additional information should contact Ms. Laura O'Shea at (202) 273–5031.

Dated: January 27, 2004.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–2108 Filed 2–2–04; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on the Readjustment of Veterans will be held Thursday and Friday, February 19 and 20, 2004, from 8:30 a.m. until 4:30 p.m. on both days, at The American Legion, Washington Office, 1608 K Street, NW., Washington, DC. The meeting is open to the public.

The purpose of the Committee is to review the post-war readjustment needs of veterans and to evaluate the availability and effectiveness of VA programs to meet these needs.

The agenda for February 19 will focus on military service-related needs of returning combatants from the war on terrorism in Afghanistan and Iraq. The day's activities will also cover the coordination of services between VA and the Department of Defense to ensure continuity of care for returning veterans.

On February 20, the Committee will be provided with an update of the recent activities of the Readjustment Counseling Service Vet Center program and a review of VA tele-medicine operations. The agenda for February 20 will also include strategic planning activities to formulate goals and objectives for the coming year. In addition, the Committee will formulate recommendations for submission to Congress in its annual report.

No time will be allocated at this meeting for receiving oral presentations from the public. However, members of the public may direct written questions or submit prepared statements for review by the Committee in advance of the meeting to Mr. Charlie M. Flora, M.S.W., Designated Federal Officer, Readjustment Counseling Service, Department of Veterans Affairs (15), 810 Vermont Avenue, NW., Washington, DC 20420. Those who plan to attend or have questions concerning the meeting may contact Mr. Flora at (202) 273–8969 or *charles.flora@hq.med.va.gov.*

Dated: January 23, 2004.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–2109 Filed 2–2–04; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 69, No. 22

Tuesday, February 3, 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 THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9100]

RIN 1545–BC62

Guidance Necessary to Facilitate Business Electronic Filing

Correction

In rule document 03–31238 beginning on page 70701 in the issue of Friday, December 19, 2003, make the following corrections:

1. On page 70703, in the first column, under the heading ''*5. Form 1120: U.S. Corporation Income Tax Return*'', in the first paragraph, in the 20th line from the bottom, ''(g)(2)(iv)(B)(3)(iii)'' should read ''(g)(2)(iv)(B)(*3*)(*iii*)''.

2. On the same page, in the same column, under the same heading, in the same paragraph, in the 13th line from the bottom, ''(iv)(B)(3)(iii)'' should read ''(iv)(B)(*3*)(*iii*)''.

§ 1.1503–2 [Corrected]

3. On page 70707, in the second column, in § 1.1503–2, in paragraph (g)(2)(iv)(B)(*3*), ''(3)'' should read ''(*3*)''.

4. On the same page, in the same column, in the same section, in paragraph (g)(2)(iv)(B)(*3*)(*iii*), in the first line, ''(iii)'' should read ''(*iii*)''.

[FR Doc. C3–31238 Filed 2–2–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
February 3, 2004

Part II

Department of Education

Institute of Education Sciences; Notice Inviting Applications for Grants To Support Education Research for Fiscal Year (FY) 2004; Notice

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.305A, 84.305B, and 84.902B]

Institute of Education Sciences; Notice Inviting Applications for Grants To Support Education Research for Fiscal Year (FY) 2004

SUMMARY: The Director of the Institute of Education Sciences (Institute) announces three FY 2004 competitions for grants to support education research. The Director takes this action under the Education Sciences Reform Act of 2002 (Act), Title I of Public Law 107–279. The intent of these grants is to provide national leadership in expanding fundamental knowledge and understanding of education from early childhood education through postsecondary study.

SUPPLEMENTARY INFORMATION:

Mission of Institute: A central purpose of the Institute is to provide parents, educators, students, researchers, policymakers, and the general public with reliable information about education practices that support learning and improve academic achievement and access to education opportunities for all students. In carrying out its mission, the Institute provides support for programs of research in areas of demonstrated national need.

Competitions in this notice: The Institute will support the following competitions in FY 2004:

- National research and development centers. The centers will focus on the following topic areas: rural education, postsecondary education, improving low achieving schools, and innovation in education reform.
- Predoctoral research training.
- Secondary analysis of data from the National Assessment of Educational Progress.

These competitions are in addition to those previously announced and are the final Institute competitions for FY 2004.

Eligible Applicants: Applicants that have the ability and capacity to conduct scientifically valid research are eligible to apply. Eligible applicants include, but are not limited to, non-profit and for-profit organizations and public and private agencies and institutions, such as colleges and universities.

Request for Applications and Other Information: Information regarding program and application requirements for each of the Institute's competitions is contained in the applicable Request for Applications package (RFA), which will be available at the following Web site: *http://www.ed.gov/programs/edresearch/applicant.html.*

The RFAs will be available as follows: on February 4, 2004 for the national research and development centers and predoctoral research training competitions, and on February 11, 2004 for the secondary analysis of data from the National Assessment of Educational Progress competition. Interested potential applicants should periodically check the Institute's Web site.

Information regarding selection criteria and review procedures will also be posted at this Web site.

Fiscal Information: For national research and development centers, funds will support four centers. We expect these awards to range in size from approximately $1 million to $2 million per year. Awards will be for 5 years.

For predoctoral research training, we expect to make from five to 15 awards, depending upon the quality of applications received. We expect these awards to range from approximately $500,000 to $1 million per year. Awards will be made for 5 years.

For secondary analysis of National Assessment of Educational Progress data, $700,000 is available and will support up to 10 awards for periods generally ranging from 12 to 18 months.

The figures above are estimates and are not binding.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 77, 80, 81, 82, 84, 85, 86 (part 86 applies only to institutions of higher education), 97, 98, and 99. In addition 34 CFR part 75 is applicable, except for the provisions in 34 CFR 75.100, 75.101(b), 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.211, 75.217, 75.219, 75.220, and 75.230.

Performance Measures

To evaluate the overall success of its education research program, the Institute annually assesses the quality and relevance of newly funded research projects, as well as the quality of research publications that result from its funded research projects. Two indicators address the quality of new projects. First, an external panel of eminent senior scientists reviews the quality of a randomly selected sample of newly funded research applications, and the percentage of new projects that are deemed to be of high quality is determined. Second, because much of the Institute's work focuses on questions of effectiveness, newly funded applications are evaluated to identify those that address causal questions and then to determine what percentage of those projects use randomized field trials to answer the causal questions. To evaluate the relevance of newly funded research projects, a panel of experienced education practitioners and administrators reviews descriptions of a randomly selected sample of newly funded projects and rates the degree to which the projects are relevant to educational practice.

Two indicators address the quality of new research publications, both print and web-based, which are the products of funded research projects. First, an external panel of eminent scientists reviews the quality of a randomly selected sample of new publications, and the percentage of new publications that are deemed to be of high quality is determined. Second, publications that address causal questions are identified, and are then reviewed to determine the percentage that employ randomized experimental designs. As funded research projects are completed, the Institute will subject the final reports to similar reviews.

To evaluate impact, the Institute surveys a random sample of K–16 policymakers and administrators once every 3 years to determine the percentage who report routinely considering evidence of effectiveness before adopting educational products and approaches.

Application Procedures

The Government Paperwork Elimination Act (GPEA) of 1998, (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999, (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

We are requiring that applications for the FY 2004 competitions be submitted electronically to the following Web site: *http://ies.constellagroup.com.*

Information on the software to be used in submitting applications will be available at the same Web site.

FOR FURTHER INFORMATION CONTACT: The contact person (and the deadline for receipt of applications associated with a particular program of research) is listed in the following chart and in the RFA that will be posted at: *http://www.ed.gov/programs/edresearch/applicant.html.*

CFDA No. and program of research	Deadline for receipt of applications	For further information contact
84.305A National Research and Development Centers	5/27/2004	
• Rural education		Ram Singh e-mail: *Ram.Singh@ed.gov*
• Postsecondary education		Jon Oberg e-mail: *Jon.Oberg@ed.gov*
• Improving low achieving schools		David Sweet e-mail: *David.Sweet@ed.gov*
• Innovation in education reform		Michael Wiatrowski e-mail: *Michael.Wiatrowski@ed.gov*
84.305B Predoctoral Training	5/27/2004	James Griffin e-mail: *James.Griffin@ed.gov*
84.902B Secondary Analysis of National Assessment of Educational Progress Data.	5/13/2004	Alex Sedlacek e-mail: *Alex.Sedlacek@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 9501 *et seq.* (the ''Education Sciences Reform Act of 2002'', Title 1 of Public Law 107–279, November 5, 2002).

Dated: January 29, 2004.

Grover J. Whitehurst,

Director, Institute of Education Sciences.

[FR Doc. 04–2127 Filed 2–2–04; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Tuesday,
February 3, 2004

Part III

The President

Executive Order 13326—President's Commission on Implementation of United States Space Exploration Policy

Federal Register
Vol. 69, No. 22
Tuesday, February 3, 2004

Presidential Documents

Title 3—

The President

Executive Order 13326 of January 27, 2004

President's Commission on Implementation of United States Space Exploration Policy

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to obtain recommendations concerning implementation of the new vision for space exploration activities of the United States, it is hereby ordered as follows:

Section 1. *Establishment.* There is hereby established the President's Commission on Implementation of United States Space Exploration Policy (the ''Commission'').

Sec. 2. *Membership.* (a) The Commission shall be composed of not more than nine members appointed by the President, taking into account as appropriate the experience of such individuals with respect to governmental, scientific, and technical matters relating to space.

(b) The President shall designate one member of the Commission to serve as Chairman of the Commission.

Sec. 3. *Mission.* (a) The mission of the Commission shall be to provide recommendations to the President, in accordance with this order, on implementation of the vision outlined in the President's policy statement entitled ''A Renewed Spirit of Discovery'' and the President's Budget Submission for Fiscal Year 2005 (collectively, ''Policy'').

(b) The Commission shall examine and make recommendations to the President regarding:

(i) A science research agenda to be conducted on the Moon and other destinations as well as human and robotic science activities that advance our capacity to achieve the Policy;

(ii) The exploration of technologies, demonstrations, and strategies, including the use of lunar and other in situ natural resources, that could be used for sustainable human and robotic exploration;

(iii) Criteria that could be used to select future destinations for human exploration;

(iv) Long-term organization options for managing implementation of space exploration activities;

(v) The most appropriate and effective roles for potential private sector and international participants in implementing the Policy;

(vi) Methods for optimizing space exploration activities to encourage the interest of America's youth in studying and pursuing careers in mathematics, science, and engineering; and

(vii) Management of the implementation of the Policy within available resources.

Sec. 4. *Administration.* (a) The National Aeronautics and Space Administration (NASA) shall provide, to the extent permitted by law, administrative support and funding for the Commission. The Commission is established in NASA for administrative purposes only.

(b) Members of the Commission shall serve without compensation for their work on the Commission. Members appointed from among private citizens of the United States, however, while engaged in the work of the Commission, may be allowed travel expenses, including per diem in lieu

of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701–5707), to the extent funds are available.

(c) Insofar as the Federal Advisory Committee Act (5 U.S.C. App. 2) (the ''Act''), as amended, may apply to the Commission, any functions of the President under that Act, except for those in section 6 of that Act, shall be performed by the Administrator of NASA (the ''Administrator''), in accordance with the guidelines that have been issued by the Administrator of General Services.

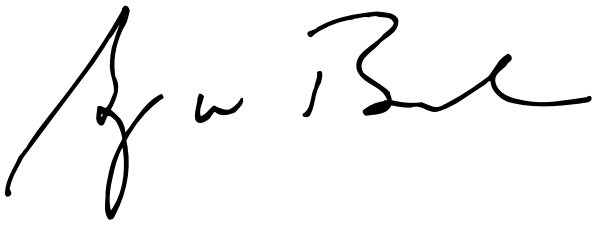
(d) The Commission shall conduct occasional meetings as appropriate, including at various locations throughout the United States, to solicit views and opinions from the public, academia, and industry.

(e) The Commission shall not have access to information classified pursuant to Executive Order 12958 of April 17, 1995, as amended.

Sec. 5. *Report.* The Commission shall submit its final report to the President through the Administrator within 120 days of the first meeting of the Commission.

Sec. 6. *General Provisions.* (a) This order is intended only to improve the internal management of the executive branch and it is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

(b) The Commission shall terminate within 60 days after submitting its final report.



THE WHITE HOUSE,
January 27, 2004.

[FR Doc. 04–2408
Filed 2–2–04; 11:02 am]
Billing code 3195–01–P

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Federal Register

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Tuesday, February 3, 2004

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ELECTRONIC RESEARCH

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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.

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- Delaware; published 12-5-03

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- Massachusetts et al.; comments due by 2-10-04; published 12-12-03 [FR 03-30598]

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Air pollution control; new motor vehicles and engines:
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